

Chicago Daily Law Bulletin®

Volume 158, No. 239

Courts may deal with pension bill

Politicians suggest judicial oversight of state payments

BY JOSH WEINHOLD

Law Bulletin staff writer

SPRINGFIELD — The question of how state courts will rule on lawsuits challenging pension reform legislation looms over the Illinois General Assembly.

The latest proposal seeking to resolve \$96 billion of unfunded public pension liability, though, also looks to the judiciary to protect the state from causing a similar crisis in the future.

House Bill 6258, filed Wednesday by state Rep. Elaine Nekritz, D-Northbrook, includes a provision not seen in previous plans.

If adopted, the bill contractually obligates the state to pay a certain amount annually into its pension funds. If the payments don't get made, the pension systems can petition the Sangamon County Circuit Court to force the state to make that contribution.

For decades, the state ballooned its pension debt by failing to meet annual obligations, which Nekritz said should never happen again.

"Right now, there's no mechanism for anyone to say to the state, 'You must make that payment,'" she said. "The

General Assembly changes it and we walk away. This would be a mechanism to allow the state pension systems to go into court and enforce that payment."

Some aspects of Nekritz's plan — including increased employee contributions and a shift of some pension costs to downstate and suburban school districts — received mixed reviews Wednesday.

But several lawmakers said they strongly support giving courts the power to ensure that pension payments continue.

State Rep. Thomas Chapin Rose II, R-Mahomet, said he sees such language as "almost mandatory" in any pension legislation.

The provision "pierces the veil of state sovereignty," Rose said, and prevents current and future lawmakers from making the same mistakes as previous generations.

"We don't want to be back in this position 20 years, 30 years from now," Rose said. "If no one's going to make the pension payment, this isn't worth a hill of beans."

State Rep. Kelly McGuire Burke, D-Evergreen Park, — one of the 20 House members backing Nekritz's bill — said the court order idea came from state employee groups, who want assurances that lawmakers will meet pension obligations going forward.

"The reason the pensions are this way is because the state has not made its payments," Burke said. "Are there other factors?



Thomas Chapin Rose II



Kelly McGuire Burke

Sure. But the bulk of it is from failing to make the payments over the years."

The bill does give lawmakers some flexibility in the event of another significant recession, said state Rep. Daniel Biss, D-Evanston, and a cosponsor of the legislation.

The proposal requires the state to pay yearly pension costs and an actuarially-accepted amount of debt reduction — enough to keep the system solvent, he said.

If the state gets taken to court over its failure to meet those standards, the bill permits a judge to establish a payment schedule that doesn't threaten public health, safety or welfare.

We Are One Illinois, a coalition of labor groups, said it found "significant problems" with the new bill and questioned whether

it violates a provision in the state constitution that blocks the diminishment of pension benefits.

Charles McBarron, a spokesman for the Illinois Education Association, said the labor groups want a pension payment guarantee in any bill.

"There has to be something to ensure that we aren't going to continue to see money that's supposed to be going to the pension systems diverted to other uses," McBarron said.

State Sen. Kirk W. Dillard, R-Hinsdale, said he supports the idea, though it could lead to a separate court battle over whether any entity can force the General Assembly to spend money.

"The legislature and the courts can't supersede the constitution," he said. "It will be a testy legal question."