
Retirees Association Suing Over Pension Reform

The state's new pension reform law could soon be facing its first lawsuit. A group representing retired state workers is preparing to take action.

The Illinois State Employees Association Retirees announced today they plan to file a class action lawsuit sometime next week.

The group is filing alone because it feels retirees are treated differently under the law, compared to active employees.

Retirees won't get the 1 percent drop in employee contributions, and are facing cost-of-living reductions after they already made contributions.

"Our part is going to be held, is going to be heard, and we're going to zero in right on that," Rudy Kink of the Illinois State Employees Association Retirees said. "And we're not going to be distracted by what may or may not come up on the active side of the lawsuits that are filed."

The lawsuit will be filed on behalf of retirees from all four state employee pension funds. Executive director Rudy Kink tells us he estimates the litigation will cost \$100,000. He says the association will be asking for donations from members and anyone else affected by the pension changes who wishes to help out.

FILED

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

JAN 02 2014 CIV.-1

ILLINOIS STATE EMPLOYEES)
ASSOCIATION RETIREES, ROBERT SILGER,)
GWENN KLINGLER, BARBARA SCHOB,)
BARBARA MAXEINER, and JOHN)
MUNDSTOCK, on behalf of a Class of)
Persons Similarly Situated,)
Plaintiffs,)

Anthony P. Lebus Clerk of the
Circuit Court

2014 CH000003

-vs-

Case No.

THE BOARD OF TRUSTEES OF THE)
STATE EMPLOYEES' RETIREMENT SYSTEM)
OF ILLINOIS, THE BOARD OF TRUSTEES OF)
THE GENERAL ASSEMBLY RETIREMENT)
SYSTEM, THE BOARD OF TRUSTEES OF THE)
STATE TEACHERS' RETIREMENT SYSTEM,)
THE BOARD OF TRUSTEES OF THE STATE)
UNIVERSITY RETIREMENT SYSTEM,)
JUDY BAAR TOPINKA, Comptroller of the)
State of Illinois, and DAN RUTHERFORD, the)
Treasurer of the State of Illinois)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

ILLINOIS STATE EMPLOYEES ASSOCIATION RETIREES, ROBERT SILGER,
GWENN KLINGLER, BARBARA SCHOB, BARBARA MAXEINER, AND JOHN
MUNDSTOCK, on their own behalf and on behalf of a class of persons similarly situated, by their
attorneys, Donald M. Craven, P.C., for their Complaint against Defendants THE BOARD OF
TRUSTEES OF THE STATE EMPLOYEES' RETIREMENT SYSTEM, THE BOARD OF
TRUSTEES OF THE GENERAL ASSEMBLY RETIREMENT SYSTEM, THE BOARD OF
TRUSTEES OF THE STATE TEACHERS' RETIREMENT SYSTEM, and THE BOARD OF

TRUSTEES OF THE STATE UNIVERSITY RETIREMENT SYSTEM, JUDY BAAR TOPINKA, comptroller of the State of Illinois, and DAN RUTHERFORD, the Treasurer of the State of Illinois, state as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff Illinois State Employees Association Retirees (“ISEAR”) is an Illinois corporation whose address is 1548 West Jefferson Street, Springfield Illinois, 62702. All ISEAR members are annuitants of a pension system of the State of Illinois. ISEAR is constituted to promote the welfare of public employees who have retired from service with the State of Illinois in all ways compatible with the public interest and to support and promote improvement in the public employee’s retirement systems of Illinois.
2. Plaintiff Robert Silger is an annuitant in the State Employee Retirement System (“SERS”). At all times during his term of service, Mr. Silger made all contributions required of him by existing terms of state law and SERS regulations to enable him to be eligible for all levels of SERS benefits, including but not limited to the 3% annual increases available to SERS annuitants.
3. Plaintiff Gwenn Klingler is an annuitant in the General Assembly Retirement System (“GARS”). At all times during her term of service, Ms. Klingler made all contributions required of her by existing terms of state law and GARS regulations to enable her to be eligible for all levels of GARS benefits, including but not limited to the 3% annual increases available to GARS annuitants.
4. Plaintiff Barbara Schob is an annuitant in the State Teachers’ Retirement System (“TRS”). At all times during her term of service, Ms. Schob made all contributions required of her by

existing terms of state law and TRS regulations to enable her to be eligible for all levels of TRS benefits, including but not limited to the 3% annual increases available to TRS annuitants.

5. Plaintiff Barbara Maxeiner is an annuitant in the State University Retirement System ("SURS"). At all times during her term of service, Ms. Maxeiner made all contributions required of her by existing terms of state law and SURS regulations to enable her to be eligible for all levels of SURS benefits, including but not limited to the 3% annual increases available to SURS annuitants.
6. Plaintiff John Mundstock is an annuitant in the SERS, having paid additional dollars in order to participate in the Early Retirement Incentive Program in 2002. At all times during his term of service, Mr. Mundstock made all contributions required of him by existing terms of state law and SERS regulations to enable him to be eligible for all levels of SERS benefits, including but not limited to the 3% annual increases available to SERS annuitants.
7. Contrary to the fiscally responsible action of the individual plaintiffs and all others members of the plaintiff class who made all required contribution to the appropriate Retirement System, (including additional ERI contributions for the members of that sub-class) the State of Illinois through the General Assembly and the office of the Governor failed and refused to budget and appropriate funding for these Retirement Systems.
8. The failure of the State, through the General Assembly and the office of the Governor to sufficiently fund these Retirement Systems resulted in (as to some Systems) the sale of assets in order to fund annuity payments to retirees.
9. The failure of the State, through the General Assembly and the office of the Governor to

sufficiently fund these Retirement Systems resulted in unfunded liabilities for each of these Retirement Systems. It is the existence of these unfunded liabilities which the General Assembly now claims to be the basis of a “pension crisis” in the State, and the excuse for diminishing the pensions of Plaintiff class.

10. Defendant The Board of Trustees of the General Assembly Retirement System (“GARS Board of Trustees”) is the governing body of an independent agency of the State of Illinois, organized and existing pursuant to Article 2 of the Illinois Pension Code, 40 ILCS 5/2-101, *et seq.* The GARS Board of Trustees is sued in its official capacity only.
11. Defendant Board of Trustees of State Employees’ Retirement System (“SERS Board of Trustees”) is the governing body of an independent agency of the State of Illinois, organized and existing pursuant to Article 14 of the Illinois Pension Code, 40 ILCS 5/14-101, *et seq.* The SERS Board of Trustees is sued in its official capacity only.
12. Defendant The Board of Trustees of the State Teachers’ Retirement System (“TRS Board of Trustees”) is the governing body of an independent agency of the State of Illinois, organized and existing pursuant to Article 16 of the Illinois Pension Code, 40 ILCS 5/16-101, *et seq.* The TRS Board of Trustees is sued in its official capacity only.
13. Defendant The Board of Trustees of the State Universities Retirement System (“SURS Board of Trustees”) is the governing body of an independent agency of the State of Illinois organized and existing pursuant to Article 15 of the Illinois Pension Code, 40 ILCS 5/15-101 *et seq.* The SURS Board of Trustees is sued in its official capacity only.
14. Defendant Judy Baar Topinka is the Comptroller of the State of Illinois, a constitutional office, charged by Article V, Section 17 of the Constitution of Illinois with the responsibility

to “maintain the State’s central fiscal accounts, and order payments in and out of the funds held by the Treasurer.” As such, Comptroller Topinka signs paychecks or grants approval to electronic payments made by the State to its retirees. Comptroller Topinka is also the Chairperson of the SERS Board of Trustees. Comptroller Topinka is sued in her official capacity only.

