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# State could be worse off if courts nix pension plan

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SPRINGFIELD — With the fight over solving Illinois' worst-in-the-nation pension shortfall now headed to the courts, the financially troubled state faces a grim possibility: The plan could be tossed and Illinois could wind up in an even deeper fiscal hole than the one it's in now.

Legislative leaders, anticipating a legal challenge from public employee unions once the landmark bill approved Tuesday is signed, went extra lengths to bolster the law's odds in the courtroom — including an unusual three-page preamble to the legislation in which they lay out their case for cutting worker and retiree benefits.

But legal experts say those efforts could mean little in a state that provides some of the country's stronger constitutional protections of pension benefits.

They point to Arizona as a possible warning sign. In 2012, a judge there said a law raising the employee contribution to pension benefits was illegal and ordered the state to repay the money to workers — with interest.

Amanda Kass, budget director and pension specialist for the Center for Tax and Budget Accountability in Chicago, predicted Illinois could see a similar outcome.

"The state could owe back a huge sum of money, possibly with interest," she said.

Recent rulings across the country bring even greater unpredictability to a plan supporters described as crucial to getting Illinois on better financial footing.

A bankruptcy judge in Michigan ruled Tuesday that Detroit can cut its pensions despite constitutional protections like Illinois' — a blow to labor unions and their members.

Illinois, Michigan and Arizona are among the seven states that have clauses in their state constitutions that protect pension benefits, according to the Center for Retirement Research at Boston College.

The others are Alaska, Hawaii, Louisiana and New York.

Illinois' and New York's protections are considered to be the strongest, however, because the language expressly states that it applies to current and future benefits.

"I think they've got a serious problem," said professor Ann M. Lousin, the Edward T. and Noble W. Lee Chair in Constitutional Law at The John Marshall Law School, speaking of the legislative leaders who were the political architects of the Illinois measure.

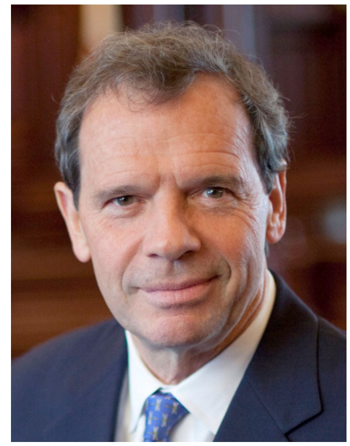
Illinois' unfunded pension liability is $100 billion, largely because lawmakers for decades didn't make the state's annual contributions to the funds.

The enormous shortfall led major credit rating agencies to downgrade Illinois to the lowest credit rating in the country. Pension payments also grew to consume about one-fifth of the state's general fund budget — siphoning money from education, social services and other areas.

After years of failed negotiations and disagreements with labor unions over how to fix the problem, the Democrat-controlled Illinois General Assembly on Tuesday approved a plan legislative leaders say will save the state $160 billion over the next three decades and fully fund the systems by 2044.

It will push back the retirement age for workers ages 45 and younger, on a sliding scale. The annual 3 percent cost-of-living increases for retirees will be replaced with a system that only provides the increases on a

Ann M. Lousin



John J. Cullerton

portion of benefits, based on how many years a beneficiary was in a job. Some workers will have the option of freezing their pension and starting a 401(k)-style defined contribution plan.

Workers will contribute 1 percent less to their own retirement under the plan. Legislative leaders say they included that provision, as well as language that says the retirement systems may sue the state if it doesn't make its annual payments, in hopes of boosting the measure's chances of surviving the unions' anticipated court challenge.

The legislation also directs new money into the pension funds.

The move got a preliminary signal of approval Wednesday from Wall Street when an important credit rating agency, Fitch Ratings, called it a "positive indication of the state's willingness to take action on this complicated issue after many failed attempts."

But a coalition of labor unions known as We Are One Illinois stated immediately after the bill passed that it will sue if Gov. Patrick J. Quinn signs it, which the Chicago Democrat is expected to do as early as this week.

Quinn said he believes the legislation is constitutional and will ultimately be upheld by the Illinois Supreme Court.

"It is necessary for the economic good for the people of our state, and I think the court will see it that way," he said.

Senate President John J. Cullerton isn't so confident. Cullerton, also a Chicago Democrat, pushed a plan earlier this year that he negotiated with the unions and that he said was constitutional because it gave workers and retirees a choice in benefits.

That measure failed because leaders in the Illinois House said it wouldn't save enough money.

Cullerton voted for the bill that passed Tuesday and lobbied other Senate Democrats to do the same, but said afterward he still believes it has "serious constitutional issues."

Ultimately, the measure could be a test case for the state, and any court ruling instructive for crafting future legislation.

"You can't find out about the constitutionality of the bill until it's actually passed," Cullerton said.