

# GOVERNANCE MATTERS

## A Practical Guide

### for Community College Trustees

*NOVEMBER, 2017*

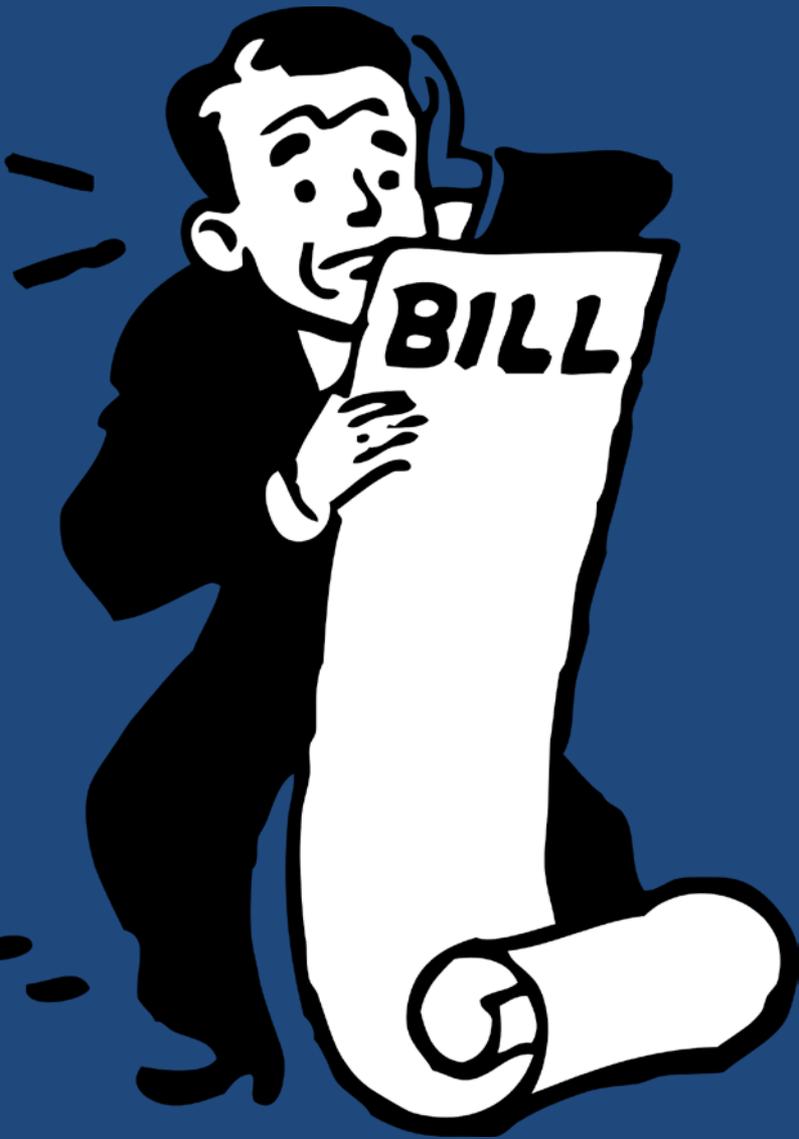
“Life short, art long, opportunity fleeting, experience misleading, judgment difficult.”

Hippocrates 460-270 B.C.

Illinois trustees are required to govern in a complex, increasingly uncertain and risky environment.

*Stakes are high....*

*Rewards are few*



- ▣ In 2016, the Illinois General Assembly enacted amendments to the Community College Act recognizing the importance of good governance by Community College Boards of Trustees.
- ▣ Effective as of January 1, 2017, each voting member of a governing board of a community college must complete a minimum of 4 hours of professional development leadership training.
- ▣ Topics are to include training on various matters including ethics and fiduciary responsibilities.

Good governance is critically important for Trustees to achieve optimal performance and maintain the confidence of their constituencies.

Goal of today's presentation is to provide an overview of some of the Illinois laws that you as Trustees are required to follow and some of the pitfalls that have occurred as a result of Trustees failing to follow good governance principles.

# The 4 “I”'s of Good Governance



- Informed
- Independent
- Integrity
- Impact

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Informed

Boards of Trustees need to be informed and knowledgeable of state laws and policies that impact a Trustee's decision making process.

- 1) The Community Colleges Act
- 2) The Freedom of Information Act
- 3) The Open Meetings Act
- 4) The State Employees' & Officers' Ethics Act
- 5) The Governmental Ethics Act
- 6) Individual Community College Policies



SIPRESS

*"My desire to be well-informed is currently  
at odds with my desire to remain sane."*

# FOIA Landscape

- ▣ Illinois was the last state to enact a law permitting access to public records (*See* Public Act 83-1013, effective July 1, 1984).
- ▣ A 1999 audit by the Associated Press found that more than two-thirds of state government organizations did not comply with FOIA.
- ▣ A 2006 investigation by the BGA yielded a 60% noncompliance rate with almost 40% of the Illinois governments tested reporting that they never even responded to the FOIA request.
- ▣ Since 2010, there have been numerous amendments and proposed amendments to FOIA law.