15. Defendant Dan Rutherford is the Treasurer of the State of Illinois. Section 14-137 of the Pension Code designates the Treasurer Rutherford as the Treasurer of SERS and requires that all monies of SERS shall be deposited by Treasurer Rutherford in a “special trust fund.” Treasurer Rutherford is sued in his official capacity only.
16. Plaintiffs bring this action on behalf of a class consisting of all annuitants of SERS, GARS, TRS, and SURS. The class is believed to exceed 10,000 persons, such that joinder of all members is impracticable. There are questions of law or fact common to the class, which common questions predominant over questions affecting only individual members. The representative parties will fairly and adequately protect the interest of the class.
17. Plaintiffs also seek the creation of a subclass of persons who availed themselves of the Early Retirement Incentive Program in 2002. This subclass (the “ERI Subclass”) is believed to have over 5,000 members. Plaintiff John Mundstock is member of the ERI Subclass and will adequately represent the subclass.
18. As is set forth below, the ERI Subclass involves only the Count of this complaint which involves promissory estoppel principles. With respect to the other counts, the claims of the ERIA Subclass are identical to those of the remaining members of the class.
19. Article 13, Section 5 of the Illinois Constitution of 1970 provides as follows:

PENSION AND RETIREMENT RIGHTS

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

State Employees' Retirement System of Illinois

20. Sections 14-101 and 14-102 of the Illinois Pension Code, 40 ILCS 5/14-101 and 14/102, define the business and purpose of SERS as follows:

Sec. 14-101. Creation of system. A retirement and benefit system is created to provide retirement annuities and other benefits for employees of the State of Illinois. The systems shall be known as the "State Employees' Retirement System of Illinois". By such name all its business shall be transacted and its cash and other property held in trust for the purposes of this Article.

Sec. 14-102. Purpose. The purpose of the system is to provide an orderly means whereby aged or disabled employees may be retired from active service, without prejudice or hardship, and to enable the employees to accumulate reserves for themselves and their dependents for old age, disability, death and termination of employment, thus effecting economy and efficiency in the administration of the State Government.

21. The named Plaintiffs and the members of the class were promised, as a term and condition of their employment, and as a "benefit" accompanying their membership in a pension or retirement system of the State of Illinois, and as an enforceable contractual relationship, that they would be entitled to a 3% per annum increase in their annuity each year. This provision is commonly (although improperly) referred to as the annual Cost of Living ("COLA") adjustment, although it is completely independent of any increase or decrease in the cost of living. It will be referred to in this complaint as the "3% Automatic Increase".
22. Section 14-153.1, titled Automatic Increase in Service Retirement Allowance, was added to the Illinois Pension code by Public Act 76-748, effective August 15, 1969, prior to the

adoption fo the 1970 Constitution. It provided that any employee eligible for a service retirement annuity under this Article, (SERS) who retires from service on or after December 31, 1969, having attained age 60, shall on January 1 next following the first full year of retirement, and each succeeding year thereafter, have the amount of his (or her) then fixed and payable retirement annuity increased by an additional 1 ½%. It also provided that these increases shall be applicable only if the employee makes an additional contribution of 1% of each salary payment concurrently with and in addition to the member contribution otherwise being made to the system effective January 1, 1970 for not less than the equivalent of one full year.

23. This same section was amended by Public Act 77-292, effective July 15, 1971, to provide that effective January 1, 1972, the rate of increase in the service retirement allowance shall be 2%. That same year this section also was amended by Public Act 77-1302, effective August 27, 1971. It expanded eligibility for this automatic increase to include any employee eligible for a service retirement annuity under Article XIV who retires before age 60 having at least 35 years of creditable service.
24. In 1977 this Section was renumbered and retitled as Section 14-114, Automatic Increase in Retirement Annuity by Public Act 80-841, and effective January 1, 1978. Annuity was substituted for each place the allowance was previously used.
25. The next year House Bill 1803 (Public Act 80-1408) was passed and approved the Governor effective August 28, 1978. It amended Section 14-114 to provide that on January 1 of each succeeding year, concurrently with retirement annuity payments to the retired employee, the retired employee's original monthly annuity shall be increased by an additional 3% (instead

of 2%). The language that this would only apply to employees who make the additional contributions required after December 31, 1969 for the purpose of the automatic increases for not less than one year was retained.

26. In 1985 this Section was amended again, this time by Public Act 84-162, effective August 16, 1985, to add language that allowed any person receiving a retirement annuity under this Article who retires before attaining age 60 and with less than 35 years of creditable service to have the amount of their fixed and payable annuity increased by 3% on the January 1 next following (1) attainment of age 60, or (2) the first anniversary of retirement, whichever is later.
27. Another subsequent amendment to this Section 14-114 by Public Act 86-273, approved and effective August 23, 1989, provided that beginning January 1, 1990, all automatic increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including previous increases granted under this Section (instead of being based on the employee's original monthly retirement annuity).
28. During the past 24 years there have been only two other relatively modest changes in the Section 14-114. Public Act 87-1265, approved and effective January 25, 1993, added language providing that a person who received early retirement incentives under Section 14-108.3 whose retirement annuity began after January 1, 1992, the first anniversary of that retirement shall be deemed to be January 1, 1993. The last change to this Section was made by Public Act 91-927, approved and effective December 14, 2000. It changed the eligibility for this automatic increase for those who retired under age 60 with less than 35 years of service when added to the member's age must equal at least 85.

29. At no time during the forty-four years since what is now Section 14-114 was added to the Pension Code in 1969 has it included any language or reference to the automatic increase being for a cost of living adjustment or COLA. In addition the requirement that annuitants are only eligible for these automatic increases if the employee made the additional contribution required on or after December 31, 1969 for at least the equivalent of one full year is still in force and included in this Section.
30. As of December 4, 2013, Section 14-114(a) of the Pension Code stated as follows:

Sec. 14-114. Automatic increase in retirement annuity.

(a) Any person receiving a retirement annuity under this Article who retires having attained age 60, or who retires before age 60 having at least 35 years of creditable service, or who retires on or after January 1, 2001 at an age which, when added to the number of years of his or her creditable service, equals at least 85, shall, on January 1 next following the first full year of retirement, have the amount of the then fixed and payable monthly retirement annuity increased 3%. Any person receiving a retirement annuity under this Article who retires before attainment of age 60 and with less than (i) 35 years of creditable service if retirement is before January 1, 2001, or (ii) the number of years of creditable service which, when added to the member's age, would equal 85, if retirement is on or after January 1, 2001, shall have the amount of the fixed and payable retirement annuity increased by 3% on the January 1 occurring on or next following (1) attainment of age 60, or (2) the first anniversary of retirement, whichever occurs later. However, for persons who receive the alternative retirement annuity under Section 14-110, references in this subsection (a) to attainment of age 60 shall be deemed to refer to attainment of age 55. For a person receiving early retirement incentives under Section 14-108.3 whose retirement annuity began after January 1, 1992 pursuant to an extension granted under subsection (e) of that Section, the first anniversary of retirement shall be deemed to be January 1, 2001, and whose retirement annuity is calculated, in whole or in part, under Section 14-110 or subsection (g) or (h) of Section 14-108, the first anniversary of retirement shall be deemed to be January 1, 2002.

On each January 1 following the date of the initial increase under this subsection, the employee's monthly retirement annuity shall be increased by an additional 3%.

Beginning January 1, 1990, all automatic annual increases payable under the Section shall be calculated as a percentage of the total annuity payable at the

time of the increase, including previous increases granted under this Article.

31. On December 5, 2013, Governor Pat Quinn signed Public Act 98-599, which impacts the ability of Plaintiffs to receive the annual increase. Public Act 98-599 denies to these Plaintiffs the 3% Automatic Increase and limits the annual increase per employee. Public Act 98-599 first defines the new term in the Pension Code, of "Tier 1 Member", adding the new Section 14-103.40:

Sec. 14-103.40 Tier 1 member. "Tier 1 member": A member of this System who first became a member or participant before January 1, 2011 under any reciprocal retirement system or pension fund established under this Code other than a retirement system or pension fund established under Article 2, 8 3, 4, 5, 6, or 18 of this Code.

Plaintiffs Robert Silger and John Mundstock are "Tier 1 Members" under this definition.

32. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

Sec. 14-114. Automatic increase in retirement annuity.

(a) This subsection (a) is subject to subsections (a-1) and (a-2) of this Section. Any person receiving a retirement annuity under this Article who retires having attained age 60, or who retires before age 60 having at least 35 years of creditable service, or who retires on or after January 1, 2001 at an age which, when added to the number of years of his or her creditable service, equals at least 85, shall, on January 1 next following the first full year of retirement, have the amount of the then fixed and payable monthly retirement annuity increased 3%.

(a-1) Notwithstanding subsection (a), but subject to the provisions of subsection (a-2), all automatic increases payable under subsection (a) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$800 (\$1,000 for portions of the annuity based on service as a noncovered employee) multiplied by the number of years of creditable service upon

which the annuity is based.

Beginning January 1, 2016, the \$800 (\$1,000 for portions of the annuity based on service as a noncovered employee) referred in item (2) of this subsection (a-1) shall be increased on each January 1 by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the preceding September; these adjustments shall be cumulative and compounded. For the purposes of this subsection (a-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (a-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(a-2) Notwithstanding subsections (a) and (a-1), for an active or inactive Tier 1 member who has not begun to receive a retirement annuity under this Article before July 1, 2014:

(1) the second automatic annual increase payable

(2) the second, fourth, and sixth automatic annual

(3) the second, fourth, sixth, and eighth automatic

(4) the second, fourth, sixth, eighth, and tenth

For the purposes of Section 1-103.1, this subsection (a-2) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

General Assembly Retirement System

33. Section 2-101 of the Illinois Pension Code, 40 ILCS 5/2-101 define the business of GARS as follows:

Sec. 2-101. Creation of system. A retirement system is created to provide retirement annuities, survivor's annuities and other benefits for members of the General Assembly, certain elected state officials and their beneficiaries. The system shall be known as the "General Assembly Retirement System". All its funds and property shall be a trust separate from all other entities, maintained for the purpose of securing payment of annuities and benefits under this Article.

34. As of December 4, 2013, Section 2-119.1(a) of the Pension Code stated as follows:

Sec. 2-119.1. Automatic increase in retirement annuity.

(a) A participant who retires after June 30, 1967, and who has not received an initial increase under this Section before the effective date of this amendatory Act of 1991, shall, in January or July next following the first anniversary of retirement, whichever occurs first, and in the same month of each year thereafter, but in no event prior to age 60, have the amount of the originally granted retirement annuity increased as follows: for each year through 1971, 1 ½%; for each year from 1972 through 1979, 2%; and for 1980 and each year thereafter, 3%. Annuitants who have received an initial increase under this subsection prior to the effective date of this amendatory Act of 1991 shall continue to receive their annual increases in the same month as the initial increase.

35. On December 5, 2013 Public Act 98-599, which impacts the ability of Plaintiffs to receive the 3% Automatic Increase, first defined a two new terms in the Pension Code, of “Tier 1 Member” and “Tier 1 Retiree”, adding new Sections 5/2-105.1 and 5/2-105.2:

Sec. 2-105.1. Tier 1 participant; Tier 2 participant.

“Tier 1 participant”: A participant who first became a participant before January 1, 2011.

“Tier 2 participant”: A participant who first became a participant on or after January 1, 2011.

Sec. 2-105.2. Tier 1 retiree. “Tier 1 retiree” means a former Tier 1 participant who has made the election to retire and has terminated service.

Plaintiff Gwenn Klingler is a “Tier 1 Retiree” under these definitions.

36. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

Sec. 2-119.1. Automatic increase in retirement annuity.

(a) Except as otherwise provided in this Section, a ~~A~~ participant who retires after June 30, 1967, and who has not received an initial increase under this Section before the effective date of this amendatory Act of 1991, shall, in January or July next following the first anniversary of retirement, whichever occurs first, and in the same month of each year thereafter, but in no event prior to age 60, have the amount of the originally granted retirement annuity

increased as follows: for each year through 1971, 1 1/2%; for each year from 1972 through 1979, 2%; and for 1980 and each year thereafter, 3%. Annuitants who have received an initial increase under this subsection prior to the effective date of this amendatory Act of 1991 shall continue to receive their annual increases in the same month as the initial increase.

(a-1) Notwithstanding subsection (a), but subject to the provisions of subsection (a-2), for a Tier 1 retiree, all automatic increases payable under subsection (a) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$1,000 multiplied by the number of years of creditable service upon which the annuity is based.

Beginning January 1, 2016, the \$1,000 referred to in item (2) of this subsection (a-1) shall be increased on each January 1 by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the preceding September; these adjustments shall be cumulative and compounded. For the purposes of this subsection (a-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (a-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(a-2) Notwithstanding subsections (a) and (a-1), for an active or inactive Tier 1 participant who has not begun to receive a retirement annuity under this Article before July 1, 2014:

(1) the second automatic annual increase payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 50 on the effective date of this amendatory Act;

(2) the second, fourth, and sixth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 47 but less than age 50 on the effective date of this amendatory Act;

(3) the second, fourth, sixth, and eighth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 44 but less than age 47 on the effective date of this amendatory Act; and

(4) the second, fourth, sixth, eighth, and tenth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is less than age 44 on the effective date of this amendatory Act.

For the purposes of Section 1-103.1, this subsection (a-2) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

State Teachers' Retirement System

37. Section 16-101 of the Illinois Pension Code, 40 ILCS 5/16-101 defines the business of TRS as follows:

Sec. 16-101. Creation of system. Effective July 1, 1939, there is created the "Teachers' Retirement System of the State of Illinois" for the purpose of providing retirement annuities and other benefits for teachers, annuitants and beneficiaries. All of its business shall be transacted, its funds invested, and its assets held in such name.

38. As of December 4, 2013, Section 16-133.1(a) of the Pension Code stated as follows:

Sec. 16-133.1. Automatic annual increase in annuity.

(a) Each member with creditable service and retiring on or after August 26, 1969 is entitled to the automatic annual increases in annuity provided under this Section while receiving a retirement annuity or disability retirement annuity from the system.

An annuitant shall first be entitled to an initial increase under this Section on the January 1 next following the first anniversary of retirement, or January 1 of the year next following attainment of age 61, whichever is later. At such time, the system shall pay an initial increase determined as follows:

(1) 1.5% of the originally granted retirement annuity or disability retirement annuity multiplied by the number of years elapsed, if any, from the date of retirement until January 1, 1972, plus

(2) 2% of the originally granted annuity multiplied by the number of years elapsed, if any, from the date of retirement or January 1, 1972, whichever is later, until January 1, 1978, plus

(3) 3% of the originally granted annuity multiplied by the number of years elapsed from the date of retirement or January 1, 1978, whichever is later, until the effective date of the initial increase.

However, the initial annual increase calculated under this Section for the recipient of a disability retirement annuity granted under Section 16-149.2 shall be reduced by an amount equal to the total of all increases in that

annuity received under Section 16-149.5 (but not exceeding 100% of the amount of the initial increase otherwise provided under this Section).

Following the initial increase, automatic annual increases in annuity shall be payable on each January 1 thereafter during the lifetime of the annuitant, determined as a percentage of the originally granted retirement annuity or disability retirement annuity for increases granted prior to January 1, 1990, and calculated as a percentage of the total amount of annuity, including previous increases under this Section, for increases granted on or after January 1, 1990, as follows: 1.5% for periods prior to January 1, 1972, 2% for periods after December 31, 1971 and prior to January 1, 1978, and 3% for periods after December 31, 1977.

39. On December 5, 2013 Public Act 98-599, which impacts the ability of Plaintiffs to receive the 3% Automatic Increase and limits the annual increase per employee, first defines the new term in the Pension Code, of “Tier 1 Member”, adding the new Section 16-106.4:

Sec. 16-106.4. Tier 1 member. “Tier 1 member”: A member under this Article who first became a member or participant before January 1, 2011 under any reciprocal retirement system or pension fund established under this Code other than a retirement system or pension fund established under Article 2, 3, 4, 5, 6, or 18 of this Code.

