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THE IMPACT OF THE PANDEMIC ON STATE AND LOCAL GOVERNMENT BUDGETS

By Beverly S. Bunch

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I. INTRODUCTION

A government's budget is a means to fund services and programs to meet the needs of constituents. During normal times, the budget process spans multiple months; includes individuals, organizations, and departments advocating for funds; and requires negotiations and compromise to finalize a budget for the upcoming year. The adopted budget serves as a plan for the fiscal year, with some flexibility needed to adapt to changing circumstances.

That's during normal years . . . but as we know, now is not normal. The notion of "changing circumstances" has taken on a whole new meaning. With the onset of COVID-19 in March 2020, state and local governments saw their revenues plummet, unemployment levels skyrocket, and political divisions intensify. State and local governments have acquired new responsibilities and tasks associated with the pandemic, including the management of unprecedented levels of federal assistance.

This essay provides an overview of how COVID-19 has impacted state and local government budgets. It addresses fiscal challenges before and during the pandemic; the economic impact of the pandemic, including the disproportionate impacts on low-income workers, people of color, and women; and the large amounts of federal dollars that are flowing into state and local governments. It discusses how state and local governments are using those federal funds, as well as the challenges associated with preparing for the future when those funds will no longer be available. Throughout the essay, Illinois state government is discussed, including the state's weak position prior to the pandemic (including one of the worst funded rainy-day funds in the nation), the state's fiscal response to the pandemic/recession, and the state's early plans for spending federal fiscal recovery funds. The essay concludes with a discussion of the economic and fiscal situation for state and local governments as of the beginning of 2022 and important budgetary practices for the future. Recommended practices include building reserve funds, addressing inequities, using evidence-based budgeting, and improving transparency to build public trust and improve budget resiliency and effectiveness.

II. FISCAL CONDITON OF GOVERNMENTS PRIOR TO THE PANDEMIC

A. State and Local Sector

Prior to the pandemic, the fiscal outlook for most state and local governments was strong. State government revenues had grown consecutively for nine years (FY 2011 – FY 2019)

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and were expected to continue to grow in FY 2020. In most states, actual revenues had exceeded the expected levels during the past several years, resulting in budget surpluses in some states.[1]

Having learned from the Great Recession, many state governments recognized the need to increase the size of their rainy-day funds. The median state rainy-day fund balance in FY 2019 was 7.3 percent of a state's general fund expenditures, compared to 4.6 percent in FY 2007, prior to the Great Recession. Significant variations existed in the magnitude of the rainy-day funds. Seventeen states had a rainy-day fund balance at the end of FY 2019 that was 10 percent or more of the general fund spending, while three states, including Illinois, had a rainy-day fund balance less than one percent.[2]

B. State of Illinois

The State of Illinois was in a weak fiscal position prior to the pandemic. The state had a long record of structural budget deficits, large unfunded pension liabilities, a large backlog of vendor bills, and a miniscule rainy-day fund.[3] The inability of state elected officials to pass a statewide budget in FY 2016 and FY 2017 exacerbated the state's fiscal problems.

Prior to the pandemic, the state's general funds unpaid vendor bills totaled about $6.4 billion as of the end of FY 2019. This was significantly less than the $16.7 billion in unpaid bills outstanding at the end of 2017 after the budget impasse, in part due to the issuance of bonds to reduce the backlog. The state pays interest of 9 and 12 percent on the unpaid vendor bills, depending on the nature of the bill.[4]

In February 2020, the Illinois Comptroller said that the Illinois Budget Stabilization Fund (the state's rainy-day fund) had a balance of about $60,000, which would cover less than 30 seconds of operating expenses for the state.[5] For perspective, Pew estimates that the median value for all state rainy-day funds in FY 2020 would cover 28.5 days of operating expenses.[6]

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[1] National Association of State Budget Officers (NASBO), The Fiscal Survey of the States: Spring 2020, 2020, VII, https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Spring_2020_Fiscal_Survey_of_States_S.pdf.
[2] *Id.* at 64.
[3] Beverly Bunch, *Illinois' Initial Fiscal Response to the COVID-19 Recession,* 42 MUNICIPAL FINANCE J. 49 (2021).
[4] Illinois Comptroller Susana A. Mendoza, Backlog Vendor Report, https://illinoiscomptroller.gov/financial-data/backlog-voucher-report-bvr/ (last visited Jan. 15, 2022).
[5] Illinois Comptroller Susana A. Mendoza, *Senate Committee Approves Mendoza's Plan to Shore Up Illinois' Rainy Day Fund*, Feb. 19, 2020, https://illinoiscomptroller.gov/news/press-releases/senate-commitee-approves-mendozas-plan-to-shore-up-illinois-rainy-day-fund/ (last visited Jan. 15, 2022).
[6] Barb Rosewicz, Justin Theal, & Joe Fleming, *States' Total Rainy-day Funds Fall for First Time Since Great Recession*, PEW (May 17, 2021), https://www.pewtrusts.org/en/research-and-analysis/articles/2021/05/17/states-total-rainy-day-funds-fall-for-first-time-since-great-recession (last accessed Mar. 11, 2022).

As of the end of FY 2019, Illinois' pension funds had unfunded accrued liabilities of $137.2 billion and were 40.3 percent funded.[7] Local governments in Illinois also face pension challenges. The City of Chicago has eight pension plans, with the funded levels ranging from 18.2 percent to 55.9 percent as of 2019.[8] Other municipal governments in Illinois also faced large unfunded pension liabilities for their police and fire pension funds. In aggregate, in FY 2019 Illinois downstate police and fire pension plans had an unfunded accrued liability of $13.7 billion and were 54.7 percent funded.[9] The Illinois Municipal Retirement Fund, which serves nearly 3,000 local government employers in Illinois, had a much higher funded level of 94.1 percent in 2020.[10]

Illinois also is faced with other challenges, including a loss in state population over each of the past eight years (2014-2021). During the period July 2020 through July 2021, Illinois' population declined by 113,776 (-0.9 percent). This was the second-largest percentage decline among all states.[11]

III. ECONOMIC IMPACT OF COVID-19

Prior to the pandemic, the U.S. economy was doing well. The gross domestic product (GDP) had increased at an average pace of about 2.3 percent per year in real terms during the post-Great Recession recovery from 2009 through 2020. The economy had expanded for 128 months, the longest period of expansion on record.[12]

A. Initial Economic Impact

Then COVID-19 hit. During March and April 2020, governors in 43 states issued orders for businesses to shut down and for people to stay at home to prevent the spread of COVID-19.[13] GDP decreased at an annual rate of 5.1 percent during the first quarter of 2020, which ended in March. The impact was more pronounced during the second

