

## STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: The Administration and Operation of the State Employees' Retirement System of Illinois
- 2) Code Citation: 80 Ill. Adm. Code 1540
- 3) Section Number: 1540.380                      Emergency Action: New Section
- 4) Statutory Authority: 40 ILCS 5/14-135.03 and 40 ILCS 5/14-148.1
- 5) Effective Date of Rulemaking: February 6, 2015
- 6) If this emergency rulemaking is to expire before the end of the 150-day period, please specify the date on which they are to expire: This emergency amendment will expire at the end of the 150-day period, or upon adoption of the permanent rule, whichever comes first.
- 7) Date Filed with the Index Department: February 6, 2015
- 8) A copy of this emergency rulemaking, including any material incorporated by reference, is on file in the Agency's principal office and is available for inspection.
- 9) Reason for Emergency: The Illinois General Assembly created PA 98-1117 to codify that the State Employees' Retirement System (System) has explicit authority to adjust benefit payments to members when it determines that a benefit payment was incorrectly set too high or low. The Act also provides procedures for the System to pay the member if it has set the benefit too low, as well as for members to pay the System if the benefit was set too high.

The law was passed in response to the lawsuit, *Sharp v. Board of Trustees of the State Employees' Retirement System*, in which both the Circuit Court and the Appellate Court ruled that the Board of State Employees' Retirement System did not have authority to fix errors it makes in the calculation of pensions outside of the 35-day period of review provided by the Administrative Review Law. PA 98-1117 was created to specifically grant the Board this authority, and would be applicable to all mistaken benefit calculations including those of the plaintiff in that lawsuit. Since the law was created, the System has reduced the benefits of the plaintiff so that the correct amount will be paid moving forward.

## STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## NOTICE OF EMERGENCY AMENDMENT

In response to the newly created law and the action by the System, the plaintiff and two additional parties subsequently filed a lawsuit in the United States District Court for the Central District of Illinois. In the complaint, the plaintiffs allege that the Board violated the Illinois Administrative Procedure Act in that it did not comply with the mandatory provisions of law relating to the valid promulgated rules. Although the System does not agree with the allegation, the filing of the emergency rule would avoid any such debate.

Additionally, the plaintiffs state in the letter that their rights under Article III of the US Constitution were violated because they were not offered due process of law. The System already provides an appeal process that allows its members the opportunity to challenge the System's decisions which is applicable to the adjustment of benefits. For the sake of being extremely transparent, this emergency rule explicitly provides that the System must include a notice of the appeal procedure in the written letter provided to a member that is subject to a benefit adjustment in accordance with PA 98-1117.

Lawsuits seeking to maintain pension benefits at erroneous levels contrary to statute constitutes a threat to the public interest, and this emergency rule will strengthen the System's position against such lawsuits.

- 10) A Complete Description of the Subjects and Issues Involved: Section 14-148.1 of the Illinois Pension Code provides that if the System mistakenly sets any benefit at an incorrect amount, it shall recalculate the benefit as soon as may be practicable after the mistake is discovered. The statute provides procedures for the System to pay the member if the System has set the benefit too low, as well as for members to pay the System if the benefit was set too high.
- 11) Are there any rulemakings to this Part pending: Yes
- 12) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate or effect units of local government.
- 13) Information and questions regarding this emergency rule shall be directed to:

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STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF EMERGENCY AMENDMENT

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The full text of the Emergency Amendment begins on the next page:

## STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## NOTICE OF EMERGENCY AMENDMENT

## TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

## SUBTITLE D: RETIREMENT SYSTEMS

## CHAPTER I: STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## PART 1540

THE ADMINISTRATION AND OPERATION OF THE  
STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## Section