- ❑ As of January 2017, Mayor Emanuel's administration faced 54 lawsuits involving FOIA.
- ❑ In 2016, the City of Chicago shelled out \$670,000 in 27 settlements alleging officials violated open records laws—almost five times what it paid in the previous eight years combined.
- ❑ The most expensive case was the Laquan McDonald video. The City paid \$97,500 in fees and court costs to fight the release of the videotape.
- ❑ The City also paid \$96,275 in the BGA's case involving the release of Mayor Emanuel's emails.

Chicago Tribune

**BGA** Shining a Light on Government



Judge rejects Emanuel assertion that emails are exempt from disclosure

MAY 31, 2016

Emails on Laquan McDonald shooting ordered disclosed, refuels privacy debate

CHICAGO **SUN**TIMES

City delays release of police shooting video despite 90-day policy



# What is a Public Record?

- ▣ Section 2(c) of FOIA (5 ILCS 140/2(c)) provides that “public records” are: “[a]ll records \*\*\* and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.”
- ▣ The presumption is that all public documents are open to inspection as noted in Section 1.2 of FOIA (5 ILCS 140/1.2): “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.”

- ❑ Compensation & Bonuses: In 2016, the Illinois AG held that the Housing Authority of the City of Freeport must disclose records relating to employee compensation and bonuses because such records relate to the use of public funds.
- ❑ Facebook/Skype: In 2016, the Illinois AG found that a public body must disclose Facebook and Skype account names because such names are akin to or derived from the individual's legal name, which is subject to disclosure.
- ❑ Student Records: In 2017, a Kentucky Court held that the Family Educational Rights and Privacy Act ("FERPA") protected University of Kentucky student information in a sexual assault case as educational records exempt from disclosure under FOIA laws. The Court also held that the records could not be disclosed in redacted form because redaction would not offer adequate protection from identifying the students.

- ▣ College of DuPage Foundation: In 2017, an Illinois appellate court held that the College of DuPage Foundation must disclose a federal subpoena that it had fought to keep private. In its ruling, the Court found that while the foundation is not technically a public body, it is subject to FOIA. “It is undisputed that the foundation is not merely soliciting donations from individual citizens and private corporations for the college educational programs, but the foundation also holds all private donations to the college, even those the foundation did not solicit.” As such, the Court ruled that the Foundation was contracted to perform a duty that “directly relates to the government” function of the College of DuPage and its records are subject to FOIA.

The Illinois AG has held that a public body responding to a FOIA request must conduct an adequate search of personal e-mail accounts and personal devices when email communications and text messages concern the business of the public agency.



Chicago Tribune/Emanuel cases. In December 2016, the Emanuel administration was forced to turn over thousands of emails from the Mayor's personal email account (and the personal email accounts of two aides).

- The released emails included disparaging remarks made by Governor Rauner to members of Emanuel's administration (prior to Governor Rauner becoming Governor) with the Governor remarking that CPS teachers are "virtually illiterate" and half of the city's principals are "incompetent".
- The released emails also show Mayor Emanuel's frequent attempts to discuss public business with people in business, government and the media such as:
  - David Plouffee, a top official at ride-share company Uber. Plouffee contacted Emanuel about the issue of signs that needed to be placed on vehicles doing pickups at the City's two major airports.
  - Alan Warms, an investor who contributed thousands of dollars to Emanuel's campaign committee. Warms complained about a huge uptick in crime in his neighborhood. The Mayor responded within minutes stating that more officers were added to the area and that he was passing along Warms' address to the police district.

## Former Obama aide fined \$90,000 for illegally lobbying Emanuel on Uber's behalf

- ❑ In connection with the 2016 release of Mayor Emanuel's emails, the Chicago Board of Ethics sent letters of suspected lobbying violations to 14 individuals and companies who contacted Mayor Emanuel seeking to improperly influence the Mayor with respect to issues affecting those companies.
- ❑ The Chicago Board of Ethics noted that potential fines were likely to be "significant" in the event the Board finds the suspected lobbying violations occurred.
- ❑ The Chicago Board of Ethics already found that David Plouffe's emails to Mayor Emanuel, on behalf of Uber, violated City rules regarding lobbying and fined Uber \$92,000.

## TALLY OF ETHICS PROBES TIED TO EMANUEL EMAIL RELEASE HITS 14

Apr 19, 2017 6:35 PM

U B E R

EVERYONE'S PRIVATE DRIVER™

Emanuel immediately responded, directing Plouffe to his staff.

# Governor Rauner's Policy on Personal E-mail Addresses

*“Please advise your board members and commissioners that we still have a zero-tolerance policy on the use of personal e-mail for state business.”*

– Christina M. McClernon,  
Assistant General Counsel,  
Office of Governor Bruce Rauner

# Consequences of Failing to Adhere to FOIA Requirements

- ▣ College of DuPage case. The Chicago Tribune initiated an investigation against the college which raised questions about top administrators' expense accounts and other spending issues. The Tribune ultimately filed a lawsuit contending that the College and its foundation violated FOIA by refusing to produce records held by the foundation including documents relating to a foundation account that paid expenses for the college's prior president, Robert Brueder. After the lawsuit was filed, the college turned over some records showing how Brueder used foundation money (nearly \$102,000) on high-end restaurants, trustees' bar bills, a refile for a departing foundation officer, among other expenses. The College fired Brueder and rescinded his \$763,000 severance package amid growing public scrutiny.
- ▣ University of Illinois case. Chancellor Phyllis Wise was forced to resign over encouraging key personnel to utilize personal email addresses to attempt to maintain confidentiality on certain University related topics.