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[7] Commission on Government Forecasting and Accountability, *Illinois State Retirement Systems Financial Condition as of June 30, 2019*, June 2020, 42, https://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysJune2020.pdf.
[8] Commission on Government Forecasting and Accountability, *Illinois Public Retirement Systems May 2021: A Report on the Financial Condition of the Illinois Municipal, Chicago and Cook County Pension Funds of Illinois,* May 2021, 86, https://cgfa.ilga.gov/Upload/Small_Systems_2020.pdf.
[9] In FY 2019, Illinois had 295 downstate fire pension plans and 352 downstate police pension funds. *See* Commission on Government Forecasting and Accountability. *Report on the Financial Condition of the Downstate Police and Fire Pension Plans in Illinois (PA 95-0950) 2021 Edition*, Dec. 2021, 9, https://cgfa.ilga.gov/Upload/2021FinancialConditionDownstatePoliceFire.pdf.
[10] Illinois Municipal Retirement Fund, *IMRF 2020 Investment Return Doubled Assumption*, May 5, 2021, https://www.imrf.org/en/news/2021/02-february/2020-financial-update.
[11] United States Census Bureau, *New Vintage 2021 Population Estimates Available for the Nation, States, and Puerto Rico*, CB21-208, Dec. 21, 2021, https://www.census.gov/newsroom/press-releases/2021/2021-population-estimates.html.
[12] Congressional Research Service, *Introduction to U.S. Economy: The Business Cycle and Growth*, 2022, https://sgp.fas.org/crs/misc/IF10411.pdf (last visited Feb. 14, 2022).
[13] Ballotpedia, *States that Issued Lockdowns and Stay-at-Home Orders in Response to the Coronavirus (COVID-19) Pandemic*, 2020, https://ballotpedia.org/States_that_issued_lockdown_and_stay-at-home_orders_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020 (last visited Jan. 30, 2022).

quarter of 2020, with a GDP decline at an annual rate of 31.2 percent (see Figure 1).[14] This was almost four times the worst quarter decline during the Great Recession and exceeded the largest historical drop of 10 percent that occurred in 1958.[15] The National Bureau of Economic Research later declared that the U.S. had experienced a two-month V-shaped recession from February to April 2020, the shortest recession on record.[16]

The number of jobs in the U.S. economy decreased by 22 million in March 2020. This included a loss of 19 million jobs in service-providing businesses. Leisure and hospitality were especially hard hit, with a loss of 8 million jobs.[17] The April 2020 unemployment rate nationally was 14.8 percent compared to 3.5 percent for February 2020, which had set a new 50-year low. The U-6 unemployment rate, an alternative measure that considers discouraged workers, increased from 7.0 percent in February 2020 to 22.8 percent in April 2020.[18] A recovery occurred in the following months, but the level of jobs in November 2020 was still 10 million less than the pre-pandemic level in February.[19] The economy rebounded during the third quarter of 2020, with GDP rising at an annual rate of 33.8 percent. GDP continued to grow on a quarterly basis throughout 2021 (see Fig. 1).[20]

[14] Bureau of Economic Analysis, *Gross Domestic Product, Fourth Quarter and Year 2021 (Advance Estimate)*, Jan. 27, 2022, 9, https://www.bea.gov/sites/default/files/2022-01/gdp4q21_adv.pdf.

[15] State of Illinois Governor's Office of Management and Budget, Illinois Economic and Fiscal Policy Report, Nov. 13, 2021, 2, https://www2.illinois.gov/sites/budget/Documents/Economic%20and%20Fiscal%20Policy%20Reports/FY2022/Economic%20and%20Fiscal%20Policy%20Report%20FY22%20FINAL.pdf.

[16] National Bureau of Economic Research, *Determination of the April 2020 Trough in the U.S. Economy*, July 19, 2021, https://www.nber.org/news/business-cycle-dating-committee-announcement-july-19-2021.

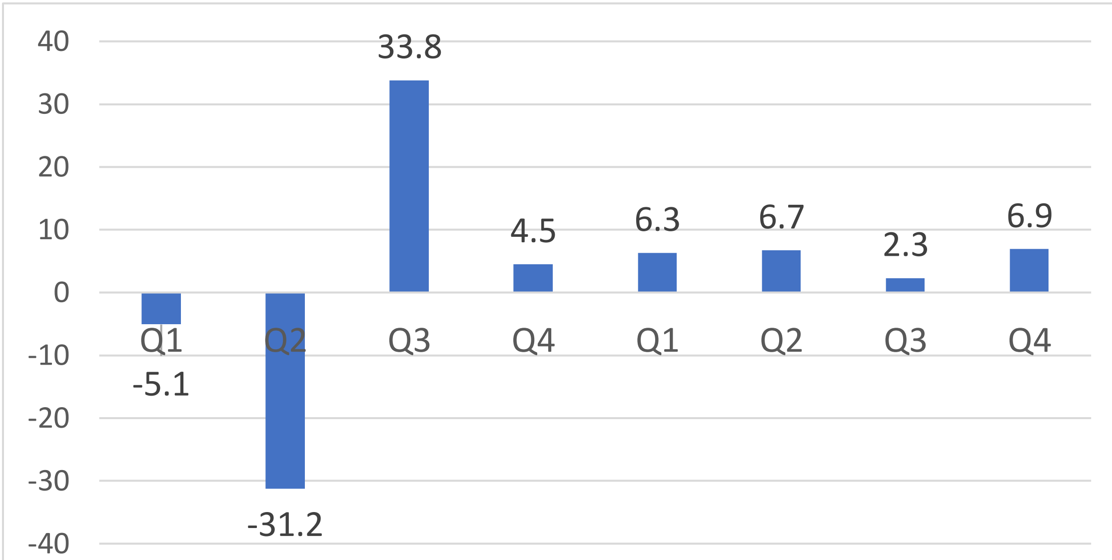
[17] Mitchell Barnes, Lauren Bauer, & Wendy Edelberg, *11 Facts on the Economic Recovery from the COVID-19 Pandemic*, The Hamilton Project, 2020, https://www.hamiltonproject.org/papers/11_facts_on_the_economic_recovery_from_the_covid_19_pandemic.

[18] State of Illinois Governor's Office of Management and Budget, November 13, 2021, 28.

[19] United States Bureau of Labor Statistics, *Employment Recovery in the Wake of the COVID-19 Pandemic*, MONTHLY LABOR REVIEW, Nov. 2020, https://www.bls.gov/opub/mlr/2020/article/employment-recovery.htm#_edn24.

[20] Bureau of Economic Analysis, *Gross Domestic Product, Fourth Quarter and Year 2021* (Advance Estimate), Jan. 27, 2022, https://www.bea.gov/news/2022/gross-domestic-product-fourth-quarter-and-year-2021-advance-estimate.

Fig. 1 Real GDP: Percent Change from Preceding Quarter (seasonally adjusted at annual rates)



2020–2021

Source: Bureau of Economic Analysis (January 27, 2022)

B. Disproportionate Impacts

The pandemic has disproportionately impacted particular segments of the work force, including low-wage workers, Blacks, Hispanics, and women.

Low-wage workers (defined as those who earned two-thirds or less of the median full-time male wage rate adjusted for the local cost of living) accounted for 43 percent of the jobs prior to the pandemic. However, these workers accounted for 52 percent of the displaced jobs (jobs lost during the pandemic that have not recovered). These displaced workers have higher risk of ongoing unemployment and, due to their economic situation prior to the pandemic, are less prepared to cope with their job loss. Nearly one-third of these workers are young adults aged 16 to 24.[21]

The unemployment rates during the pandemic have been much higher for Black and Hispanic workers and for workers with less education. The U.S. unemployment rate in April 2020 was 14.2 percent for white workers, 16.7 percent for Black workers, and 18.9 percent for Hispanic workers. Among workers with only a high school diploma, the unemployment rate increased from 3.5 percent in February to 17.3 percent in April 2020.

