Empowering Illinois' Pension Reform

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Abstract

The United States is facing a nationwide public pension-funding crisis, with some estimates of total state unfunded pension liabilities exceeding $4.7 trillion at the end of 2014. The Illinois pension funds, which provide retirement payments for 479,000 state and local workers, are insolvent. The actuarial unfunded liabilities for Illinois's pension plans stood at $111 billion for fiscal year 2015, according to official estimates. Without a new federal remedy, the situation will only worsen as the population of state workers ages and retires. Massive pension obligations are crowding out Illinois' ability to fund essential services such as police, disaster assistance, education, healthcare and others that are key to the general welfare. Illinois' public pensions receive extensive protections under state laws. As a consequence, bipartisan pension reform proposals have been struck down by the State Supreme Court, pitting the payment of pension obligations against providing essential state services, and using up more general revenues just to keep up with pension fund payments. If left unchecked, many workers in Illinois, and throughout the United States, could be left with dramatically-diminished or no pensions.

A minor change to federal bankruptcy law would provide a new tool to allow Illinois and other states to reform their own pensions so they don't become a burden to the federal government. Article 1 of the U.S. Constitution grants Congress the power to enact "uniform laws on the subject of bankruptcies." This paper proposes that Congress create a new section of the U.S. Bankruptcy Code, Section 113, a "Limited Proceeding to Ensure the Undiminished and Unimpaired Performance of Essential State Services." The provision would give state legislatures and governors the option to remedy fiscal crises attributable to pension obligations, notwithstanding local laws that prohibit changes to such obligations. If they so choose, state legislatures and governors would be authorized to enact pension benefit changes only after determining that funding obligations impair the performance of essential state services; and would publish the basis for their determination, conduct public hearings, and file a proceeding in a bankruptcy court identifying the changes.

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Introduction and Summary

The Illinois pension funds, which provide retirement payments for about 479,000 state workers and retirees, are insolvent.[2] The actuarial unfunded liabilities for Illinois's pension plans stood at $111 billion for fiscal year 2015, according to government estimates.[3] The liabilities increased by more than 600 percent between 1999 and 2013 in nominal terms, and by more than 450 percent in real terms.[4] Due to the nature of defined benefit plans, including generous cost of living increases, the deficits have grown faster than the state's ability to fund them.[5] These problems have been building for decades, and, left unaddressed, they will continue to grow.

Former Illinois Governor Pat Quinn signed reforms to the pension funds into law in December 2013. These reforms were intended to place the fund on a path to solvency by 2042.[6] In reality, due to the high costs of the plan, it is unlikely that these reforms would have succeeded. However, the Illinois Supreme Court overturned the reforms as unconstitutional. Unless something is done, Illinois will require increasingly higher tax payments to bring the pension funds into balance. For fiscal year 2016, Illinois transferred $7.6 billion into its pension funds, but such payments did little to address the funds' solvency or long-term prospects.[7]

This paper reviews the paths to fiscal solvency for Illinois' pension funds, including raising taxes, cutting spending, and reforming pensions for current and new employees.

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[1] The author is grateful to Preston Cooper and Jared Meyer for research assistance, and to the legal team at Kirkland and Ellis for drafting the model legislation. All errors are her own.
[2] "Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2014." *State Employees' Retirement System of Illinois*, 2014. https://www.srs.illinois.gov/PDFILES/oldAnnuals/sers2014.pdf
[3] VanMetre, Benjamin, "Illinois Unfunded Pension Liability has Increased by $13 Million per Day since 1996." *Illinois Policy Institute*, May 14, 2015. https://www.illinoispolicy.org/illinois-unfunded-pension-liability-has-increased-by-13-million-per-day-since-1996/
[4] Ibid.
[5] Dabrowski, Ted. Lessons from the Edgar Plan: Why Defined Benefits Can't Work, Illinois Public Policy Institute, April 23, 2013, https://d2dv7hze646xr.cloudfront.net/wp-content/uploads/2013/04/Edgar_Lessons_report.pdf.
[6] Hudspeth, Nancy. "Governor Quinn's Plan for Public Pensions: Analysis of the Proposed Changes." *The Institute of Government and Public Affairs*, May 17, 2012. "http://igpa.uillinois.edu/system/files/Hudspeth_Analysis_Quinn_Pension_Plan_0.pdf
[7] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." *Commission on Government Forecasting and Accountability*, March 2016. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf

We propose that Congress pass a law allowing states and municipalities to reform public pension obligations. Such a law would deal with one specific type of debt—public pensions—and would require the state legislature to pass the reforms. Sample legislation is provided in the Appendix. Reform of pension obligations is faster than passing a constitutional amendment, and the outcome will be more certain. Without such federal legislation or passage of a constitutional amendment, Illinois will not be able to alter the terms of the pension plan for existing employees or retirees.

The paper is divided into the following sections. The first section describes the origins of the problem. The second section outlines the beneficiaries of Illinois' state pension system. The third describes the losers from the pension system. The fourth section offers solutions to the pension crisis. The final section provides conclusions.

I. The Origins of the Problem

The Illinois pension plans were put in place in 1915.[8] The plans faced unfunded liabilities as early as 1949. According to the 1949 Report of the Illinois Public Employees' Pension Laws Commission, deficits were caused by an expansion of the program that was not supported by additional revenues. The 1959 Report of the Illinois Public Employees' Pension Laws Commission stated that unfunded liabilities were increasing "for the most part from the inadequacy of government contributions in the prior years." The 1973 Report also warned of actuarial deficiencies that were not being addressed by public officials.[9] These warnings have been proven correct. Due to legislative inaction, Illinois is now left with only difficult, but necessary, options.