Plaintiff Barbara Schob is a “Tier 1 Member” under this definition.

40. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

Sec. 16-133.1. Automatic annual increase in annuity.

(a) This subsection (a) is subject to subsections (a-1) and (a-2). Each member with creditable service and retiring on or after August 26, 1969 is entitled to the automatic annual increases in annuity provided under this Section while receiving a retirement annuity or disability retirement annuity from the system.

An annuitant shall first be entitled to an initial increase under this Section on the January 1 next following the first anniversary of retirement, or January 1 of the year next following attainment of age 61, whichever is later. At such time, the system shall pay an initial increase determined as follows:

- (1) 1.5% of the originally granted retirement annuity or disability retirement annuity multiplied by the number of years elapsed, if any, from the date of retirement until January 1, 1972, plus
- (2) 2% of the originally granted annuity multiplied by the number of years elapsed, if any, from the date of retirement or January 1, 1972, whichever is later, until January 1, 1978, plus
- (3) 3% of the originally granted annuity multiplied by the number of years elapsed from the date of retirement or January 1, 1978, whichever is later, until the effective date of the initial increase.

However, the initial annual increase calculated under this Section for the recipient of a disability retirement annuity granted under Section 16-149.2 shall be reduced by an amount equal to the total of all increases in that annuity received under Section 16-149.5 (but not exceeding 100% of the amount of the initial increase otherwise provided under this Section).

Following the initial increase, automatic annual increases in annuity shall be payable on each January 1 thereafter during the lifetime of the annuitant, determined as a percentage of the originally granted retirement annuity or disability retirement annuity for increases granted prior to January 1, 1990, and calculated as a percentage of the total amount of annuity, including previous increases under this Section, for increases granted on or after January 1, 1990, as follows: 1.5% for periods prior to January 1, 1972, 2% for periods after December 31, 1971 and prior to January 1, 1978, and 3% for periods after December 31, 1977.

(a-1) Notwithstanding subsection (a), but subject to the provisions of subsection (a-2), all automatic increases payable under subsection (a) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$1,000 multiplied by the number of years of creditable service upon which the annuity is based; however, in the case of an initial increase under subsection (a) that is subject to this subsection:

(i) if more than one year has elapsed from the date of retirement to the effective date of the initial increase under this Section, the applicable percentage shall be the sum of the percentages for each such elapsed year; and

(ii) in the case of a disability retirement annuity granted under Section 16-149.2, the initial increase shall be subject to the reduction provided in subsection (a) for increases previously received under Section 16-149.5.

Beginning January 1, 2016, the \$1,000 referred to in item(2) of this subsection (a-1) shall be increased on each January by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 month ending with the preceding September; these adjustments shall

be cumulative and compounded. For the purposes of this subsection (a-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of good sand services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (a-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(a-2) Notwithstanding subsections (a) and (a-1), for an active or inactive Tier 1 member who has not begun to receive a retirement annuity under this Article before July 1, 2014:

(1) the second automatic annual increase payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 50 on the effective date of this amendatory Act;

(2) the second, fourth, and sixth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 47 but less than age50 on the effective date of this amendatory Act;

(3) the second, fourth, sixth, and eighth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 44 but less than age 47 on the effective date of this amendatory Act; and

(4) the second, fourth, sixth, eighth, and tenth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is less than age 44 on the effective date of this amendatory Act.

For the purposes of Section 1-103.1, this subsection (a-2) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

State University Retirement System

41. Section 15-101 of the Illinois Pension Code, 40 ILCS 5/15-101 defines the business of SURS as follows:

Sec. 15-101. Creation of system. A retirement system is created to provide retirement annuities and other benefits for employees, as defined in this Article, and their dependents.

The system shall be known and may be cited as State Universities Retirement System. All the business of the system shall be transacted in that name.

42. As of December 4, 2013, Section 15-163(d) of the Pension Code stated as follows:

Sec. 15-136. Retirement annuities - Amount. The provisions of this Section 15-136 apply only to those participants who are participating in the traditional benefit package or the portable benefit package and do not apply to participants who are participating in the self-managed plan.

(d) A Tier 1 member whose status as an employee terminates after August 14, 1969 shall receive automatic increases in his or her retirement annuity as follows:

Effective January 1 immediately following the date the retirement annuity begins, the annuitant shall receive an increase in his or her monthly retirement annuity of 0.125% of the monthly retirement annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section, multiplied by the number of full months which elapsed from the date the retirement annuity payments began to January 1, 1972, plus 0.1667% of such annuity, multiplied by the number of full months which elapsed from January 1, 1972, or the date the retirement annuity payments began, whichever is later, to January 1, 1978, plus 0.25% of such annuity multiplied by the number of full months which elapsed from January 1, 1978, or the date the retirement annuity payments began, whichever is later, to the effective date of the increase.

The annuitant shall receive an increase in his or her monthly retirement annuity on each January 1 thereafter during the annuitant's life of 3% of the monthly annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section. The change made under this subsection by P.A. 81-970 is effective January 1, 1980 and applies to each annuitant whose status as an employee terminates before or after that date.

Beginning January 1, 1990, all automatic annual increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including all increases previously granted under this Article.

The change made in this subsection by P.A. 85-1008 is effective January 26, 1988, and is applicable without regard to whether status as an employee terminated before that date.

43. Public Act 98-92 effective July 16, 2013 and Public Act 98-596 effective November 19, 2013, defined two new terms in the Pension Code, of “Tier 1 Member” and “Tier 2 Member”, adding the new Sections 15-108.1 and 15-108.2:

Sec. 15-108.1. Tier 1 member. “Tier 1 member”: A participant or an annuitant of a retirement annuity under this Article, other than a participant in the self-managed plan under Section 15-158.2, who first became a participant or member before January 1, 2011 under any reciprocal retirement system or pension fund established under this Code, other than a retirement system or pension fund established under Articles 2, 3, 4, 5, 6, or 18 of this Code. “Tier 1 member” includes a person who first became a participant under this System before January 1, 2011 and who accepts a refund and is subsequently reemployed by an employer on or after January 1, 2011.

Sec. 15-108.2. Tier 2 member. “Tier 2 member”: A person who first becomes a participant under this Article on or after January 1, 2011, other than a person in the self-managed plan established under Section 15-158.2, unless the person is otherwise a Tier 1 member. The changes made to this Section by this amendatory Act of the 98th General Assembly are a correction of existing law and are intended to be retroactive to the effective date of Public Act 96-889, notwithstanding the provisions of Section 1-103.1 of this Code.

Plaintiff Barbara Maxeiner is a “Tier 1 Member” under this definition.

44. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

Sec. 15-136. Retirement annuities - Amount. The provisions of this Section 15-136 apply only to those participants who are participating in the traditional benefit package or the portable benefit package and do not apply to participants who are participating in the self-managed plan.

(d) This subsection (d) is subject to subsections (d-1) and (d-2). A Tier 1 member whose status as an employee terminates after August 14, 1969 shall receive automatic increases in his or her retirement annuity as follows:

Effective January 1 immediately following the date the retirement annuity begins, the annuitant shall receive an increase in his or her monthly retirement annuity of 0.125% of the monthly retirement annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section, multiplied

by the number of full months which elapsed from the date the retirement annuity payments began to January 1, 1972, plus 0.1667% of such annuity, multiplied by the number of full months which elapsed from January 1, 1972, or the date the retirement annuity payments began, whichever is later, to January 1, 1978, plus 0.25% of such annuity multiplied by the number of full months which elapsed from January 1, 1978, or the date the retirement annuity payments began, whichever is later, to the effective date of the increase.

The annuitant shall receive an increase in his or her monthly retirement annuity on each January 1 thereafter during the annuitant's life of 3% of the monthly annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section. The change made under this subsection by P.A. 81-970 is effective January 1, 1980 and applies to each annuitant whose status as an employee terminates before or after that date.