[21] Nicole Bateman and Martha Ross, *The Pandemic Hurt Low-Wage Workers the Most – and So Far, the Recovery Has Helped Them the Least*, BROOKINGS METRO, July 28, 2021, https://www.brookings.edu/research/the-pandemic-hurt-low-wage-workers-the-most-and-so-far-the-recovery-has-helped-them-the-least/.

The unemployment rate for workers with at least a four-year college degree increased from 1.9 percent to 8.4 percent during the same period.[22]

Women also have been disproportionately impacted by the pandemic. About 4.1 million women exited the labor force from the start of the pandemic through September 2020. This is about 23 percent higher than the 3.3 million men who left during the same period. From 2020 to February 2021, 46 percent of the workers who dropped out of the labor market were Black and Hispanic women.[23] Factors that have contributed to the disproportionate impact on women include the reality that women's employment is more concentrated in industries that have been hardest hit by the pandemic (restaurants, other retail, hospitality, and health care), the mass shutdown of schools and daycare centers (mothers tend to provide the majority of childcare), and that fewer women have jobs that allow them to telecommute.[24]

IV. IMPACTS OF COVID-19 ON STATE AND LOCAL GOVERNMENT FINANCES

State and local government revenues fell significantly in the second quarter of 2020 and then rebounded. State and local government own-source tax revenues decreased by $61.3 billion in second quarter of 2020 compared to the same period in the prior year. This was largely attributable to individual income taxes, which decreased 30.5% ($35.3 billion) and sales tax revenues, which declined by 13.9 percent (15.5 billion).[25]

State and local government income and sales tax revenues rebounded in third quarter, including a 99.7% ($80.1 billion) increase in income taxes and a 17.9 percent ($17.2 billion) increase in sales taxes.[26] The income tax rebound was in part due to the federal government's extension of the deadline for filing federal income tax from April 2020 to July 2020, which most state governments also followed for state income taxes. That pushed income tax revenue from the second to third quarter of 2020.[27] States also received income tax revenue from an increase in unemployment benefits. Unemployment benefits usually are subject to federal and state income tax.[28] Also, high-income earners were more likely to be able to work remotely compared to lower-income workers.

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[22] Betsey Stevenson, *The Initial Impact of COVID-19 on Labor Market Outcomes Across Groups and the Potential for Permanent Scarring,* The Hamilton Project, Essay 2020-16, July 2020, 4, https://www.brookings.edu/research/the-initial-impact-of-covid-19-on-labor-market-outcomes-across-groups-and-the-potential-for-permanent-scarring/.

[23] State of Illinois Governor's Office of Management and Budget, Nov. 13, 2021, 8.

[24] Eleni X. Karageorge, *COVID-19 Recession is Tougher on Women*, MONTHLY LABOR REVIEW, Bureau of Labor Statistics, Sept. 2020, 1.

[25] United States Government Accountability Office, *State and Local Governments: Fiscal Conditions During the COVID-19 Pandemic in Selected States*, GAO-21-562, July 2021, 6-7, https://www.gao.gov/assets/gao-21-562.pdf.

[26] *Id.* at 7.

[27] For most states, the deferral of the income tax deadline pushed those revenues from FY 2020 to FY 2021.

[28] The American Rescue Plan Act authorized a federal income tax exemption for the first $10,200 in unemployment benefits for 2020 for singles or couples with income less than $150,000 *See* Internal

Sales tax revenues were helped by the federal government's distribution of economic impact payments to individuals. As consumers purchased goods online, a recent U.S. Supreme Court case, *South Dakota v. Wayfair* (2018), allowed states to require vendors to collect sales taxes on online purchases even if the vendors do not have a physical presence (nexus) within the state. In addition, most state and local governments sales taxes are focused on goods rather than services. During the early stages of the pandemic, services declined more than goods.[29]

Property tax revenues decreased by a much lower amount, 3.5 percent ($5.7 billion) in the second quarter of 2020 and then rebounded by 4.3 percent ($6.7 billion) in the following quarter. Property tax revenues tend to lag changes in the economy due to the timing of the assessments of property. During the pandemic, residential housing values have remained steady or increased while commercial properties have experienced stress due to the decline in economic activity. The property tax revenue totals for 2020 were 4.5 percent higher than in 2019.[30]

V. INITIAL FISCAL RESPONSE BY ILLINOIS STATE AND LOCAL GOVERNMENTS

The impact of COVID-19 on state governments varied depending on the nature of a state's economy, its revenue system, virus transmissions, and other factors. During the summer of 2020, most states were finalizing their FY 2021 budgets. Twenty-three states implemented targeted spending reductions and eight states imposed across-the-board cuts to balance their budgets. The largest budget cuts occurred in K-12 education, although reductions also occurred in higher education, transportation, and other government programs. Medicaid and public assistance experienced the largest spending increases.[31]

In Illinois, the Governor's Office of Management and Budget in March/April 2020 directed state agencies to limit nonessential hiring, freeze travel that is not mission essential, and put on hold nonessential spending and operational spending.[32] The FY

Revenue Service, *New Exclusion of up to $10,200 of Unemployment Compensation*, https://www.irs.gov/forms-pubs/new-exclusion-of-up-to-10200-of-unemployment-compensation. Some states followed this action.

[29] National Association of State Budget Officers, *Fiscal Survey of the States – Spring 2021,* 2021, 43, https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Spring_2021_Fiscal_Survey_of_States_S.pdf.

[30] United States Government Accountability Office, *State and Local Governments: Fiscal Conditions During the COVID-19 Pandemic in Selected States,* GAO-21-562, July 2021, 8, https://www.gao.gov/assets/gao-21-562.pdf.

[31] National Association of State Budget Officers, *Fiscal Survey of the States – Fall 2020*. 2020, VII, https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf.

[32] Governor's Office of Management and Budget, *July 2020 Report to the Legislative Budget Oversight Commission*, Aug. 14, 2020, 6, https://www2.illinois.gov/sites/budget/Documents/LBOC/LBOC_Report_July_2020_%208.14.20.pdf and Governor's Office of Management and Budget, *April 2020 Revenue Forecast Revision*, https://www2.illinois.gov/sites/budget/Documents/April-2020-GOMB-Revenue-Forecast-Revision.pdf.

2021 Illinois budget, which was passed in the summer of 2020, increased overall spending by 5.8%. Most programs were funded at FY 2020 levels; however, there was increased spending for COVID-19 and several other high-priority areas. The FY 2021 budget also fully funded the state's statutory pension contribution.[33]

The State of Illinois enacted FY 2021 budget had an estimated $6.5 billion deficit. The Governor said the gap could be closed with federal stabilization funds or revenues from a graduated income tax referendum. If those did not occur, the Governor said he would work with the legislature to close the gap.[34] In November 2020 the voters defeated the graduated income tax rate referendum. Fortunately, for the state, the federal government approved large amounts of funding for state and local governments in March 2020 and again in March 2021.