Daily Herald: Watchdogs file lawsuit against COD for withholding public records  
April 2, 2015 09:46 PM  
(not rated)  
Original Article, [click here](#).  
**Daily Herald**  
Big Picture . Local Focus  
By: **Melissa Silverberg**  
A group of government watchdogs filed a lawsuit against College of DuPage on Thursday alleging numerous violations of the Illinois Freedom of Information Act.

DuPage County | updated: 4/29/2016 5:17 PM

# College of DuPage may admit Open Meetings Act violations on Breuder's contract

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News / Watchdog / College of DuPage

f t e

# DuPage prosecutors sue College of DuPage board over Breuder contract vote

**CHICAGO SUN@TIMES**

**TRENDING**

**Chicago Tribune**

**News**  
CHICAGO NEWS 10/20/2015, 08:16pm  
**College of DuPage board fires president**  
Sun-Times Staff  
email

SATURDAY, MAY 16, 2015

## COLLEGE OF DUPAGE SCANDAL THREATENS SCHOOL'S ACCREDITATION



GLEN ELLYN, IL - College of DuPage is facing further scrutiny for its spending following decisions by the state and the accreditation agency that oversees the school.

# Open Meetings Act

- ▣ The Open Meetings Act is designed to prohibit secret deliberations and action on matters which, due to their potential impact on the public, properly should be discussed in a public forum. *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980).
  
- ▣ What is a “meeting” under the Open Meetings Act?
  - “Meeting” is defined as “any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business.” 5 ILCS 120/1.02.



MANKOFF

*“Let’s never forget that the public’s desire for transparency  
has to be balanced by our need for concealment.”*

CN  
COLLECTION

# Community College Example

- ❑ At a 2015 special meeting, the Board discussed the financial condition of the College in executive session under 2(c)(1) and 2(c)(5) of the OMA, allowing public agencies to go into executive session to discuss personnel matters and the lease or purchase of real property.
- ❑ The topics in executive session included:
  - Financial Uncertainties of the College;
  - Financial Stewardship;
  - Financial 5 Year Forecast;
  - Property Tax Levies; and
  - Impacts of Limited Financial Resources.
- ❑ AG concluded that Board's brief discussion on general matters related to employees in general (such as staffing levels and the importance of having a financial context for upcoming negotiations with employees) and the College's efforts to sell or lease property owned by the College did not authorize the Board to enter into executive session pursuant to 2(c)(1) and 2(c)(5) of the OMA.

# Northern Illinois University

- ❑ Following an OEIG report that alleged improper spending at NIU, the NIU President, Doug Baker, resigned and was awarded a \$617,500 severance package by the NIU Board of Trustees.
- ❑ A member of the public sued the NIU Board alleging the Board violated the Open Meetings Act by : (1) failing to provide proper notice of the meeting; (2) failing to provide a full description of the agenda item involving Baker's severance award; and (2) failing to make a required performance review of the President publicly available.
- ❑ The Complaint cites to a new State law that requires State Universities to consider the performance review in any employment compensation and to make that review available to the public on the respective University's website at least 48 hours prior to the Board approving a bonus incentive-based compensation, raise or severance agreement for the president or all chancellors of the University.

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Independent

Good governance requires that Trustees are independent decision-makers acting in the sole interest of their respective Community College. Trustees are required to comply with conflicts of interest prohibitions in the Illinois Governmental Ethics Act and individual policies of their respective Universities.

When identifying whether a conflict of interest exists effecting his/her ability to be an independent decision-maker, a Trustee should consider the following stages:

- Identifying the conflict; and
- Managing the conflict.

# Identifying Conflicts of Interest

- ▣ A conflict of interest arises when a Trustee is required to make a decision where:
  - 1) the Trustee is obliged to act in the best interests of his/her Community College constituency; and
  - 2) at the same time, the Trustee has or may have either: (i) a separate personal interest or (ii) another duty owed to a different beneficiary in relation to that decision, giving rise to a possible conflict with the Trustee's duty as a Trustee of the Community College Board.
- ▣ Conflicts may be classified as real conflicts or potential conflicts.

# Managing Conflicts of Interest

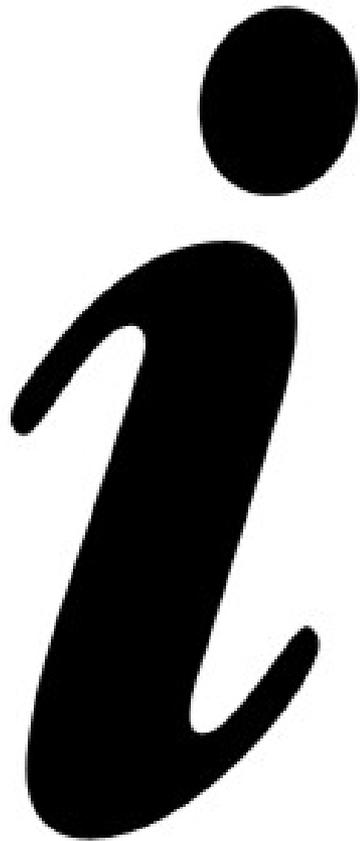
- ❑ Board Members should disclose any actual or potential conflicts of interest immediately upon discovery.
- ❑ Paramount importance because avoiding appearances of conflicts maintains public confidence in the Community College's institutional integrity as a prudently managed Community College operated for the sole and exclusive benefit of its members.
- ❑ When managing a conflict, the role of a legal adviser is important to consider how the conflict may affect (or appear to affect) the independence of the Trustee's decision making.
- ❑ A decision taken by a Trustee with a conflict may be invalidated if the Trustee did not take proper steps to manage the conflict.