1540.5	Introduction
1540.10	Appointment of Retirement System Coordinator
1540.20	Member's Contribution and Service Credit
1540.30	Determination of Rate of Compensation
1540.40	Prior Service Credit
1540.50	Credit for Service for Which Contributions are Permitted
1540.60	Severance of Employment – A Condition to the Payment of a Refund or Retirement Annuity
1540.70	Death Benefits
1540.80	Disability Claims
1540.90	Benefit Offset
1540.100	Birth Date Verification
1540.110	Marriage Verification
1540.120	Level Income Option
1540.130	Pension Credit for Unused Sick Leave
1540.140	Removal of Children from Care of Surviving Spouse
1540.150	Proof of Dependency
1540.160	Investigations of Benefit Recipients
1540.170	Interest on Member Contributions
1540.180	Date of Application – Retirement Annuity, Occupational and Nonoccupational and Temporary Disability Benefits, and Resignation Refund Payments
1540.190	Lump Sum Salary Payments
1540.200	Removal from the Payroll
1540.210	Latest Date of Membership
1540.220	Period for Payment and Amount of Payment of Contributions
1540.230	Contributions by the State (Repealed)
1540.240	Actuarially Funded Basis (Repealed)
1540.250	Payments to Establish Credit for Service for Which Contributions are Permitted
1540.255	Pick-up Option for Optional Service Contributions
1540.260	Contributions and Service Credit During Nonwork Periods

## STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## NOTICE OF EMERGENCY AMENDMENT

- 1540.270 Written Appeals and Hearings  
1540.280 Availability for Public Inspection (Recodified)  
1540.290 Procedure for Submission, Consideration and Disposition of Petitions Seeking the Promulgation, Amendment or Repeal of these Rules and Regulations (Recodified)  
1540.300 Organization of the State Employees' Retirement System (Recodified)  
1540.310 Amendments  
1540.320 Optional Forms of Benefits – Basis of Computation  
1540.330 Board Elections  
1540.340 Excess Benefit Arrangement  
1540.350 Qualified Illinois Domestic Relations Orders (QILDRO)  
1540.360 Election to be an Employee under Section 14-103.05(b)(3) of the Illinois Pension Code  
1540.370 Americans With Disabilities Act  
[1540.380 Correction of Mistakes in Benefit Payments](#)  
[EMERGENCY](#)

1540.APPENDIX A Grievance Form

1540.TABLE A Optional Forms of Benefits – Basis of Computation

**AUTHORITY:** Implementing and authorized by Article 14 of the Illinois Pension Code [40 ILCS 5/Art. 14].

**SOURCE:** Filed December 20, 1977, effective December 31, 1977; filed and effective February 28, 1978; emergency rule at 4 Ill. Reg. 2, page 246, effective January 1, 1980; amended at 4 Ill. Reg. 12, pages 530, 532, 534, effective March 11, 1980; emergency rule at 4 Ill. Reg. 46, page 1300, effective November 1, 1980; amended at 5 Ill. Reg. 3454, effective March 19, 1981; amended at 5 Ill. Reg. 7225, effective July 1, 1981; amended at 5 Ill. Reg. 12846, effective October 30, 1981; amended at 6 Ill. Reg. 2114, effective January 29, 1982; amended at 6 Ill. Reg. 5505, effective April 16, 1982; codified at 6 Ill. Reg. 10935; emergency amendment at 6 Ill. Reg. 11084, effective August 31, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 677, effective December 30, 1982; amended at 7 Ill. Reg. 8831, effective July 15, 1983; emergency amendment at 8 Ill. Reg. 359, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 4144, effective March 26, 1984; Sections 1540.280, 1540.290 and 1540.300 recodified to 2 Ill. Adm. Code 2375 at 8 Ill. Reg. 15902; amended at 9 Ill. Reg. 12375, effective July 30, 1985; emergency amendment at 9 Ill. Reg. 19752, effective December 5, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 8889, effective May 14, 1986; amended at 11 Ill. Reg. 11155, effective June 15, 1987; amended at 14 Ill. Reg. 10498, effective June 19, 1990; amended at 15 Ill. Reg. 7379, effective April 26, 1991; amended at 16 Ill. Reg. 14407, effective September 4, 1992; amended at 20 Ill. Reg. 8033, effective June 15, 1996; emergency

## STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## NOTICE OF EMERGENCY AMENDMENT

amendment at 21 Ill. Reg. 476, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4992, effective April 1, 1997; emergency amendment at 21 Ill. Reg. 13187, effective September 15, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 967, effective December 22, 1997; amended at 22 Ill. Reg. 15363, effective August 10, 1998; amended at 23 Ill. Reg. 3824, effective March 9, 1999; amended at 23 Ill. Reg. 11313, effective September 1, 1999; amended at 24 Ill. Reg. 6975, effective April 20, 2000; amended at 24 Ill. Reg. 18090, effective December 1, 2000; amended at 25 Ill. Reg. 5632, effective April 4, 2001; emergency amendment at 26 Ill. Reg. 11133, effective June 28, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16575, effective October 22, 2002; emergency amendment at 28 Ill. Reg. 8775, effective July 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 15628, effective November 18, 2004; amended at 29 Ill. Reg. 15554, effective October 1, 2005; amended at 30 Ill. Reg. 12303, effective July 1, 2006; amended at 31 Ill. Reg. 211, effective December 21, 2006; amended at 32 Ill. Reg. 17779, effective October 29, 2008; emergency amendment at 33 Ill. Reg. 9449, effective June 19, 2009, for a maximum of 150 days; emergency expired November 15, 2009; amended at 34 Ill. Reg. 285, effective December 15, 2009; amended at 34 Ill. Reg. 8313, effective June 10, 2010; amended at 38 Ill. Reg. 4023, effective January 24, 2014; emergency amendment at 39 Ill. Reg. 2792, effective February 6, 2015, for a maximum of 150 days.

**Section 1540.380 Correction of Mistakes in Benefit Payments**  
**EMERGENCY**

- a) As soon as reasonably practicable after discovery that the amount of a benefit being paid to a recipient is incorrect, the System shall notify the recipient in writing. The written communication shall indicate the correct amount of the benefit, when the corrected benefit amount will begin to be paid, and the procedure for appealing such action.
- b) Upon discovering that the System has been paying a benefit that is not correct, the System shall endeavor to determine whether the recipient has been underpaid or overpaid by the System.
  - 1) If the recipient has been underpaid, the System shall pay a lump sum amount of the recipient in the amount necessary to make the recipient whole as to the amounts that should have been paid to the recipient by the System according to the terms of the Act.
  - 2) If the System determines the recipient has been paid more than provided for by the Act the System shall determine when the overpayments began.

## STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS

## NOTICE OF EMERGENCY AMENDMENT

- A) If the overpayments have been made by the System for more than three years the recipient will not be required to reimburse the System for the amount of the overpayments unless the overpayments are the result of incorrect or inaccurate information provided by a member, beneficiary or their authorized representative. Incorrect information provided by another retirement system or a state agency will be considered as being provided by an authorized representative of the member or beneficiary.
- B) If the overpayments have been made for less than three years then the System shall make arrangements for collection of the amount of the overpayment. The overpayment can be repaid by reductions of the remaining payments due to the recipient, repayment of the overpayment by the recipient to the System, by such other arrangement as the System makes with the recipient or by any other means legally available to the System.
- C) No matter how long an overpayment has been made to a member or beneficiary if the overpayment is the result of incorrect or inaccurate information provided by a member, beneficiary or their authorized representative the System shall make arrangements for collection of the amount of the overpayment. The overpayment can be repaid by reductions of the remaining payments due to the recipient, repayment of the overpayment by the recipient to the System, by such other arrangement as the System makes with the recipient or by any other means legally available to the System.
- c) As used in this Section, "System" shall refer to the State Employees' Retirement System, Judges' Retirement System and General Assembly Retirement System.

(Source: Added by emergency rulemaking at 39 Ill. Reg. 2792, effective February 6, 2015, for a maximum of 150 days)