Without a rainy-day fund, the State of Illinois turned to borrowing. Illinois initially planned to b-+4orrow $1.2 million in short-term notes in the bond market but put that on hold. Instead, Illinois borrowed $1.2 billion from the newly created Federal Reserve's Municipal Liquidity Facility (MLF) program in June 2020 and an additional $2.0 billion in December 2020.[35] The Federal Reserve established this program to help stabilize the state and local bond market and to serve as a back-up lender for liquidity purposes for state and local governments. The state also increased its interfund borrowing and deferred repayment of $400 million to the state treasurer's investment program.[36]

The State of Illinois also borrowed from the Federal Unemployment Trust Fund to pay unemployment benefits. This form of borrowing, referred to as a Title XII advance, is authorized under Title XII of the Social Security Act (42 U.S. C. § 1321). As of July 2020, Illinois had a $647 million Title XII advance, but it increased to $4.5 billion as of December 31, 2021.[37] The federal government waived interest charges during the first part of the pandemic, but reinstated interest in September 2021.

At the local level, a survey conducted by the Illinois Municipal League in June and July 2020 found that about 87 percent of the 227 responding Illinois municipalities

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[33] S&P Global Rating, *Illinois Fiscal 2021 Budget Anticipates, and Needs, Additional Federal Aid,* 2020, https://www.spglobal.com/ratings/en/research/articles/200601-illinois-fiscal-2021-budget-anticipates-and-needs-additional-federal-aid-11514461.

[34] Governor's Office of Management and Budget. *Fiscal Year 2021 Budget Highlights,* 2020, 1, https://www2.illinois.gov/sites/budget/Documents/Budget%20Book/FY2021-Budget-Book/21665-Fiscal_Year_2021_Budget_Highlights.pdf.

[35] The state repaid the first MLF loan in 2021 and repaid the second loan in January 2022. *See* Yvette Shields, *Illinois Cuts Final Check to Repay Fed's MLF Loan*, THE BOND BUYER, Jan. 5, 2022, https://www.bondbuyer.com/news/illinois-cuts-final-check-to-repay-feds-mlf-loan.

[36] *$400,000,000 State of Illinois General Obligation Bonds, Series of December 2021,* A-24, https://www2.illinois.gov/sites/capitalmarkets/Documents/Official%20Statements/2021/State%20of%20Illinois%20GO%20Bonds%20Series%20of%20December%202021%20A%20and%20B%20Official%20Statement.pdf.

[37] U.S. Treasury, Title XII Advance Activities Schedule, TREASURYDIRECT, https://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited Dec. 31, 2021).

anticipated revenue shortfalls, with most estimates falling in the 10 to 30 percent range.[38] The respondents estimated that the revenue shortfalls primarily would be due to decreases in sales tax revenues, gaming tax revenues, motor fuel tax revenues, and shared income tax revenue from the state. At that time, municipalities were considering or had made reductions in municipal personnel and/or services, reductions or delays in capital projects, and drawdowns of municipal reserve funds.

VI. LARGE INFLUX OF FEDERAL ASSISTANCE

Most state and local governments have a balanced budget requirement, which can make it difficult to provide the services and assistance needed during a recession, especially a recession combined with a pandemic. In contrast, the federal government does not have a balanced budget requirement and therefore has more capacity to provide assistance.

A. Types of Federal Financial Assistance to State and Local Governments

In response to COVID-19, the federal government authorized about $5 trillion in assistance to individuals, businesses, nonprofit organizations, and state and local governments during 2020 and 2021. This occurred primarily through the following six pieces of legislation:

- The Coronavirus Preparedness and Response Supplemental Appropriations Act ($7.8 billion);
- The Families First Coronavirus Response Act ($15.4 billion);
- The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act ($2.1 trillion);
- Paycheck Protection Program and Health Care Enhancement Act ($483 billion);
- The Coronavirus Response and Relief Supplemental Appropriations Act ($900 billion); and
- The American Rescue Plan Act ($1.9 trillion)[39]

Much of the initial federal aid to state and local governments was restricted to specified purposes. For example, the Coronavirus Relief Fund (CFR), which was part of the CARES Act passed in March 2020, provided $150 billion to state and local governments primarily to reimburse state and local governments for spending on COVID-19. The allocation was based on population, with a minimum of $1.25 billion per state. These funds, which could not be used to replace lost government revenue, had to be spent by December 31, 2021.

[38] Illinois Municipal League, *COVID-19 Survey Results*, Aug. 21, 2020, https://www.iml.org/covid-survey#:~:text=Survey%20responses%20were%20submitted%20from,to%20the%20COVID%2D19%20pandemic.
[39] Pandemic Response Accountability Committee, *Pandemic Oversight,* https://www.pandemicoversight.gov/ (last visited Feb. 18, 2022).

The CARES Act also provided aid targeted at specific governmental functions, such as public transit, K-12 education, and higher education. The CARES Act also included funds for health care providers, a portion of which went to public hospitals and community health centers.

The Family First Coronavirus Response Act authorized a 6.2 percentage point increase to the federal share of Medicaid spending. The increase began on January 1, 2020 and is set to expire on the last day of the calendar quarter in which the COVID-19 health emergency period ends.[40]

B. State and Local Government Decisions About How to Allocate Federal Funds

State and local governments in Illinois received $4.9 billion in CFR funds. The largest local governments (City of Chicago, Cook County, Lake County, Will County, Kane County, and DuPage County) received $1.4 billion in direct aid and the state government received $3.5 billion. The state distributed 50 percent of its funds to stage agencies, 15 percent to small business/childcare centers, 27 percent to health care providers, and 8 percent to local governments (other than the large governments that received CRF funds directly). Illinois also received other CARES funds, including $1.1 billion for education, $1.6 billion for public transit, and $450 million for airports. [41]

The American Rescue Plan Act (ARPA), passed a year later in March 2021, provided substantially more discretion to state and local governments through the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program. ARPA also provided funds for specific purposes, such as $122.7 billion in Elementary and Secondary School Emergency Relief funds for states and local education agencies, $39.6 billion for the Higher Education Emergency Relief Fund, $10.0 billion for the Coronavirus Capital Projects Fund, $21.5 billion for the Emergency Rental Assistance Program, and $10.0 billion for the Homeowner Assistance Fund.[42]

The SLFRF program allows state and local governments to allocate funds on the following types of spending:

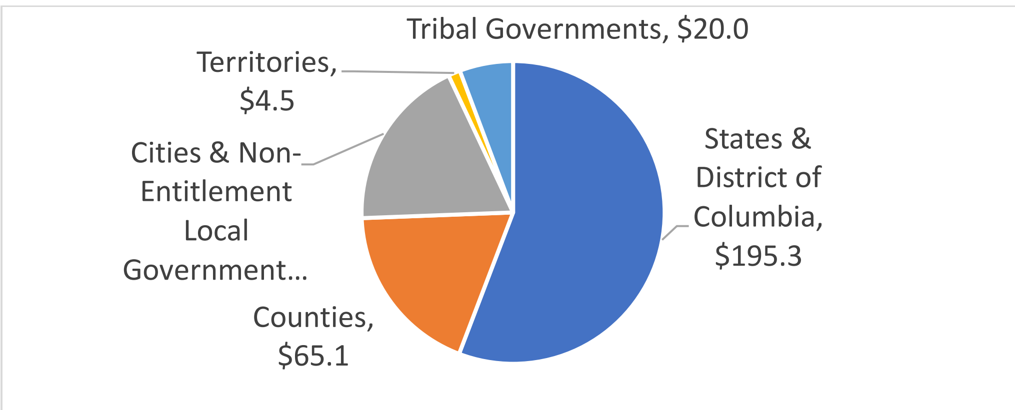
- Public Health;
- Negative Economic Impacts;
- Services to Disproportionately Impacted Communities;