Beginning January 1, 1990, all automatic annual increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including all increases previously granted under this Article.

The change made in this subsection by P.A. 85-1008 is effective January 26, 1988, and is applicable without regard to whether status as an employee terminated before that date.

(d-1) Notwithstanding subsection (d), but subject to the provisions of subsection (d-2), all automatic increases payable under subsection (d) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$1,000 multiplied by the number of years of creditable service upon which the annuity is based; however, in the case of an initial increase subject to this subsection, the amount of that increase shall be prorated if less than one year has elapsed since retirement.

Beginning January 1, 2016, the \$1,000 referred to in item (2) of this subsection (d-1) shall be increased on each January 1 by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the preceding September; these adjustments shall be cumulative and compounded. For the purposes of this subsection (d-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (d-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(d-2) Notwithstanding subsections (d) and (d-1), for an active or inactive Tier 1 member who has not begun to receive a retirement annuity under this Article before July 1, 2014:

(1) the automatic annual increase payable under subsection (d) the second January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is at least age 50 on the effective date of this amendatory Act;

(2) the automatic annual increase payable under subsection (d) the second, fourth, and sixth January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is at least age 47 but less than age 50 on the effective date of this amendatory Act;

(3) the automatic annual increase payable under subsection (d) the second, fourth, sixth, and eighth January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is at least age 44 but less than age 47 on the effective date of this amendatory Act;

(4) the automatic annual increase payable under subsection (d) the second, fourth, sixth, eighth, and tenth January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is less than age 44 on the effective date of this amendatory Act.

COUNT I

(Violation of Pensions Clause of Illinois Constitution)

- 1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts as and for paragraphs 1-44 of Count I.
45. Public Act 98-599, by eliminating the 3% Automatic Increase impairs or diminishes the Plaintiffs' pension benefits in violation of Article 13, Section 5 of the Illinois Constitution.
46. There is a controversy between the named Plaintiffs and the members of the class on one hand, and the Defendants on the other, as to the validity of Public Act 98-599 and the others

matters set forth in this Court, such that declaratory and injunctive relief is appropriate. The named Plaintiffs and the members of the class have no adequate remedy at law, and should the Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class will suffer irreparable injury. Consequently, the Court should enter a preliminary injunctive relief ordering the establishment of an escrow into which the Defendant will pay the difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, *pendente lite*.

WHEREFORE, Plaintiffs Illinois State Employees Association Retirees, Robert Silger, Gwenn Klingler, Barbara Schob, Barbara Maxeiner, and John Mundstock request the following relief:

- a. That the class, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining agreement, be certified;
- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 13, Section 5 of the Illinois Constitution;
- c. That the Court enjoin the Defendants for implementing Public Act 98-599 and that Section 14-114 of the Pension Code as it existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such other and further relief as the Court deems appropriate.

COUNT II

(Violation of Contract Clause of the Illinois Constitution)

1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts and for paragraphs 1-44 of Count II.

47. The Constitution defines membership in the pension system as an “enforceable contractual relationship.” By performing 20 years of loyal service, the named Plaintiffs and members of the Plaintiff class gave good and valuable consideration to the State of Illinois, and they are entitled to the benefit of their contract.

48. The adoption of Public Act 98-599 is an impairment of the contract in violation of Article 1 Section 16 of the Illinois Constitution, which provides:

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

49. There is a controversy between the named Plaintiffs and the members of the class on the one hand, and the Defendants on the other, as to the validity of Public Act 98-599 and the other matters set forth in this Count, such that declaratory and injunctive relief is appropriate. The named Plaintiffs and the members of the class have no adequate remedy at law, and should the Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class, they will suffer irreparable injury. Consequently, the Court should enter a preliminary injunctive relief ordering the establishment of an escrow into which the Defendant will pay the difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, *pendente lite*.

WHEREFORE, Plaintiffs Illinois State Employees Association Retirees, Robert Silger, Gwenn Klingler, Barbara Schob, Barbara Maxeiner, and John Mundstock request the following relief:

- a. That the class, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining agreement, be certified;
- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 13, Section 5 of the Illinois Constitution;
- c. That the Court enjoin the Defendants from implementing Public Act 98-599 and find that Sections 14-114, 2119.1(a), 16-101, and 15-101 of the Pension Code as they existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such and other and further relief as the Court deems appropriate.

COUNT III

(Violation of Equal Protection Clause of the Illinois Constitution)

- 1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts as and for paragraphs 1-44 of Count III.
50. Public Act 98-599 eliminated the 3% Automatic Increase for SERS, GARS, TRS, and SURS leaving this 3% Automatic Increase in the Judges Retirement System of Illinois (“JRS”), as such, is a violation of Article 1 Section 2 of the Illinois Constitution, which provides:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

51. Section 18-125.1 of the Pension Code (the Judges Retirement System), left unchanged by Public Act 98-599, provides:

Sec. 18-125.1. Automatic increase in retirement annuity.

A participant who retires from service after June 30, 1969, shall, in January of the year next following the year in which the first anniversary of retirement occurs, and in January of each year thereafter, have the amount of his or her originally granted retirement annuity increased as follows: for each year up to and including 1971, 1 1/2%; for each year from 1972 through 1979 inclusive, 2%; and for 1980 and each year thereafter, 3%.

Notwithstanding any other provision of this Article, a retirement annuity for a participant who first serves as a judge on or after January 1, 2011 (the effective date of Public Act 96-889) shall be increased in January of the year next following the year in which the first anniversary of retirement occurs, but in no event prior to age 67, and in January of each year thereafter, by an amount equal to 3% or the annual percentage increase in the consumer price index-u as determined by the Public Pension Division of the Department of Insurance under subsection (b-5) of Section 18-125, whichever is less, of the retirement annuity then being paid.

This Section is not applicable to a participant who retires before he or she has made contributions at the rate prescribed in Section 18-133 for automatic increases for not less than the equivalent of one full year, unless such a participant arranges to pay the system the amount required to bring the total contributions for the automatic increase to the equivalent of one year's contribution based upon his or her last year's salary.

This Section is applicable to all participants in service after June 30, 1969 unless a participant has elected, prior to September 1, 1969, in a written direction filed with the board not to be subject to the provisions of this Section. Any participant in service on or after July 1, 1992 shall have the option of electing prior to April 1, 1993, in a written direction filed with the board, to be covered by the provisions of the 1969 amendatory Act. Such participant shall be required to make the aforesaid additional contributions with compound interest at 4% per annum.

Any participant who has become eligible to receive the maximum rate of annuity and who resumes service as a judge after receiving a retirement annuity under this Article shall have the amount of his or her retirement annuity increased by 3% of the originally granted annuity amount for each year of such resumed service, beginning in January of the year next following

the date of such resumed service, upon subsequent termination of such resumed service.

Beginning January 1, 1990, all automatic annual increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including previous increases granted under this Article.

52. There is no basis in fact or law to allow annuitants in the Judges Retirement System to continue to receive the 3% Automatic Increases, while diminishing the pensions of annuitants in the other four Retirement Systems by reducing the automatic increases in those systems.

WHEREFORE, Plaintiffs Illinois State Employees Association Retirees , Robert Silger, Gwenn Klingler, Barbara Schob, Barbara Maxeiner, and John Mundstock request the following relief:

- a. That the class, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining agreement, be certified;
- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 1, Section 2 of the Illinois Constitution;
- c. That the Court enjoin the Defendants from implementing Public Act 98-599 and find that Sections 14-114, 2119.1(a), 16-101, and 15-101 of the Pension Code as they existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such and other and further relief as the Court deems appropriate.

