

Deserving of high praise for pension reform efforts

State politicians worthy of a 'loud hurrah' for passing a far-reaching law

Gov. Pat Quinn and the Illinois legislature accomplished a near miracle when they successfully negotiated the "third rail" of Illinois politics: a meaningful reform of state pension laws. Criticism that the reform did not go far enough is unfortunate and misguided. The pension bill that passed will save hundreds of billions of dollars in the future (including a substantial sum in next year's budget). Legally, the governor and the legislature may have gone as far as they can under the Illinois Constitution.

Article 13 of the constitution says "membership in any retirement or pension system" of any governmental entity "shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Under the "plain meaning" rule that almost every judicial authority recognizes, the words speak for themselves. Every existing employee is protected against changes in benefits. That is what Illinois courts have said the words mean.

I recognize that a very distinguished law firm (and a very distinguished lawyer) disagree. They cite some cases to the contrary, and unfortunately it is not too hard to find conflicting decisions on almost any subject in the Illinois courts. But most of the cases in Illinois say that the words are plain and mean what they say.

Even if my opinion is erroneous (I have to acknowledge that the U.S. Supreme Court told me so on a few occasions when I was a judge), there is no question that a pension reform that affected existing employees would be challenged and tied up in the courts for many years. During that period, there would be no "immediate" savings to the state. Judges, whose pension rights would be impaired if it applied to existing employees, would be making the decision. If the whole proposal were thrown out (as I think would happen) there would not be any savings any time. It would require a governor and a legislature who again would take on the "third rail."

It is with only mild cynicism that I point out that it is judges who interpret the constitution and the pension laws. They are aware that it is their own pensions that are involved. They may try to be objective, but they are involved.

The likely litigation points to another problem with passing a broader pension reform bill. Because of the state's enormous debt, bond-raters are looking hard at the favorable interest rate that the state enjoys. The passage of the present pension reform bill may give them some assurance that the state is providing some long-term and substantial restraint on pension costs. The passage of a "show" bill of dubious constitutionality that would not have any immediate effect in any event might well result in the bond raters deciding that Illinois was not serious about pension reform. Our interest costs could skyrocket.

Will there be litigation over the bill that passed? Probably, but it would be of the nuisance kind and would not take long to end. In any event, it would not tie up the reform effects.

I don't recall a previous governor who put any real effort into pension reform. There are governors who talked about it during campaigns, and some even put it in their State of the State addresses. But I don't remember any governor who really leaned on the legislature to do something about pension reform. And I know that the legislature has never sent a bill to the governor on its own. That is understandable. When you add up the combined political weight of the judges, the teachers, the policemen, the firemen and every other group of government employees, that is a lot of weight to take on.

Gov. Quinn and the legislature deserve lot of credit for a pension reform that is a substantial piece of any meaningful fiscal restraint program. More than a faint praise, they deserve a loud hurrah.

Abner J. Mikva is a former federal judge, state legislator and member of Congress.

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