[40] Congressional Research Service, Medicaid's Federal Medical Assistance Percentage (FMPA), R43847, July 29, 2020, 14, https://sgp.fas.org/crs/misc/R43847.pdf.
[41] Governor's Office of Management and Budget, Illinois Federal Coronavirus Response Funds and Anticipated Uses, June 2020, 5-8, https://www2.illinois.gov/sites/budget/Documents/Budget%20Book/FY2021-Budget-Book/COVID-%20Response-Federal-Funding-Budget%20Summary-6.13.20.pdf.
[42] 117 Congress (2021-2022). H.R. 1319 - American Rescue Plan Act of 2021, https://www.congress.gov/bill/117th-congress/house-bill/1319/text.

- Premium Pay;
- Water, Sewer, and Broadband Infrastructure;
- Revenue Replacement; and
- Administrative and Other[43]

APRA allocated a total of $350 billion in SLFRF dollars.[44] (See Fig. 2 for a breakdown of the allocation of funds under this program.)

Fig. 2 Allocation of American Rescue Plan Act Coronavirus State and Local Recovery Fiscal Recovery Funds (in billions)



Source: American Rescue Plan Act (2021) (https://flicg.org/american-rescue-plan-resources/)

State and local governments have discretion regarding how much to spend in each of the categories listed above, with one exception: the Revenue Replacement amount. The U.S. Department of the Treasury final rule allows a standard revenue loss allowance of up to $10 million or a government can use a formula provided by the Treasury to calculate its estimated revenue loss due to the pandemic. State and local governments can use the Revenue Replacement funds to restore government services that were cut due to the pandemic and other government purposes. However, they cannot use the funds to offset revenues from governmental tax cuts,[45] to make extraordinary contributions to a pension

[43] U.S. Department of the Treasury, *Coronavirus State and Local Fiscal Recovery Funds*, Final Rule, Jan. 27, 2022, 4338-4339, https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf.
[44] 117 Congress (2021-2022). H.R. 1319 - American Rescue Plan Act of 2021, 135 STAT 228, https://www.congress.gov/bill/117th-congress/house-bill/1319/text.
[45] As of December 2021, 20 states had filed six lawsuits contesting the ARPA provision that prohibits the use of SLFRF dollars to offset revenue loss due to state tax law change. (See Caitlin Devitt, *ARPA Tax Mandate Appeal Set*, THE BOND BUYER, Dec. 7, 2021, https://www.bondbuyer.com/news/treasurys-legal-battle-with-states-over-arpa-funding-mandates-heats-up.

fund to decrease accrued unfunded liabilities, to replenish reserve funds, or to pay debt service (principal and interest on debt).[46]

State and local governments face difficult decisions as to how to allocate the SLFRF dollars. For example, should a government allocate funds for premium pay to essential frontline workers, such as health care providers and first responders, who have been fighting the pandemic? To what extent should a government provide financial assistance to small businesses who have incurred major financial losses or to families who are struggling to pay for food, rent, and utilities?

Another option, as indicated above, is to use the federal funds for broadband, water, or sewer infrastructure. Broadband projects are supposed to provide affordable service to unserved or underserved communities. Inequities in broadband access became especially apparent during the pandemic as people worked remotely and children attended classes online. Water and wastewater projects also address critical services, such as providing safe drinking water, proper treatment of sewage, and management of stormwater.

But what if funds are spent on water or wastewater projects that primarily benefit middle and upper-income neighborhoods? Or what if a state or local government uses a portion of their Revenue Replacement funds to finance highways or fire stations? Are these appropriate uses of pandemic-related funding?

One of the eligibility categories, Services to Disproportionately Impacted Communities, recognizes that the pandemic has had disproportionate impacts on low-income families who were more likely to experience loss of income. Pre-existing social vulnerabilities and disparities in these communities have contributed to the disproportionate health and economic outcomes of the pandemic. The final rule included a broader set of enumerated eligible uses for this category, including affordable housing, childcare, early learning services, and certain community development and neighborhood revitalization activities.[47]

Government officials also need to ensure fiscal sustainability, including the avoidance of a fiscal cliff when federal funds are no longer available. SLFRF funds must be obligated by December 31, 2024 and spent by December 31, 2026. If a government decides to use SLFRF dollars to support programs that will be needed in the future, then the government will need to identify other revenues to continue to finance the program when federal funds end. Given the one-time nature of the SLFRF funds, governments may choose to use the federal funds for one-time purposes such as addressing a backlog of deferred infrastructure maintenance or constructing a new capital project. If a new facility or system is constructed, the government will need to ensure that it has sufficient revenues to finance the future operations and maintenance associated with that asset.

[46] U.S. Department of the Treasury, *Coronavirus State and Local Fiscal Recovery Funds*, Final Rule, Jan. 27, 2022, 4422, https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf.
[47] *Id.* at 4339.

C. Illinois State and Local Governments' Use of SLFRF Funds

The State of Illinois received $8.1 billion from the SLFRF program, which is equivalent to about 10 percent of the state's FY 2020 budget. The state appropriated $2.8 billion of SLFRF dollars in the FY 2022 budget, including $1.8 billion for operating purposes (e.g., health-related programs/assistance, assistance for businesses and workforce recovery, anti-violence programs, educational programs) and $1.0 billion for infrastructure. The FY 2022 budget includes an additional $2.0 billion in SLFRF dollars as "ARPA Reimbursement for Essential Government Services," but does not disclose how those funds will be used.[48]

In March 2022, Illinois passed legislation that authorized the use of $2.7 billion in SLFRF dollars to repay a portion of the state's federal unemployment trust fund loans.[49] This brought the outstanding loan balance to $1.8 billion as of April 2022.[50] As of July 2021, at least 14 other states had used or planned to use SLFRF dollars to repay federal unemployment trust fund loans or replenish the state unemployment trust fund.[51] If the federal loans are not repaid within a certain time, the federal unemployment tax on Illinois businesses will increase and continue to increase over time until the loans are repaid. Critics of using the SLFRF dollars for this purpose say that there are more urgent needs for the use of funds and that a means already exists for repaying those funds through tax increases on businesses.[52]

At the local level, the results of a survey by the Illinois Municipal League in December 2021 found that municipalities plan to use a large portion of their SLFRF dollars on water and wastewater projects and/or broadband infrastructure.[53]

VII. CONCLUSION

A. Economic and Fiscal Conditions at the Beginning of 2022

The negative impact of the pandemic on state and local government budgets has not been as severe as was originally feared. Revenues dropped initially but then rebounded and are