COUNT IV

(Impairment of Contract–ERI Participants)

- 1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts as and for paragraphs 1-44 of Count IV.
53. This Count IV is brought by ISEAR and John Mundstock and relates only to the ERI Subclass.
54. In 2002, the State of Illinois announced an Early Retirement Incentive Program (hereinafter “ERI Program”). The program was specifically designed to lower the personnel costs of the State of Illinois by pensioning off higher paid employees with many years of service. The Early Retirement Program promised that one of the things the ERI Participants was buying was continued entitlement to the 3% Automatic Increase as established for annuitants.
55. Mr. Mundstock and the members of the ERI Subclass reasonably and detrimentally relied on these promises made by the State of Illinois. Their actions in reliance on these promises included but were not limited to (a) retirement from State service and (b) payment of substantial sums of cash to purchase additional service credits. The State’s promises, and the ERI Subclass’s reliance thereon, gave rise to an implied contract between the State and members of the ERI Subclass pursuant to the principles of promissory estoppel.
56. According to a report of the Commission of Government Forecasting and Accountability, in reliance on the ERI Program, John Mundstock and members of the ERI Subclass paid the State over \$128 million to purchase additional service credits and retired from State service. They thereby reduced the State’s payroll cost over \$2.9 billion in the years 2003-2012.

57. The State's promises, and the ERI Subclass's reliance thereon, created implied contracts between the State and members of the ERI Subclass pursuant to the principles of promissory estoppel. (*See* Exhibit A).
58. Public Act 98-599 is an impairment of the contracts made between the State of Illinois and members of the ERI Subclass and as such, is an impairment of the contract in violation of Article 1 Section 16 of the Illinois Constitution, which provides:

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

59. There is a controversy between the named Plaintiffs and the members of the class on the one hand, and the Defendants on the other, as to the as to the validity of Public Act 98-599 and the other matters set forth in this Count, such that declaratory and injunctive relief is appropriate. The named Plaintiffs and the members of the class have no adequate remedy at law, and should the Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class, they will suffer irreparable injury. Consequently, the Court should enter a preliminary injunctive relief ordering the establishment of an escrow into which the Defendant will pay the difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, *pendente lite*.

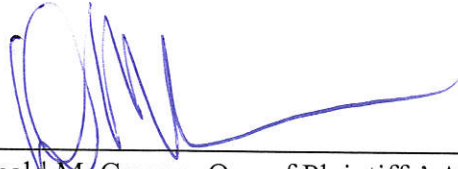
WHEREFORE, Plaintiffs Illinois State Employees Association Retirees and John Mundstock request the following relief:

- a. That the ERI Subclass, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining

agreement and who availed themselves of the Early Retirement Incentive Program in 2002, be certified;

- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 13, Section 5 of the Illinois Constitution;
- c. That the Court enjoin the Defendants from implementing Public Act 98-599 and find that Sections 14-114, 2119.1(a), 16-101, and 15-101 of the Pension Code as they existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such and other and further relief as the Court deems appropriate.

ILLINOIS STATE EMPLOYEES ASSOCIATION
RETIREES, ROBERT SILGER, GWENN
KLINGLER, BARBARA SCHOB, BARBARA
MAXEINER, and JOHN MUNDSTOCK, Plaintiffs,
for themselves and A Class of Persons similarly
situated

By: 
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http://www.state.il.us/srs/SERS/ERI.html

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Early Retirement Incentive (ERI)

On Tuesday, June 25, 2002, Governor George H. Ryan signed in law HB2671 (PA #92-566) creating the Early Retirement Incentive (ERI) allowing State Employees' Retirement System of Illinois (SERS) members to purchase up to five years of service and age enhancement. By participating in the ERI, members have two options:

1. If a member meets the ERI retirement eligibility requirements, they may retire between August 1, 2002 and January 1, 2003 using the age and service enhancement (See [Option 1](#) below);
2. If a member does not meet the ERI retirement eligibility requirements between August 1, 2002 and January 1, 2003, they may purchase ERI service, terminate employment by January 1, 2003 and receive retirement benefits when they become eligible (See [Option 2](#) below).

Option 1:

Eligible employees may retire on the first day of any month during the ERI period (August 1, 2002 to January 1, 2003), as long as you meet the eligibility requirements on the date chosen.

To participate in, and begin receiving a SERS pension under the ERI, you must:

- Have eight years of SERS service, not including ERI service (five years must be contributing service) by your date of termination;
- Members retiring under the alternative formula must be age 50 without the addition of the ERI enhancement to receive benefits;
- Have never established service credit under an ERI from the Teacher's Retirement System.
- Have never retired from SERS.
- Be a member of SERS who is either:
 - In active payroll status during June 2002; or
 - On layoff status with a right of re-employment or recall; or
 - Receiving a disability benefit for less than two continuous years at retirement.
- Terminate on or before December 31, 2002.
- Meet the eligibility requirements with the ERI enhancement:
 - 13 years of service (including five years of ERI service) at age 60;
 - 25 years of service at age 55 (under the ERI, the reduction in benefits between ages 55 and 60 is waived);
 - Rule of 85;
 - Alternative formula employees: 20 years at age 55 or 25 years at age 50.

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ERI benefit estimates for Option 1

We will send out a special ERI estimate, brochure and checklist to all members eligible to retire under Option 1. This information will be mailed by July 15, 2002.

Members will have ample time to review the ERI information and make an informed decision. Please allow us time to mail this information before making inquiries to our office.

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Participating in the ERI - Option 1

If, after receiving the ERI estimate and brochure after July 15, 2002, you decide to participate in the ERI, you must contact SERS and request a retirement benefit application. The application and ERI election form must be received by us on or before December 31, 2002, even if your employment is extended beyond December 31, 2002 by your agency director

If you participate in the ERI and return to service in any permanent position covered by SERS (excluding the 75-day temporary employment) you forfeit the ERI age and service enhancement, and receive a refund of

contributions made under the ERI.

NOTE: See general information below.

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Option 2:

Purchase up to 5 years of service and terminate employment under the ERI, and receive retirement benefits at a later date

ERI requirements

To participate in the ERI service purchase and terminate state employment program, you must:

- Have eight years of SERS service (five years must be contributing service) by your date of termination.
- Have never retired from SERS.
- Be a member of SERS who is either:
 - In active payroll status during June 2002; or
 - On layoff status with a right of re-employment or recall; or
 - Receiving a disability benefit for less than two continuous years at termination.
- Have never established service credit under an ERI from the Teacher's Retirement System.
- Terminate employment and file an ERI election by December 31, 2002.

Receiving Retirement Benefits At A Later Date:

After you purchase ERI service and terminate state employment, you may apply for retirement benefits when you become eligible.

To be eligible, you must:

- File an application for retirement benefits.
- Members retiring under the alternative formula must be age 50 without the addition of the ERI enhancement to receive benefits;
- Meet the following retirement eligibility requirements:
 - 13 years of service (including five years of ERI service) at age 60;
 - 25 years of service at age 55 (under the ERI, the reduction in benefits between age 55 and 60 is waived)
 - Rule of 85;
 - Alternative formula employees: 20 years at age 55 or 25 years at age 50.

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Benefit Estimates for Option 2

We will not automatically send out ERI estimates to members who might participate in the service purchase and terminate program. If you want an ERI estimate, contact us after July 15, 2002.

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Participating in the ERI - Option 2

If you would like to participate in the ERI, you must contact SERS and request a service purchase election form. The service purchase form must be received by SERS on or before December 31, 2002, even if your employment is extended beyond December 31, 2002 by your agency director.

If you participate in the ERI and return to service in any permanent position covered by SERS (excluding the 75-day temporary employment) you forfeit the ERI age and service enhancement, and receive a refund of contributions made under the ERI.

NOTE: See general information below.

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General ERI information - This following information applies to all ERI participants. This includes members eligible to retire and/or members choosing to purchase service and terminate.

Extensions

To ensure the efficient operation of state government, agency directors may extend key employees to no later than April 30, 2003.

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Contributions (used for all ERI participation)

Members meeting the ERI eligibility requirements may establish up to five years of creditable service in one month increments. For each month of service established under the ERI, the member's age at retirement will be considered one month older.