- ▣ Constituency Interests. Elected or appointed Trustees often have responsibilities toward his or her constituency.
- ▣ *Identify the conflict*: A Trustee's interest in his or her responsibilities to his or her constituency may cause a conflict of interest on a particular matter. Trustees must recognize at all times that the Trustee's obligation is to act in the best interest of the Community College as a whole and not to a particular constituency that he or she has been elected or appointed to represent.
- ▣ *Manage the conflict*: If a Trustee believes that an interest to his or her constituency may create a conflict, the Trustee is encouraged to seek legal advice before participating in the discussion or vote at issue and disclose the conflict to the Board. Trustees should recognize at all times that the Trustee's duty is to act in the best interest of the Community College as a whole and not to a particular constituency that he or she has been elected or appointed to represent.

- ▣ Personal and Financial Interests. Trustees (and his or her spouse and/or immediate family member) are prohibited from having a financial or personal interest in contracts or business operations that affect or appear to affect that party's independence, objectivity or loyalty to the Community College.
- ▣ *Identify the conflict:* possible conflicts include (i) referring any prospective vendor to the Community College for a specific transaction without Board approval; (ii) engaging in outside employment with any Community College vendor; (iii) using his or her prestige as a Board Member to encourage the hiring of family members at vendors of the Community College; (iv) engaging in activities that are incompatible with his or her duties as a Board Member such as using his or her prestige, influence or position with the Community College to receive any private gain or advantage or divulging confidential or non-public information to any unauthorized person which he or she gains by reasons of his or her role as a Trustee.
- ▣ *Manage the conflict:* The Trustee should notify the Board as soon as possible about the conflict and should seek legal advice regarding appropriate responses to managing the conflict.

# ISBE Example

- ❑ Illinois State Board of Education Chairman violated the agency's conflicts of interest policy by participating in discussions and a Board vote relating to Illinois' No Child Left Behind Act waiver application without disclosing his wife's ownership of a supplemental educational services provider to the entities subject to ISBE jurisdiction.
- ❑ The agency's conflict of interest policy specifically prohibited the following types of behavior: (1) Using public office for direct or indirect private gain; (2) giving preferential treatment to any organization or person; (3) losing independent or impartiality of action; (4) making a Board decision outside official channels; or (5) adversely affecting the confidence of the public in the integrity of the Board.
- ❑ OEIG concluded that the Chairman's wife's ownership could "reasonably create the appearance of [the Chairman]'s loss of independence or impartiality. ...Thus, [the Chairman] was required to disclose this interest to the Board when he participated in the Board discussions and vote."

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Integrity

Good governance requires Trustees to act with integrity in all Community College decisions.

Boards of Trustees need to operate within the ethical requirements of state laws including relevant portions of the State Officials' and Employees' Ethics Act (“Ethics Act”).

# Gift Ban

- ❑ The Illinois Gift Ban, codified in the Ethics Act, applies to all Board Members (and Staff) and prohibits Board Members (and their respective spouses/immediate family members) from submitting or accepting any “gift” from a prohibited source.



A “prohibited source” are people or entities that fit one or more of the following categories:

- (1) do or seek to do business with the respective Community College;
- (2) conduct activities regulated by the respective Community College;
- (3) have interests that may be substantially affected by the Community College’s official duties or
- (4) are registered or required to be registered as lobbyists.

Gifts from prohibited sources do not violate the Gift Ban if they fall under one or more of the following exceptions:

- Gifts available to the public under the same conditions;
- Gifts for which the recipient paid market value;
- Gifts received from a relative;
- Foods or refreshments not exceeding \$75 per day;
- Gifts from one prohibited source with a cumulative value of less than \$100 during any calendar year.

# Gift Ban Violations

- ▣ OEIG Illinois Department of Transportation Case: An IDOT Office Administrator violated the Illinois Gift Ban Act by accepting payment for a flight ticket for her daughter from the owner of a IDOT official testing station.
- ▣ OEIG University of Illinois at Chicago Case: OEIG Investigation found that Midwest Foods and its co-owner gave prohibited gifts to University of Illinois Associate Athletic Director and other UIC employees and officials. The illicit gifts included Chicago Bulls and White Sox games as well as use of a rental apartment in California. Midwest Foods was considered a prohibited source because it did business with UIC and sought to do additional business.