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[48] Commission on Government Forecasting and Accountability, *State of Illinois Budget Summary FY 2022*, 2021, 28, https://cgfa.ilga.gov/Upload/FY2022BudgetSummary.pdf.
[49] Governor Pritzker Signs Landmark Legislation Paying Off $4.1 Billion in Debt, Press Release, Mar. 25, 2022, https://www.illinois.gov/news/press-release.24677.html.
[50] U.S. Treasury, *Title XII Advance Activities Schedule*, TREASURYDIRECT, https://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited Apr. 4, 2022).
[51] Author review of state Recovery Plan Performance Reports, 2021, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recovery-plan-performance-reports-2021.
[52] Ed Lazere, *How States Can Best Use Federal Fiscal Recovery Funds: Lessons from State Choices So Far*, Center on Budget and Policy Priorities, Nov. 29, 2021, 13, https://www.cbpp.org/research/state-budget-and-tax/how-states-can-best-use-federal-fiscal-recovery-funds-lessons-from.
[53] Illinois Municipal League, *American Rescue Act Survey Responses – Intended Uses of ARPA Funds by Illinois Municipalities*, VILLAGES AND TOWNS, Dec. 31, 2021, https://www.iml.org/arpaprojects.

continuing to recover. State and local governments also benefitted from the large amounts of federal assistance that became available in 2020 and 2021.

But concerns remain. There still is significant uncertainty associated with COVID-19 variants. In addition, inflation has increased, and supply chains are experiencing backlogs. Supply chain backlogs have resulted in delays in the delivery of goods, such as computer chips, that are essential components for other products. The consumer price index increased by 7.0 percent from December 2020 to December 2021, which is the largest December-to-December increase since 1981.[54]

Unemployment figures as of March 2022 were close to pre-pandemic levels. The March 2022 unemployment rate was 3.6 percent, compared to 3.5 percent in February 2020 before the pandemic. The number of people unemployed was 6.0 million in March 2022 compared to 5.7 million in February 2020. Nonfarm employment has improved but as of March 2022 was still down by 1.6 million (1.0 percent) from the level in February 2020. Employment in leisure and hospitality was down by 1.5 million (8.7 percent) in March 2022 compared to pre-pandemic levels, while retail trade employment was 278,000 higher than the pre-pandemic level.[55]

Illinois' revenues performed well during the first six months of FY 2022. Not counting federal funds, Illinois revenues were $1.3 billion higher than in the prior year for the first six months. Income tax receipts were $266 million higher, even though FY 2021 had an additional $1.3 billion in revenues due to the delay of the state income tax deadline in 2020. Net sales taxes also were up $643 million in the first six months of FY 2022.[56]

Illinois' employment has improved since the start of the pandemic but remains below pre-pandemic levels. During the first few months of the pandemic, the state lost 800,000 jobs. As of November 2021, Illinois had about 5.9 million jobs, compared to 6.1 million jobs prior to the pandemic.[57] IHS Markit, a national forecasting firm, estimates that hiring in Illinois will increase slightly in 2022 but that the state will not reach pre-pandemic employment levels until 2023.[58] The Illinois unemployment rate in January 2022 was 5.0 percent, compared to 17.4 percent in April 2020 and 3.8 percent in February 2020 prior

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[54] United State Bureau of Labor Statistics, *Consumer Price Index: 2021 in review*, TED: THE ECONOMICS DAILY, Jan. 14, 2022, https://www.bls.gov/opub/ted/2022/consumer-price-index-2021-in-review.htm.

[55] United States Bureau of Labor Statistics, *Employment Situation Summary – March 2022*, Apr. 4, 2022, https://www.bls.gov/news.release/empsit.nr0.htm (last visited Mar. 16, 2022).

[56] Eric Noggle, *Significant December Gains from Economic Sources and Transfers are Offset by Comparatively Lower Federal Source Performance, Monthly Briefing for the Month Ended: December 2021*, Commission on Government Forecasting and Accountability, Jan. 2022, 9, https://cgfa.ilga.gov/Upload/1221.pdf.

[57] Eric Noggle, *Illinois Employment/Unemployment Update, Monthly Briefing for the Month Ended: December 2021*, Commission on Government Forecasting and Accountability, Jan. 2022, 1, https://cgfa.ilga.gov/Upload/1221.pdf.

[58] State of Illinois Governor's Office of Management and Budget, Nov. 13, 2021, 10.

to the pandemic.[59] Illinois' GDP growth is estimated to increase by 4.5 percent in FY 2022 and then slow to 2.7 percent in FY 2023 and 2.9 percent in FY 2024.[60]

B. Budgeting in the Future

The pandemic continues to pose challenges for state and local government budgeting. This includes uncertainty related to the pandemic and the economy; the disproportionate impact of the pandemic on low-wage workers, people of color, and families with children; and the need to manage large influxes of federal dollars flowing into state and local governments.

The pandemic has accentuated the need for planning that goes beyond the scenarios used in the past. To improve resiliency, governments need to analyze what level of rainy-day funds are needed for the future and how to achieve those levels. Governments also need to do stress testing to determine their capacity to respond to demands for higher spending while experiencing declines in revenues. Emergency operations plans also need to be updated to facilitate better information sharing and partnerships among federal, state, and local governments and to be able to respond to more than one emergency at the same time (e.g., a pandemic and a natural disaster).

The pandemic was especially challenging for the State of Illinois, which entered the pandemic in a weak fiscal position with a tiny rainy-day fund, large unfunded pension liabilities, a significant backlog of vendors bills, and a bond rating just one notch above "junk" status. The Illinois taxpayers defeated the graduated income tax rate proposal and the bond market increased its scrutiny of Illinois' fiscal condition. Without federal assistance, including the Federal Reserve Municipal Liquidity Program and federal financial assistance, the state government would have had to make difficult decisions, such as which services and programs to cut and whether to increase the vendor bill backlog at a time when people, businesses, and healthcare providers were already suffering.

Illinois needs to continue to take action to improve its fiscal situation to be better prepared for future emergencies and challenges. Legislation passed in March 2022, which authorized repayment of a portion of the state's debt and an extra $300 million contribution to the state's pension funds, was a step in the right direction.[61] The FY 2023 budget also authorized a $200 million extra payment to the state's pension plan and a $1 billion contribution to the budget stabilization fund, which is the state's rainy-day fund.[62]

Typically, most residents do not pay attention to a state or local government budget unless there is something that impacts them directly, such as a proposed tax increase or cut to a

[59] U.S. Bureau of Labor Statistics, Illinois, https://ycharts.com/indicators/illinois_unemployment_rate.
[60] State of Illinois Governor's Office of Management and Budget, Nov. 13, 2021, 10.
[61] Governor Pritzker Signs Landmark Legislation, 2022.
[62] Gov. Pritzker Statement on State Budget Agreement, Press Release, April 7, 2022.
https://www.illinois.gov/news/press-release.24739.html.

particular program they care about. As one local official explained, people just want the municipal government to work – they don't want to become immersed in the daily operations of the government.[63] But with the pandemic, state leaders and local officials are making decisions that impact people's lives in unprecedented ways, such as whether businesses can stay open, whether people must wear masks and get vaccinations, and whether schools can offer in-person education.