SERS will determine your required contribution amount after you apply for the ERI.

If your net lump sum payment for accrued vacation, sick leave and personal days is greater than the ERI contribution due, your agency will deduct the ERI contribution on a pre-tax basis, send it to SERS, and forward the remaining balance to you.

If your net lump sum payment for accrued vacation, sick leave, and personal days is less than the ERI contribution due, your agency will deduct and send SERS the entire net lump sum payment as a partial pre-tax ERI contribution.

The remaining ERI contribution will be reduced from your pension payment on a pre-tax basis in 24 interest-free installments.

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Calculating the required ERI contribution (used for all ERI participation)

The formula to calculate the required ERI contribution is:

Rate of Pay on June 1, 2002 X Employee Retirement Contribution Rate X Number of Months to be Established

Coordinated Employee Example

A coordinated employee with a contribution rate of 4% wants to buy 60 months of service with a June 1 rate of pay of \$2,200.

$\$2,200 \times 4\% \times 60 \text{ months} = \$5,280.$

Non-Coordinated Employee Example

A non-coordinated employee with a contribution rate of 8% wants to buy 60 months of service with a June 1 rate of pay of \$3,200.

$\$3,200 \times 8\% \times 60 \text{ months} = \$15,360.$

Alternative Formula Coordinated Employee Example

An alternative formula coordinated employee with a contribution rate of 6.5% wants to buy 60 months of service with a June 1 rate of pay of \$3,000.

$\$3,000 \times 6.5\% \times 60 \text{ months} = \$11,700.$

Alternative Formula Non-Coordinated Employee Example

An alternative formula non-coordinated employee with a contribution rate of 10.5% wants to buy 60 months of service with a June 1 rate of pay of \$3,000.

$\$3,000 \times 10.5\% \times 60 \text{ months} = \$18,900.$

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ERI Frequently Asked Questions & Answers

ERI Application Packet Request

Can I call on the phone or send an e-mail to request an ERI Application Packet?

Yes, we have dedicated an e-mail address and telephone number for just requesting an ERI application packet. The employee who answers the phone cannot answer questions concerning ERI and questions asked in e-mails received at this address will not be answered. This phone number and e-mail address have been set up exclusively to expedite the mailing of the ERI packets. When you call this number or e-mail this address, please provide your name, social security number, marital status, and whether or not you have minor children.

- The phone number is: 217-557-2033
- The e-mail address is: pension@ser084r1.state.il.us

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Purchasing Service

How is the cost of the ERI program computed?

The member's monthly salary on June 1 is multiplied by their contribution rate and then multiplied by the number of months of ERI credit purchased.

As an example, a member contributing 4% with a monthly salary on June 1 of \$3,000 purchasing 60 months of ERI credit would pay \$7,200 to participate in the ERI program.

Can Deferred Compensation be used to pay the employee's cost to participate in the ERI?

No. The employee's cost is taken from their lump sum benefit for accumulated sick and vacation time. If this amount is insufficient, the balance is deducted from the member's retirement annuity interest-free over a 24-month period.

If the lump sum payment for sick and vacation time is insufficient to pay the ERI cost, can a direct payment for the balance be made by the member?

No. Any remaining balance is deducted from the member's retirement annuity interest-free over a 24-month period.

Does the ERI purchase count towards the 20-year requirement for free group health insurance benefits.

All creditable service, ERI included, counts toward the 20-year requirement for free health insurance.

If a SERS member is purchasing optional service credit (military, refund repayment, etc.) under an irrevocable payroll deduction agreement that is not completed at retirement, can the balance be paid off? If so, how?

The remaining balance can be paid as a post-tax direct payment (personal check), or by a rollover from Deferred Compensation or other tax-sheltered account.

It cannot be paid from the lump sum payment for sick and vacation time.

If I am already eligible to retire under the "Rule of 85," and meet all of the other ERI requirements can I still buy service under the ERI?

If you are eligible to retire under any provision of the SERS Retirement Code, you can buy up to five years of ERI service. The only time you would want to buy less than the five years is if you would exceed the 75% maximum for regular employees and 80% for alternative employees.

Can an SERS member who is purchasing five years of ERI credit and terminating employment, but is not immediately eligible to receive a retirement benefit, also purchase service credit for their accumulated sick and vacation time?

The member can't purchase their service credit for sick and vacation time unless the retirement benefit will be effective within 90 days from terminating employment.

If I use my unused sick, vacation and personal time towards purchasing my five years, am I still able to establish service credit for this time? If I can, will it require a contribution in addition to that made for purchasing the five years?

Yes. The full employee contribution is still required to purchase sick and vacation credit.

Will the five years of ERI service be used to calculate my final average compensation?

No. Final average compensation is not affected by the number of months of ERI credit purchased.

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ERI REQUIREMENTS

Does a member have to be age 50 to begin receiving SERS retirement benefits?

Alternative formula members must be age 50 without the ERI enhancement to begin receiving benefits. Regular formula members can receive benefits before age 50 if the normal eligibility requirements with the ERI enhancement are met.

Can a retiring member utilize the Level Income option with the ERI?

Yes, but actual age is used to calculate benefits.

If you would like to request an updated Social Security Statement on-line you can do so at <https://s00dace.ssa.gov/pro/batch-pebes/bp-7004home.shtml>

When asked for future earnings enter a zero as the amount.

To be eligible to participate in the ERI, members must have eight years of total service, and five years of contributing service. What's the difference?

Total service includes all service credit granted while a SERS member, excluding the ERI enhancement and reciprocal retirement system service.

Contributing service includes actual service credit earned while an active employee, plus free military service granted after being employed by the State, repaid refunds and qualifying periods.

The two-year pre-employment purchased military credit purchase option, leaves of absence, and federal and out-of-state service do not count as contributing service.

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GROUP INSURANCE - The following Questions and Answers concerning group insurance when retiring have been furnished to the Retirement System by the Dept. of Central Management Services (CMS Group Insurance Division).

Will I be eligible for group health insurance coverage when I retire?

Yes. If you have established at least eight years of creditable service, you would be eligible for group health/dental/vision and, if applicable, life insurance coverage when your pension begins.

What is the cost of health coverage?

If you have established at least 20 years of creditable service, either by having worked 20 years or by purchasing additional creditable service time under the Early Retirement provisions to accumulate at least 20 years of creditable service, your health insurance coverage is provided at no cost when your pension begins. If you have less than 20 years of creditable service, the State of Illinois pays 5% of the health insurance premium for each full year of creditable service.

What is the cost of dependent health coverage?

The cost for dependent coverage is the same for active and retired state employees. Refer to the current Benefit Choice Options book for updated dependent rate information. Note: As Medicare is generally primary payer when you retire, dependent rates are lower if your dependent is enrolled in both Parts A and B of Medicare. Be sure to inform the SERS when your dependent becomes enrolled in Medicare.

Does creditable service with other retirement systems count toward the SERS service to determine years of creditable service for the purpose of group insurance?

In general, if you are retiring under the Reciprocal Act and you participated in the State of Illinois Group Insurance Program while contributing to one of the other state retirement systems, i.e., State Universities Retirement System, Teachers' Retirement System, Judges Retirement System, or General Assembly Retirement System, state service under the other retirement system would count towards the 20 years of service needed to qualify for health insurance coverage at no cost. Service with all other retirement systems, such as IMRF, count for pension purposes, but not for group insurance, since these systems do not participate in the State of Illinois group Insurance Program. Normally the last system you participated in carries the group insurance, but there are exceptions. Check with SERS Insurance Division to determine if your service under another retirement system would count toward your creditable service time.

Can I waive health insurance coverage?

If you are required to pay a percentage of the cost for your health insurance coverage due to having less than 20 years of creditable service, you may waive health/dental/vision coverage. You will still receive basic life insurance coverage, as it is provided to all eligible members receiving a pension benefit. You must contact your retirement system in writing to request waiver of the coverage. Once you waive coverage, you may reinstate coverage only during the annual Benefit Choice Period, or if you experience a qualifying change in status.