# Political Activity

- ❑ Ethics Act strictly prohibits employees and Board Members from using State resources for prohibited political activity. 5 ILCS 430/5-15(a).
- ❑ Ethics Act does not permit any exception for anyone to engage in *de minimis* use of Community College property for political campaign activities even if the employee:
  - Is a tenured faculty or professor;
  - Did not think about what they were doing (or not doing);
  - Describes their conduct as an error that was “miniscule”;
  - Used State resources that only represented a fraction of their overall e-mail use; or
  - Did not think about using their personal e-mail as opposed to their State e-mail.

# Political Activity Violation

- ▣ Tenured University professors exchanged seemingly innocuous, limited e-mails using both their State University email accounts and their personal e-mail accounts to communicate about a fellow Professor's campaign for Congress. E-mails included:
  - A request and response regarding drafting an introductory speech for the Professor in preparation for a campaign meeting;
  - A list of contact information in order to assist the Professor in sending invitations for a campaign meet and greet;
  - A request and response regarding distributing the Professor's campaign materials at a meeting in Washington D.C.; and
  - A request and response regarding assistance in soliciting campaign donations from other University employees.

- ▣ All of the University professors were required to complete the annual training on the State Ethics Act.
- ▣ The University professors admitted that they knew that “you’re not supposed to” use State e-mail in regards to a political matter but argued that the violation was a “miniscule error” and that they “could not believe time was being wasted on something so trivial”.
- ▣ OEIG responded by finding all of the University professors involved in the e-mail exchanges were in violation of the State Ethics Act.
  - “[a] violation of State law is not a trivial matter. In addition, what is also similarly not trivial, is that a tenured professor, who said she completed ethics training each fall and said she was familiar with the training related to prohibited political activity, nevertheless either intentionally disregarded or simply ignored her annual training.”

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Impact

Good governance requires Trustees to be knowledgeable of the existence of risks and ensure that proper procedures and processes are developed in advance to address such risks. Ensuring that proper procedures and processes are followed will result in a lasting impact on the Community College's governance.

“Leadership is an action, not a position.” –Donald McGannon

# Employment Contracts

- ▣ In 2016, the Illinois General Assembly passed legislation impacting employment contracts and severance packages for Community College Presidents and Chancellors:
  - Severance payments may be placed in an escrow account if there are pending criminal charges against the President or Chancellor;
  - Final action on the formation, extension or termination of the employment contract must be made during an open meeting of the Board and the Board must provide the public with documentation describing the financial components of the President or Chancellor's contract; and
  - Any performance based bonus or incentive must be approved by the Board in an open meeting and the performance criteria and goals upon which the compensation is based must be provided at least 48 hours prior to the Board approval of such payment.

# Sexual Harassment

- ▣ Under the Illinois Human Rights Act, sexual harassment is defined as: “any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:
  - Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment;
  - Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - Such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.
- ▣ The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991.

- ▣ **Verbal:** Sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions threats, repeated requests for dates, or statements of a sexual nature about other employees, even outside of their presence.
- ▣ **Non-verbal:** Suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, “catcalls”, “smacking” or “kissing” noises.
- ▣ **Visual:** Posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic materials or websites.

- ▣ **Physical**: Touching, unwelcome hugging or kissing, pinching, brushing the body, and coerced sexual act, or actual assault.
- ▣ **Textual/Electronic**: “Sexting” (electronically sending messages with sexual content including pictures and video) the use of sexually explicit language, harassment, cyber stalking and treats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

- ▣ Under landmark U.S. Supreme Court decisions, the Supreme Court held that employers have an affirmative defense for liability involving the harassing conduct of supervisors and management only where:
  - (1) no tangible job action (such as demotion or a termination) occurred;
  - (2) the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and
  - (3) the employee unreasonably failed to take advantage of the preventative/corrective opportunities provided by the employer or to otherwise avoid harm.
- ▣ “Reasonable care” on the part of the employer can take the form of an established and well-published anti-harassment policy that is consistently and promptly applied.

- ▣ Recent decisions have noted that the affirmative defense for employers is not available when the harasser is so high up in the managerial structure that he or she may be considered to be the “alter ego” of the employer.
  - *EEOC v. Robert L. Reeves & Assoc., P.C.* (C.D. Cal. 2003): The Court found that the founder, chief executive officer, president, director and shareholder of the firm was the firm’s proxy/alter ego and, therefore, the affirmative defense was not available to the firm.
- ▣ In some circumstances, members of the Board may be considered to be alter egos of a College, such that the College could be held strictly liable for harassment by Board Members against employees without the ability to assert the affirmative defense available to employers.

- ▣ Q: Is sexual harassment only men harassing women?
  - A: No. Sexual harassment can be done by either a man or a woman. According to the Illinois Human Rights Act, sexual harassment is defined as “unwelcome sexual advances or requests for sexual favors” in exchange for services that may affect employment status.
- ▣ Q: A regular customer of my employer makes offensive sexual remarks every time I see him. Is this sexual harassment?
  - A: If you informed your employer about a customer making sexually offensive remarks and your employer did nothing to handle the situation, then yes, under Illinois law, this type of harassment would be considered third-party sexual harassment.