So how does this alter the relationship between state and local governments and their constituencies? People will likely stay focused on government issues that matter most to them. But it will be imperative for governments to continue to increase transparency and opportunities for stakeholders to engage in the budget process and governance more broadly if and when they choose to do so.

In some ways, the pandemic has improved transparency. More meetings have occurred virtually, which allowed stakeholders to watch from remote locations. If meetings are recorded, stakeholders can choose when to watch the meetings. Some governments also have expanded their use of social media.

The pandemic also has increased the visibility and concerns associated with inequities. This was articulated by the APRA category titled Disproportionate Impact on Communities, which noted that some communities have felt the impact of the pandemic much more than others. Increasingly, governments are being asked to identify where the needs are greatest and to invest funds to eliminate disparities.

The large influx of federal dollars to state and local governments has relieved the fiscal pressure governments otherwise would have experienced. But now the governments need to ensure that they spend those funds effectively. In addition to meeting critical needs, the governments need to avoid a fiscal cliff that could occur when the federal funds are no longer available.

Within state and local governments there has been a movement to focus more on budgeting for results and using evidence-based research to inform decisions. One of the allowable uses of the federal fiscal assistance funds is for data collection and program evaluation. This use allows state and local governments to assess what is working and what is not working, which can help inform future budget decisions.

Overall state and local governments need to continue to be responsive to stakeholders, to address inequities, to prepare for the future, and to continue to improve transparency. This can help build trust between governments and stakeholders, which is important in normal times, but especially during a pandemic.

[63] Personal Interview, Illinois Municipal Government Official, Mar. 2019.

RECENT DEVELOPMENTS

By Student Editorial Board:
Eric R. Halvorsen, MaryKate Hresil, Bradley Kupiec, Victoria Lozano, Erin Monforti

WORKPLACE VACCINATIONS

National Federation of Independent Businesses v. OSHA 595 U.S. ____ (2022)

In *NFIB v. OSHA,* the United States Supreme Court overturned the 6th Circuit and reinstated a stay of the Occupational Safety and Health Administration's (OSHA) vaccine mandate. On November 5, 2021, OSHA set an emergency temporary standard without submitting it to traditional notice and comment rulemaking. The standard required employers with 100 or more employees to create and enforce a vaccination requirement or, in the alternative, to require proof of a negative test once a week. OSHA estimated that approximately 84 million employees would be covered by the rule, and it imposed fines ranging up to $136,000 for willful noncompliance. Several different business groups and a coalition of states filed appeals and the cases were consolidated before the 6th Circuit. Prior to the consolidation, the 5th Circuit entered a stay of the rule. The 6th Circuit overturned that stay, and the Supreme Court granted review.

The Supreme Court determined that OSHA had exceeded its authority when enforcing the mandate because the agency is limited to matters of workplace safety, not matters of public health. The Supreme Court further reasoned that risk of exposure and contraction of COVID-19 is not an occupational hazard in most workplaces. Rather it is a universal risk akin to "crime, air pollution, or any number of communicable diseases" which Congress did not expressly authorize OSHA to have such regulatory power over.

The Supreme Court did opine that OSHA could make special regulations for specific jobs that have particular risks related to COVID-19, but overly broad regulations that do not distinguish between occupational risk and general risk are beyond the scope of authority provided for in the Act. The stay was granted and the mandate was stopped while the matter is pending before the Sixth Circuit Court of Appeals.

MASKS IN SCHOOL

Austin, et al. v. Bd. of Educ. of Cmty. Unit Sch. Dist #300, et al., Nos. 2021-CH-500002, 2021-CH-500003, 2021-CH-500005, 2021-CH-500007 (Ill. Cir. Ct. Feb. 4, 2022) (order granting temporary restraining order)

In early February 2022, a Circuit Judge in Sangamon County, Illinois issued a temporary restraining order to prohibit dozens of school districts across Illinois from requiring students to wear facemasks while in class. Several groups of parents brought the claim arguing that the masking requirements, as promulgated by the State, did not adequately provide for notice and an opportunity to be heard for students who would be excluded from school for noncompliance. The Court found that the Illinois Department of Public Health (IDPH) had violated its own administrative rules by impermissibly delegating its responsibilities to the Illinois State Board of Education and local school districts, and that the rules promulgated by these entities interfered with the due process protections provided to the parents and students under the legislation governing the operations of IDPH.

Following the ruling, the Joint Committee on Administrative Rules objected to and suspended the IDPH's renewal of the emergency rules issued by Governor J.B. Pritzker mandating masking in schools. Because the rules stalled by the TRO are no longer in effect, the Appellate Court declared the TRO appeal moot and nonjusticiable.

TEACHER TERMINATIONS

DeBerry v. Illinois Educational Labor Relations Board, 2021 IL App (1st) 201127-U (1st Dist. Dec. 13, 2021)

The Illinois Court of Appeals upheld the IELRB's dismissal of ULP charges brought pro se by a fourth-grade teacher who was terminated after she struck a student with a yardstick. The Board found, and the Appellate Court affirmed, that there was no evidence to support the teacher's allegations that the school principal fabricated the allegations against her as a pretext to discipline her for engaging in protected activity.

The Court, applying an abuse of discretion standard, held that a "plausible argument" by DeBerry would not be enough to overcome the Board's ruling. The Court found that DeBerry *had* engaged in protected union activity in previously requesting union representation and filing grievances, and the principal had made antiunion comments demonstrating his knowledge of her protected activity. However, the Court determined that DeBerry had not produced evidence to establish a causal link between her protected activity and the school's allegedly retaliatory conduct. The Court further deferred to the Board's findings regarding the merits of her claims that the principal coached students to fabricate the claims which led to her ultimate dismissal.

However, the Court rejected the argument that the procedural deficiencies in DeBerry's brief divested the court of jurisdiction.

Brennan v. Board of Education of the City of Chicago, 2022 IL App (1st) 201162-U (1st Dist. Jan.7, 2022)

The Court of Appeals affirmed the Board of Education's final administrative decision to dismiss a tenured special education teacher for poor performance.

The Appellate Court upheld the termination, rejecting the argument that the Board of Education lost jurisdiction over the case because the hearing officer did not issue her report within 30 days. The Court interpreted the 30-day limit as directory rather than mandatory which when viewed in context of the act, did not serve as a jurisdictional bar. The Court then rejected the teacher's argument that her right to due process was violated because the principal who originally developed the remediation plan did not testify at the hearing. The court found that the teacher had waived her due process argument by not raising it during the hearing. She was on notice that the board would not call the principal at the hearing, and she made no effort to subpoena his testimony. The court further found that the principal's testimony was not essential for the Board to prove its case as the evaluating teacher and the acting principal both testified regarding Brennan's performance during the remediation plan. The court finally rejected the argument that the discharge decision was against the manifest weight of the evidence and upheld the decision of the Board of Education.

