

Chicago Daily Law Bulletin®

Volume 158, No. 129

Professor gives the amendment an 'F'

This November, Illinois voters will decide whether to adopt an amendment to the Illinois Constitution that the General Assembly says will help solve our public pension crisis. I believe it will do no such thing and that it is merely window dressing over a growing problem.

The amendment, HJRCA HC0049, can be found on the General Assembly's website, ilga.gov. The text is long for a constitutional provision. Simply put, it requires a three-fifths vote of each house to pass a bill creating a "benefit increase" in a public pension. It also increases, from three-fifths to two-thirds, the number of votes needed to override any gubernatorial veto of such a bill. There are similar requirements for the governing boards of local governments and school districts.

This sounds like a significant hurdle for a legislative body, but it is not. Most pension increases are part of a greater package agreed upon by the governing boards or legislature and the employees. In fact, a three-fifths vote is not that difficult to reach.

The General Assembly and several governors placed Illinois into the current mess primarily in two ways: By extending favors to themselves and their friends and by refusing to fund the pension systems adequately.

Let's take the first: Doing favors. In the early 1970s, when I worked for the Illinois House, there were special bills regarding pensions that were so convoluted that they were clearly designed to benefit only a few people, maybe even only one person. Sometimes that person was a state employee who was a close personal friend of a legislator. He would try to increase her pension benefits, usually by "tagging" service in one agency to service in another agency. The tagging meant that her years of

service would cumulate and that she would receive a pension at the highest level of pay.

Of course, the legislator himself never sponsored the bill. Instead, he would get a colleague to do so. A staffer would write the legislator's name in pencil on the bill analysis and would quietly let legislators know whose friend was the intended beneficiary. On the theory of "what are friends for," the other legislators would overwhelmingly vote for the bill.

By the 1980s, the General Assembly had extended tagging well beyond the occasional friend. Sometimes the tagging extended to giving public employees credit in a public pension fund for time served in a private position. Those private positions were often with lobbyists. Recently, we also learned that one statute allowed a legislator who later held municipal office to claim one month in the General Assembly Retirement System, even though he was already serving in the municipal office. He could thereby tag his General Assembly service to the Municipal Retirement System — even though he did not serve in the legislature again. There are probably many other cases of tagging-without-service that will come to light.

At what point does allowing someone to take advantage of a

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LAW AND PUBLIC ISSUES



ANN M. LOUSIN

Ann M. Lousin has been a professor at The John Marshall Law School since 1975. Before then, she was a research assistant at the 1969-1970 Illinois constitutional convention and parliamentarian of the Illinois House of Representatives. Her treatise “The Illinois State Constitution: A Reference Guide” was published in December 2009. She can be contacted at tlousin@jmls.edu.

pension without serving in the position covered by the pension amount to a “gift of public money” in violation of Article VIII, Section 1(a) of the Illinois Constitution?

The three-fifths requirement in the proposed amendment would not prevent these “favors” because the bills almost always pass overwhelmingly. In addition, I do not recall a single gubernatorial veto of these bills. Therefore, the increase in the vote to override a veto is equally meaningless.

The second way the General Assembly and several governors got Illinois into the pension crisis was by chronically underfunding the pension funds. Since 1940, the earliest year whose reports on pension funds I have seen, the pension funds have usually hovered around a dangerously low 40 percent.

Since 1940, Illinois state and local governments have refused to address both the short-term and long-term needs of the pension funds. Some employees of local governments and school districts told the 1970

Constitutional Convention that the governing bodies of their employers simply refused to contribute their required share to the pension funds. That is why the convention placed the “public pension guarantee” clause in the constitution.

Occasionally, a far-sighted governor or legislator has dared to propose a multiyear plan to reduce the pension deficit. These plans never got anywhere. Instead, the state would “sweeten” the pension systems and encourage employees to take an early retirement. This got them off the current payroll, but it also increased the pension burden down the road. The nadir was the governorship of Rod R. Blagojevich, who “borrowed” from the pension funds to pay current debts. The General Assembly allowed him to do this. Why? It was easier to kick the can, or problem, down the road. Both the governors and the General Assembly deserve the blame for these delays.

The crisis came to head with the Great Recession of 2008, which has not abated. Nobody has wanted to admit that the “favors for friends” and “let’s pay for this later” mentality got us into the situation.

Now, in 2012, Illinois still does not have a short-term solution, let alone a long-term solution, to the pension crisis. Instead, the solution proposed is a constitutional amendment that obviously will accomplish nothing. Probably some legislators who voted for it hope that the public employees and their unions will muster enough votes to deprive the amendment of the three-fifths of the votes needed to be adopted. Then they can say, “we tried to propose a solution, but the voters shot it down.” The truth is that the amendment is another refusal to face up to the problem, to make hard decisions. I give the amendment an F.