- ▣ Q: If a co-worker or supervisor comments on my clothing or appearance, is that sexual harassment?
  - A: If a co-worker or supervisor compliments you on your outfit it doesn't necessarily constitute sexual harassment. For example, if someone at your job says to you "I like your outfit", it is not sexual harassment. However, if the compliment is followed by a remark about your physical attributes or includes references to your private parts, then yes, the compliment could be considered a verbal form of sexual harassment.
- ▣ Q: Is it sexual harassment if I ask a co-worker for a date?
  - A: In Illinois, it is not against the law to ask a co-worker out on a date. However, if the answer is "No" and you repeatedly ask the same person to go out with you, under the given circumstances you could be charged for sexual harassment or for creating a hostile work environment.

- ▣ Q: A fellow employee told me a joke that had mild sexual content. I wasn't offended by it, and we both found the joke to be funny. Today, we both got a memo from our boss saying our conduct was inappropriate and a potential violation of the company's sexual harassment policy. Was the joke harassment?
  - A: All companies in Illinois have a responsibility to create a safe working environment for all their employees. If a joke was told with sexual connotations and someone overhearing the joke found it to be offensive, it could create a hostile working environment, which is another form of sexual harassment. Either way, telling a dirty joke at work is deemed inappropriate.

- ▣ Q: I was denied a promotion, and I've learned that the promotion went to my supervisor's boyfriend. Is this sexual harassment?
  - A: It is not sexual harassment if you are passed over for a promotion in favor of your supervisor's boyfriend. However, if you were denied a promotion because you refused to sleep with your boss or give sexual favors to your supervisor, then yes, that would be sexual harassment.

Sexual Harassment Training Begins In Springfield



Open letter alleges rampant sexual harassment in Illinois politics

Sexual Harassment Becomes Hot Topic In Springfield



The only way to solve Springfield's sexual harassment problem



Editorial: Suddenly, Springfield is aghast about sexual harassment

# Senate Bill 402

- ▣ In response to the allegations of sexual harassment in Springfield, Speaker Madigan filed an amendment to Senate Bill 402 revising the Ethics Act.
- ▣ The House Amendment amends the Ethics Act to require the following:
  - (1) Annual in-person training regarding sexual harassment for all officers, members and employees subject to the Ethics Act; and
  - (2) Each Community College district must adopt an ordinance or resolution establishing a policy to prohibit sexual harassment, including how an individual can report allegations of sexual harassment and disciplinary action for violation of the policy.
- ▣ On November 7, 2017, Senate Bill 402 passed and was sent to the Governor for signature.



**Uber board member resigns after making a joke about women at a company meeting on sexism**

***21st Century Fox Pressed by Investment Group to Overhaul Board***



*Los Angeles Times*

LEADERSHIP • UBER

**Uber Board Expected to Review Sexual Harassment Report Wednesday**

*The New York Times*

***David Bonderman Resigns From Uber Board After Sexist Remark***

**Weinstein Company hit with lawsuit following sexual assault allegations**

*Harvey Weinstein off Weinstein Company board of directors*

Actor Dominique Huett files \$5m civil suit against film company for 'abetting' Harvey Weinstein, alleging board members knew about and covered up misconduct

# Weinstein Company

- ▣ Following the revelations regarding the Harvey Weinstein sexual harassment scandal, an actress is suing the Weinstein production company claiming that the Weinstein Company and its Board of Directors “aided and abetted” Weinstein.
- ▣ Specifically, she alleges the Board of Directors was negligent in ignoring Weinstein’s behavior, which she alleges they had been aware of since the 1990’s.
- ▣ The lawsuit states: “The Board of Directors was aware of the probable dangerous consequences of failing to remove or adequately supervise Weinstein. In failing to do so, the Defendant acted with actual malice and with conscious disregard to Plaintiff’s safety.”

# Southern Illinois University

- ▣ In 2012, a SIU student worker in the SIU student employment program sued SIU after three encounters with a former SIU professor and substantial donor, in which the former professor touched the student inappropriately and complimented him on what he believed to be his feminine features.
- ▣ SIU's response to the harassment was held by the court to be reasonable because of the following:
  - 2 SIU officials were “quite helpful in shepherding the [student] through the complaint process...and the officials encouraged the [student] to pursue a formal complaint.”
  - SIU took corrective action such as assigning the Professor to another area of the University, issuing a formal reprimand, requiring sexual harassment training, and making a good faith effort to minimize his contact with the student.



*"It's an amazing coincidence, isn't it, that we all served on the same board of directors?"*



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*October 18, 2017 - 6:00am*

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**THINK TANK**

Pensions & Salaries

# **Golden Parachutes In Illinois: How To Curb Six-Figure Severances For Public Execs**

*By: José Sanchez*



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*Editor's note, posted Oct. 20, 2017: Senate Bill 2159 was added to this post. Senate Bill 2159 focuses on severance deals for top university officials. It was passed and signed into law in 2016. That law says future severance packages for public university presidents and chancellors may not exceed one year's salary and applicable benefits. It also says future contracts may not exceed four years and may not include any automatic rollover clauses. The law also increased transparency about severance deals by requiring public input and open meetings.*

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While Illinoisans face years of budget deficits, cuts to social services and tax increases, we also foot the bill for expensive severance packages for public executives.

Proponents of high payouts argue the practice allows public departments, including colleges and universities, to recruit and retain high-value talent.