Under Public Act 92-0600, retirees with 20 years of creditable service who receive their health coverage at no cost may also waive health/dental/vision coverage. This Act was just recently signed by the Governor and will not be in effect until later this year. A special 'opt-out' period will be announced in which you will be allowed to discontinue your health/dental/vision coverage. Basic life insurance coverage will still be provided to all eligible members receiving a pension benefit. The waiver of coverage will apply to both you and your covered dependent(s). Once you opt out of the coverage, you may reinstate coverage only during the annual Benefit Choice Period, or if you experience a qualifying change in status.

When is the best time of the month to retire?

It is recommended that you resign from your active agency in the second pay period of the month (from the 16th through the end of the month), preferably on the last day of the month. The reason for this is that your pension and group insurance coverage normally begins on the first day of the month following your resignation. If you resign in the first pay period of a month, your insurance will be terminated. Then, to avoid a lapse in coverage, you would need to enroll in COBRA.

Am I required to enroll in COBRA if I retire the first pay period of the month?

No, but if your retirement annuity is to begin the first of the month following the date your active employment ends, you may want to consider enrollment in COBRA. If you receive a COBRA notification letter from CMS please call the CMS Group Insurance Division COBRA Unit for an explanation of your options under COBRA.

Can I keep the same health insurance coverage at retirement that I had when actively working?

Yes, the same health/dental/vision plan as when you were actively working will remain in force when you retire, unless you are enrolled in a managed care plan and move outside of the managed care service area or you wish to make a change in coverage because this event is considered a change in status. If you wish to make a change in coverage, a written request needs to be made to SERS within 60 days of the change in status. Be sure to advise the retirement system in writing if you are retiring and moving. If you no longer qualify for coverage under a managed care plan, your insurance coverage will be changed to the Quality Care Health Plan and the Quality Care Dental Plan.

Can dependents be added at the time of retirement? What documents are required?

If your dependent is currently enrolled, he/she will be automatically covered during retirement. New dependents can be added at the time of retirement because a qualifying change in status has occurred. If you wish to add an eligible dependent, a written request needs to be submitted to SERS within 60 days of the change in status. The request should include the dependent's name, social security number, relationship to you, date of birth, copy of your marriage certificate (if adding a spouse), copy of the dependent's Medicare card (if applicable) and creditable coverage letter from the dependent's previous health insurance carrier (if applicable). Dependents can also be added during the annual Benefit Choice Period.

What is the cost of dental and vision insurance coverage?

Dental and vision coverage are provided at no cost to members and their covered dependents.

Do I need to purchase Medicare Part B when I retire?

If you or your dependents are age 65 and enrolled in Medicare Part A (hospital insurance), you should purchase Medicare Part B (medical insurance). The Medicare Part B premium will be deducted from your Social Security Check. It is a requirement of the State of Illinois Group Insurance Program that you enroll in Medicare Part B. If you do not enroll in Part B, the State will reduce your benefits on Part B claims so that the benefit paid by the State would be the same as if you were enrolled in Part B. This means that your State insurance coverage would only pay 20% of your charges if you are not enrolled in Part B. If you are over age 65, you should contact your local Social Security office to enroll in Medicare Part B effective your retirement date and to obtain additional information regarding certain penalties that may apply if you do not enroll at retirement.

Is Medicare or the State primary payer for insurance coverage once I retire?

If you are age 65 or older and insured with Medicare, Medicare usually becomes primary health insurance payer with the State of Illinois paying secondary. If you are receiving Medicare due to End State Renal Disease (ESRD) or dual entitlement, the State of Illinois may remain primary payer through the 30-month ESRD coordination period. Enrolling in both Parts A and B of Medicare results in greater coverage on claims, lower premiums for members with less than 20 years of creditable service who must pay a percentage of the cost for their health coverage, and lower dependent health premiums if your dependents are enrolled in both Medicare A and B.

What happens to my life insurance coverage when I retire?

If you are under age 60 and retire, your life insurance will be exactly the same as the coverage you had when working, based on your last annual salary. Upon attainment of age 60, your basic life insurance reduces to \$5,000. Any optional life that you had purchased (up to 4 times the basic amount) is also reduced, since the basic amount is reduced to \$5,000. When your life insurance coverage reduces, you may convert your life insurance to a policy (other than a term life policy) offered by the life insurance company up to the amount of basic life coverage lost. For optional coverage that you lose, you may convert to a policy (other than term insurance) offered by the life insurance company or port your term insurance up to the amount of optional coverage you lost. If you choose to port your optional coverage, your coverage will be through a group term insurance policy offered by the life insurance company.

If you wish to purchase more life insurance coverage (for example, purchase 4 times the basic amount instead of 1 times basic life), you would need to complete a Health Certificate questionnaire, which is subject to approval by Minnesota Life Insurance Company. If approved, premiums would be deducted from your monthly pension check.

If I am retiring and am over age 60, it is possible to convert the amount of life insurance that I am losing when I retire to an individual policy?

When your life insurance coverage reduces at retirement (as described in the question above), you have 31 days from the date of your retirement to purchase conversion whole life coverage. Or, if you have optional life coverage, you may purchase portable term life on the difference in coverage that you are losing. The advantage of purchasing conversion or portable term life coverage is that no evidence of insurability is required. If you wish to purchase this coverage, the application forms should be requested from your former active agency when you retire.

If I resign from State service but am not old enough to start receiving a pension until sometime in the future, will I be eligible for optional life insurance coverage when my pension begins?

If you receive your pension within one year from leaving active State payroll, you will be classified as an "Immediate Annuitant" and would be eligible to purchase optional life insurance coverage. You would not be able to increase your optional life insurance coverage without evidence of insurability and approval from the life insurance carrier.

If you receive your pension after one year from leaving active State payroll, you will be classified as a "Deferred Annuitant" and would only be eligible for basic life insurance coverage. You would not be eligible to purchase optional life coverage for yourself or your dependents.

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MISCELLANEOUS

If a member's employment is extended past the December 31, 2002 deadline, will they receive their first 3% cost of living allowance on January 1, 2004?

SERS members are not eligible for their first 3% increase until January 1 following their first full year of retirement.

Therefore, if a member's employment is extended, their initial increase would not be effective until January 1, 2005, assuming the age requirement is met by that date.

How long will it take to receive the first retirement check?

Our goal is to make the initial payment six to eight weeks after the effective date of the benefit.

If an extremely large number of employees retire at the beginning of any month during the ERI window, delays may occur. Based on the 1991 ERI, over 70% of our members who retired did so at the end of December.

If I want to apply for retirement under the ERI, do I have to come to the SERS office?

No. You may apply by contacting your agency's retirement coordinator, who will then notify SERS.

Why won't SERS mail the retirement packets now?

We feel that we must wait until the Governor signs the ERI legislation. Also members should wait to review their ERI estimates, which will be mailed by July 15 before requesting a retirement packet.

I took a furlough day which affects my final average compensation for retirement purposes. Is there a way to get credit for these lost earnings?

The ERI legislation also included a provision allowing free service and/or earnings credit for voluntary or involuntary furloughs taken between December 1, 2001 and January 1, 2003. The maximum number of credit days allowed is five.

Employees considering retirement under the ERI should contact their agency's retirement coordinator or payroll clerk for the election form to obtain this credit.

The election forms will be furnished to all retirement coordinators after the ERI legislation is signed by the Governor.

In the last SERS-O-GRAM, it stated that if you want to participate in the ERI purchase service and terminate program (Option 2), you must contact SERS directly to request a purchase service election form. Are these forms available from my agency's retirement coordinator?

No. The ERI service purchase election form must be obtained from SERS directly.

I have several years of service under a reciprocal system. Does this time count towards my SERS pension?

Reciprocal service counts toward eligibility in SERS, such as the Rule of 85. Each system calculates and pays benefits based on their formula and service requirements.

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