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## Pension reform: What's next?

### Public unions expected to lead litigation in state court, but other possibilities abound

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SPRINGFIELD — The path to pension reform inevitably winds through the courts.

But assuming Gov. Patrick J. Quinn signs the bill lawmakers passed Tuesday cutting some state worker and retiree benefits, a few different paths will be available.

Unions that oppose the measure are likely to file suits in Cook or Sangamon counties, legal and constitutional observers said, and they could do it almost immediately after Quinn puts pen to paper.

The most likely move, multiple lawyers said, is to challenge the bill on the grounds it violates the state constitution, then stop the law from being enforced by seeking to enjoin it before it takes effect in June.

Much of the legislative debate over pension reform has centered around a section of the constitution that says pension

benefits are an “enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”

“It’s something that requires a great deal of evaluation,” said John M. Fitzgerald, a partner at Tabet, DiVito & Rothstein LLC who has written legal memos on pension reform for Quinn and Senate Democrats. “In addition to the legal basis, a lot of strategic and tactical decisions” factor into how the challenge is filed, he said.

Ann M. Lousin, a professor at The John Marshall Law School who teaches constitutional law, agreed that injunctive relief would likely be the first move.

“They’d have a declaratory judgment and an injunction saying the bill is unconstitutional,” she said. “They will ask for an injunction to declare that a bill cannot be enforced, and any monies that are moved around shall be held in escrow.”

Though lawmakers have largely anticipated legal action

from public employee unions in state court, potential litigation won’t be limited to those terms.

An argument could be made, one observer said, that a challenge could be filed in federal court contending the bill infringes on property rights in the U.S. Constitution.

Unions don’t have to be the ones filing suit, either. Any individual whose pension is altered could theoretically challenge the law in any county in Illinois.

It’s widely believed, however, that the groups will have a challenge ready and waiting to be filed.

And once a suit is filed in a circuit court, the discovery process, arguments and a final decision would likely take at least three months.

That may not be necessary, as the Illinois Supreme Court has the power to take up litigation directly. Lousin said the high court will likely let the matter play out in a trial court before weighing in.

“Under the Illinois Constitution, the Illinois Supreme Court can remove the litigation virtually at will,” she said. “But I think that they will want a kind of factual record set out at the

outset.”

If a circuit court judge rules in favor of the state, the case could proceed to an appellate court, further extending the timetable before it potentially reaches the Supreme Court. But if a lower court declares the law to be unconstitutional, the case would proceed directly to the high court.

Lousin and others noted that a suit in 2011 challenging Mayor Rahm Emanuel’s residency — and thus, his eligibility to run for office — is sort of a de facto example of how fast an ultimate decision can come down from the courts.

In that case, the high court justices allowed the matter to proceed, albeit quickly, through the trial and appellate levels.

“(The Supreme Court) could remove it quite quickly, but I don’t think they will. They didn’t do it with the Rahm Emanuel case, and in that one they really were under the gun on,” Lousin said.

John E. Stevens, resident partner at Freeborn & Peters LLP in Springfield who represents the “We Are One” coalition of labor groups that opposed the measure, couldn’t be reached for comment. Other union officials also couldn’t be reached.