The practice, however, has cost taxpayers millions of dollars and rivals golden parachutes awarded in the corporate sector. How public officials determine how much to include in severance packages also has historically lacked transparency. Severance deals often are made behind closed doors, keeping the public in the dark.

What's a better process? What do other states do? How extensive is the habit of awarding significant golden parachute severance packages in Illinois? The Better Government Association's policy unit took a look at recent severance controversies, best practices and possible solutions.

## EXAMPLES IN ILLINOIS

### **Doug Baker** • Northern Illinois University • left 2017



Payment to end contract:  
**\$450K**

Payment for resigning from  
tenured position: **\$137.5K**

Legal counsel: **\$30K**

In June of 2017, Doug Baker, former president of Northern Illinois University, agreed to retire in the midst of investigative revelations that pointed to misspending from his office. As part of his retirement, Baker's severance package totaled more than \$600,000; including a year's salary, a sum for retiring from a teaching position, and money for legal counsel.

Investigators found the university was hiring consultants at expensive rates and handing out contracts to Baker's personal

friends. The questionable conduct occurred in the midst of NIU staff budget cuts during the state budget impasse. Students also complained of construction projects being delayed or stopped, including work on fixing dorms with leaking ceilings, potholes in parking lots, and unfinished sidewalks around campus.

Recently, a judge granted a temporary restraining order barring NIU from making any additional severance package payments to Baker, but he already received a large majority of his package. The restraining order was the result of a lawsuit by DeKalb County Board member Misty Haji-Sheikh. Haji-Sheikh claims trustees violated the Open Meetings Act when they agreed to Baker's package. The agreement was made in a closed-doors meeting that lasted seven hours. No public comment was solicited.

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## Thomas Calhoun Jr. • Chicago State University • left 2016



Payment to end contract:  
**\$600K**

Moving expenses: **\$5K**

Thomas Calhoun Jr. mysteriously received a \$600,000 severance package after serving as president of Chicago State University for just nine months. The deal was part of a separation agreement that included two years' salary. During the board meeting finalizing the separation, trustees did not hear public comment. The reason for Calhoun's departure never was shared, but community members insisted he was being pushed out. Chicago State University continues to face major budget shortfalls.

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## Robert Breuder • College of DuPage • left 2015



\$762.9K

Payment to end contract:  
**\$762.9K**

In 2015, College of DuPage's former president, Robert Breuder, received a severance package that totalled more than \$750,000. The package was awarded by trustees after Breuder agreed to retire early, three years before his recently-renewed contract expired. Breuder stepped down after it was revealed that the College of Dupage had hidden \$95 million in spending on prestigious club memberships for Breuder, expensive meals, and on deals with companies which college leadership owned or had close ties to.

After public outcry, a new set of trustees moved to void Breuder's contract. The trustees cited 19th-Century case law which reasoned that lame-duck boards cannot bind future boards to lengthy employment agreements. The board then moved to fire Breuder, citing the scandals.

Breuder then sued the college and some trustees for breach of contract and unlawful termination. His suit seeks \$2 million. Most recently, Breuder petitioned the U.S. Appellate Court to uphold a lower court's ruling that determined that the college could not cite the 19th Century case law, as it had been overridden by existing state law. The case is pending.

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## **Timothy Flanagan** • Illinois State University • left 2014



\$480.4K

Payment to end contract:  
**\$480.4K**

Former Illinois State University President Timothy Flanagan received a \$480,000 severance payment after only being on the job for seven months. As part of a separation agreement, Flanagan resigned and all parties agreed not to comment on the resignation. Students and community members protested the agreement and demanded to know why Flanagan received a severance payment if his resignation was voluntarily. It was later uncovered that Flanagan had been arrested and was facing charges after an altercation with another man in Flanagan's front yard. Flanagan was found guilty of disorderly conduct and was allowed to serve his community service in another state. The conviction did not result in him losing his severance package.

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## Phyllis Wise • University of Illinois at Urbana-Champaign • left 2013



Paid sabbatical: **\$365K**

New position salary:  
**\$298.9K**

Former Chancellor Phyllis Wise, at the University of Illinois at Urbana-Champaign, submitted her resignation a day before documents were released that strongly suggested she had conspired to hide information from the public, violating FOIA and university policy. Initially, as part of her resignation, Wise was set to receive a \$400,000 bonus. After public outcry, however, the board of trustees voted down her resignation. She submitted a second resignation that left her without a bonus. However, she did keep a sabbatical of one year at \$365,000 and a tenured teaching position with a salary of \$298,926.

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## Jeneen Smith-Underwood • Lake County Housing Authority • left 2013

**\$122K**

Payment to end contract:  
**\$122K**

In July of 2013, Jeneen Smith-Underwood received a \$122,000 severance package after being the chief executive officer/executive director of the Lake County Housing Authority for only four months. While the housing authority board chairman claimed no taxpayer dollars were used as part of the settlement and that the money came from private real estate transactions, residents and elected officials were upset at the lack of transparency.