DUTY TO BARGAIN

International Brotherhood of Teamsters Local 916 v. Illinois Secretary of State, S-CA-21-042 (Ill. Lab. Rels. Bd. Jan. 13, 2022)

On January 13, 2022, the State Panel of the Illinois Labor Relations Board (ILRB) affirmed the dismissal of an unfair labor practice charge as issued by the ILRB Executive Director. The charge was filed in October 2020 by the International Brotherhood of Teamsters, Local 916 (Union) against the Illinois Secretary of State and alleged that the Secretary of State had violated the Illinois Labor Relations Act (ILRA) when it repudiated a "side memo" which would have permitted the Union to request bargaining over the use of pesticides by some of its represented employees performing yard maintenance.

The side memo, which was entered into in October 2019, provided that the two parties would meet to discuss pesticide certification and pesticide spraying within the first year of the collective bargaining agreement (CBA), which started on July 1, 2019. When the Union requested bargaining over these issues in September 2020, the Secretary of State refused, claiming that the window for bargaining had passed. The Secretary of State construed the one-year bargaining period as beginning with the contract, in July 2019, whereas the Union argued that the one-year period began when the side memo was entered into in October 2019.

The Executive Director found that the Secretary of State's actions did not rise to the level of an unlawful repudiation, which require an alleged breach be (1) substantial and (2) in bad faith. Because the ILRB does not police CBAs or hear breach-of-contract claims, the Executive Director found that the objectively reasonable—but different—interpretation of the memo's time frame did not show bad faith such that it required the ILRB's review. Furthermore, since the Secretary of State had since agreed to discuss issues involving pesticide use, the issue was moot. Therefore, the State Panel denied the Union's appeal and found that the unfair labor practice charge was not properly before the ILRB.

TRANSPARENCY AND OPEN RECORDS

Public Access Opinion 21-011 (2021-PAC-C-0385)

The Illinois Attorney General's office issued a binding opinion on December 14, 2021, holding that the Board of Education of Jersey Community Unit School District No. 100 did not violate the Open Meetings Act (OMA) by holding its

September 16, 2021, meeting remotely amid concerns related to the COVID-19 pandemic.

On September 17, a member of the public submitted a Request for Review to the Public Access Bureau, alleging that the Board had violated the OMA by conducting its monthly meeting remotely via Zoom, without allowing in-person attendance by the public.

The Board's previous meeting on August 19, 2021, was held in person. At that meeting, a member of the public refused to wear a face mask, in violation of then-current COVID-19 mitigation protocols. This member refused to leave or put on a mask, delaying the meeting while a police officer and Board members discussed the matter with her. There was also a loud gathering of maskless people outside the meeting, leading to a recess to address the issue.

The Attorney General's opinion noted that Section 7(e) of the OMA sets out requirements that public bodies must adhere to in order to hold meetings remotely, and that the Board had complied with each of them. Illinois was under a disaster declaration related to public health concerns, and the jurisdiction of the Board was covered by the disaster area. Further, the head of the public body had determined that an in-person meeting "was not practical or prudent because of a disaster." Finally, the public body made a Zoom link publicly available as an alternative arrangement to allow any interested member of the public to "hear all discussion, testimony, and roll call votes."

In summation, the Attorney General's office found that the Board met all requirements of section 7(e) of the OMA for its September 16, 2021, remote meeting.

Mancini Law Group, P.C. v. Schaumburg Police Dep't, 2021 IL 126675

In *Mancini Law Group, P.C., v. The Schaumburg Police Department*, 2021 ILCS 126675, the Illinois Supreme Court blocked a private injury law firm from gaining information under Illinois's Freedom of Information Act related to car accidents. The court found that the police department had not waived its right to redact certain information on traffic accident reports in responding to FOIA requests by virtue of its earlier furnishing of unredacted documents to one of its vendors.

In July 2017, Mancini Law Group (MLG) requested traffic accident reports from the Schaumburg Police Department, asking specifically that the Department redact personal information including drivers' license numbers, license plate numbers, and the dates of birth for the drivers involved in the accidents. In its response, the Department provided the documents, but redacted them more heavily, exempting phone numbers and home addresses in addition to the information conceded by the requestor to be "personal information."

MLG challenged the provided reports and sought review in circuit court. In its complaint, MLG alleged the Department violated FOIA by not providing unredacted copies of accident reports. MLG asserted that because the Department had previously provided unredacted copies of the same reports to LexisNexis, a third-party vendor, the Department had waived exemptions of FOIA.

The circuit court held that the Department met its burden that the redacted information was exempt under the FOIA statute, and a panel of judges in the appeals court affirmed this decision, finding that the earlier production of records to a vendor did not rise to the level of a waiver.

The Illinois Supreme Court, relying on a federal 2001 FOIA decision, Sherman v. United States Dep't. of the Army, 244 F.3d 357 (5th Cir. 2001), held that the redaction of the documents did not constitute a violation of FOIA. The Court found that a government does not have the ability to waive the privacy interests of individuals whose information may be contained in government records. Moreover, the vendor was approved by the State of Illinois to fulfill accident reporting requirements and there was no inference of selective treatment for one FOIA requestor over another. Accordingly, the Court found that the Department had not waived its ability to redact or withhold the documents in this case.

Chicago Public Media v. Cook County Office of the President, IL App (1st) 200888

In Chicago Public Media v. The Cook County Office of the President, IL App (1st) 200888, the First District Appellate Court found in favor of a media company that requested records under the Freedom of Information Act (FOIA) regarding a political action committee chaired by a commissioner of the Cook County Board of Commissioners.

The Office of the Cook County President (OCCP) produced documents in response to the media company's request, but withheld and redacted certain records, including many emails, pursuant to Sections 7(1)(f) or 7(1)(m) of FOIA.

Sections 7(1)(f) exempts from disclosure: "Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated." The court noted that the types of records that may be withheld are only those that would reveal "internal agency deliberations on substantive policy matters" not yet finalized.

In this case, the emails at issue contained a press release, edits to a Wikipedia page, draft answers to a reporter's questions, a draft speech about a women's conference, and talking points relating to a variety of job issues. The court found that the OCCP did not offer factual support or justification that any of the emails revealed actual policy formation.

Regarding the communications between the commissioner and an attorney, the appellate court considered whether certain emails were properly withheld under Section 7(1)(m)--which exempts communications between a public body and its attorney. The court found that simply labeling communications as privileged, confidential, or legal advice is insufficient. Rather, the public body has the burden to provide some "objective indicia" that the exemption applies.

Ultimately, the court determined that no confidential legal information existed in one set of emails and in the other, the counsel had no attorney-client relationship with the OCCP. Therefore an exemption did not exist.

COVID LEAVE (LEGISLATIVE UPDATE)

HB2778/HB1167: Covid-19 Paid Administrative Leave for School Employees

In January 2022, Governor Pritzker vetoed HB2778, a bill that would allow teachers and staff to use paid administrative leave instead of sick days if they are unable to come to work because they or a family member has COVID-19.

Despite the bill's widespread, bi-partisan support, Governor Pritzker announced his alternative plan that would limit compensation only to those school district employees who are fully vaccinated.

In February, a revised bill, HB 1167, was placed on the calendar with House Speaker Emmanuel "Chris" Welch as sponsor. The new initiative was a result of conversations between Governor Pritzker, the Illinois Education Association, and the Illinois Federation of Teachers. The bill passed the House and has been referred to the Senate Assignments Committee.