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## Alex Clifford • Metra • left 2013

**\$652.3K**

Payment to end contract:  
**\$419.5K**

Legal counsel: **\$75K**

Moving expenses: **\$60.5K**

Leftover vacation, sick days, PTO: **\$63.1K**

Pension and health plan contributions: **\$34.1K**

In June of 2013, former Metra CEO Alex Clifford resigned after accepting a severance package that cost more than \$650,000. The agreement covered the remainder of his salary and benefits, any potential salary difference between his next job and his Metra salary. In return, Clifford agreed not to pursue legal action against Metra. In total, the agreement cost taxpayers more

than \$1.3 million. Metra paid outside legal counsel as well as public relations professionals after facing public outcry. In response to public outrage, Metra officials said they reformed the way they manage severance agreements.

But later, when an audit of Metra was conducted, it was uncovered the transit agency had an insurance policy that would have covered any legal costs associated with a lawsuit from Clifford. The deductible would have been \$150,000, a minor amount compared to the severance and the amount paid to outside legal counsel. When leadership at Metra was asked to explain why they didn't use the insurance, they pointed to bad legal advice.

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## Michael Hogan • University of Illinois at Urbana-Champaign • left 2012



Payment to end contract:  
**\$67.5K**

Paid sabbatical: **\$285.1K**

New position salary:  
**\$285.1K**

Michael Hogan, former president at the University of Illinois at Urbana-Champaign, resigned after facing a scandal where his chief of staff posed as a member of the university's legislative body in an attempt to influence an internal debate. Hogan also was facing criticism from staff and professors about his ability to maintain positive relationships. As a result, he resigned and received a one-year paid sabbatical and a teaching position with a salary of \$285,200. Hogan then chose to teach in Springfield where he was the highest-paid employee.

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## Richard H. Herman • University of Illinois at Urbana-Champaign • left 2009



Paid sabbatical: **\$244K**

New position salary:  
**\$395.5K**

In 2009, Chancellor Richard H. Herman, from the University of Illinois at Urbana-Champaign, resigned in the midst of an admissions scandal. He was able to retain his \$395,000 annual salary by being named special assistant to the interim president, and also was granted a sabbatical worth \$244,000. Herman also received a \$212,000 teaching salary as a communications professor following his tenure as special assistant. He only was required to teach two courses, whereas communications professors usually are required to teach four courses a year.

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## NATIONAL SCOPE

High-cost severance packages are not granted only in Illinois. Take, for example, the three largest severance packages for public university officials:

- More than \$6 million for E. Gordon Gee, former president at Ohio State University
- \$1.6 million for R. Bowen Loftin, former president of Texas A&M
- More than \$1.3 million for Hamid A. Shirvani, former chancellor at North Dakota University.

Other examples of high public severances include:

- Former Baltimore County police chief Jim Johnson, who received a \$117,000 severance package, in addition to a \$45,000 salary paid to him after his resignation. As in many cases, Johnson's departure was announced, but no specific details about reasons for his departure were shared.

- Former Minneapolis police chief Janee Harteau received a package worth up to \$200,000. The package included a severance payment of \$183,000 with covered medical, dental and life benefits for up to a year. Harteau resigned in the midst of a controversy which involved an officer shooting an unarmed woman in an alley.
- In Florida, Lee Niblock, a former county manager, received a severance package of \$116,000. The package included 20 weeks of pay, vacation time, sick leave and a payout for retirement health insurance. Niblock received the package after being fired following complaints of low-employee morale and because he planned to reward high-level county executives with a bonus, which many felt was undeserved.

## **BEST PRACTICES: LAWS IN OTHER STATES**

No other state in the Midwest has taken action to put limitations or regulations on public severance packages.

California passed a law in 2015 that restricted severance pay for K-12 school superintendents to 12 months of salary from an 18-month limit. The legislation was introduced after several superintendents from Bay Area school districts received large payouts.

Florida passed a law in 2011 that restricts severance pay for any “officer, agent, employee, or contractor” to no more than 20 weeks’ salary. Employees without a contract or employee agreement may receive severance pay which cannot exceed six weeks’ salary.

## **LAW IN ILLINOIS**

Following the public outrage stemming from the College of DuPage Breuder severance package, a subcommittee on Public Higher Education Executive Compensation was formed in Springfield. As a result, Illinois passed HB3593 into law in 2015. That law provides that community colleges entering employment contracts, with the exception of collective bargaining agreements, have to abide by the following: 1) severance pay may not exceed one year’s salary, 2) a contract may not exceed four years, 3) no automatic contract rollovers, renewals or extensions can be made without an open meeting, and 4) public notice must be made when a contract is entered into, amended, renewed, or extended. A year later, SB2159 would also be passed and signed into law. The bill included similar provisions to HB3593, applying them to state university presidents and chancellors. The bill also added new provisions that improved transparency and open meetings.

While HB3593 has placed regulations on severance packages and made more transparent when and how contracts are entered into, renewed or extended, it only applies to community colleges. Bigger reforms are needed. As our timeline shows, high-cost severance packages have been awarded beyond the community college system. A broader approach would be to model Illinois policy after Florida's that applies to any public employee without a collective bargaining agreement.

Illinois has a chance to lead by reining in severance packages for public officials that anger taxpayers as an overly generous abuse of their money.

José Sanchez is a policy analyst for the Better Government Association. He can be reached at [jsanchez@bettergov.org](mailto:jsanchez@bettergov.org).

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› **AREAS: ILLINOIS**