Prior to 1970, the law allowed governments to adjust pension benefits or even eliminate pensions. After 1970, the Illinois legislature no longer had the power to do this. In order to safeguard against future unfunded pension liabilities, the language of Illinois' pension clause needs to be changed. Changing the state Constitution is a difficult matter, as will be discussed further below.

The late 1960s and early 1970s saw the gradual bankruptcy of some private sector pension plans, such as Studebaker in 1963. Many other companies, such as A&P

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[8] "Report of Illinois Pension Laws Commission." *University of California Libraries*, 1917, p. 38. https://archive.org/details/illinoispension00illirich

[9] "Reports of the Illinois Public Employees Pension Laws Commission" as reported in: Jaffe, Logan. "Illinois Pension Problems Go Back Decades." *WBEZ,* December 18, 2012. http://www.wbez.org/news/illinois-pension-problems-go-back-decades-104454

Supermarkets and Horn & Hardart, struggled to pay pensions throughout the decade. This led to the passage of the federal Employee Retirement Income Security Act (ERISA) in 1974, as well as state initiatives. Prior to ERISA, it was common for workers to spend their entire career at one company. They typically had no investment retirement accounts or 401(k) plans, and other non-tax advantaged forms of retirement saving were uncommon. People depended on pensions to a far greater extent than they do today, because nearly 90 percent of workers with pension coverage had defined-benefit pension plans.[10] A company pension's bankruptcy caused serious problems for workers and retirees.

Throughout the history of the Illinois pension systems, politicians have been all too willing to promise more generous benefits to retirees and existing state employees that cannot be funded with increased taxes. According to the government's financial reports, in real 2013 dollars, unfunded liabilities were $2.9 billion in 1958, $15.3 billion in 1970, and $111 billion in 2015.[11] By this estimate, Illinois has 41 percent of the funds needed to cover its pension obligations.[12]

Joe Luppino-Esposito of State Budget Solutions has calculated unfunded pension liabilities for each of the fifty states, using a more realistic discount rate. Table 1 shows that Illinois is doing worse than other states in terms of the funding ratio of its pension plan. According to his estimates, Illinois has just 22 percent of the funds needed to pay its current retirees and expected retirees among current workers. In contrast, neighboring Wisconsin has 67 percent of needed funds.

States towards the top of the table have pension plans in better financial shape than states towards the bottom. Still, even relatively well-off states such as Wisconsin, South Dakota, and North Carolina have unfunded per-capita liabilities that stretch into the thousands of dollars. The picture is much bleaker at the other end of the table, where states such as Connecticut and Illinois have unfunded per capita liabilities that reach $24,000 or higher. Overall, the nation's state pension plans are only 36 percent funded.

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[10] Munnell, Alicia. "Why Have Defined Benefit Plans Survived In The Public Sector?" *Center for Retirement Research at Boston College*, December 2007. http://crr.bc.edu/wp-content/uploads/2007/12/slp_2.pdf
[11] Adjusted for inflation. "Record of Proceedings: Sixth Illinois Constitutional Convention." *Illinois Digital Archives,* July 10 – August 5, 1970, p. 2893-2963. http://www.idaillinois.org/cdm/compoundobject/collection/isl2/id/7417/rec/6
[12] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf

At the Illinois Constitutional Convention of 1970, Illinois rewrote its entire constitution for the fourth time. Public sector unions, including police, fire, and other local workers and labor groups, lobbied during the convention to protect pensions.[13] Illinois has one of the strongest contractual pension protections of any state, and benefit reductions are explicitly prohibited.

Lawmakers included a provision in the new Constitution, Article XIII, Section 5, that required the government to pay its public pensions obligations when they become due.[14] The clause states,

"Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

The four sponsors of the Illinois amendment were Republicans. Notable sponsors were Helen Kinney and Anthony Peccarelli, who were later appointed judges. Other sponsors were Urbana land developer Henry Green and Kankakee County lawyer Donald Zeglis.

Green stated, "[I]n Illinois today we have public employees who are beginning to lose faith in the ability of the state and its political subdivisions to meet these benefit payments. This insecurity on the part of the public employees is really defeating the very purpose for which the retirement system was established, and this is one of the reasons why I personally request that the Convention adopt the provision which will guarantee these rights and direct the General Assembly to take the necessary steps to fund the pension obligations."[15]

Ted Borek, a Convention delegate from Chicago, stated, "I regret that I must vote no. I objected very much to section 5, since I represent six out of seven people who are not mentioned as a guarantee in the constitution with their pension system. I thought it was

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[13] "Record of Proceedings: Sixth Illinois Constitutional Convention." *Illinois Digital Archives,* July 10 – August 5, 1970, p. 2893-2963.
http://www.idaillinois.org/cdm/compoundobject/collection/isl2/id/7417/rec/6
[14] "Constitution of the State of Illinois." *Illinois General Assembly,* Accessed August 31, 2015.
http://www.ilga.gov/commission/lrb/conmain.htm
[15] "Record of Proceedings: Sixth Illinois Constitutional Convention." *Illinois Digital Archives,* July 10 – August 5, 1970, p. 2893-2963.
http://www.idaillinois.org/cdm/compoundobject/collection/isl2/id/7417/rec/6

very wrong for people in this Convention that have benefits of the retirement system of the state that they voted for the thing."[16]

The new Illinois Constitution was approved by the convention on September 3, 1970, and it was ratified by the people of Illinois on December 15, 1970.

II. Beneficiaries of State Pensions

Almost half a million Illinois residents either receive public pensions or pay into the system. The Illinois pension plan has 266,000 active members and 213,000 retirees.[17] For comparison, employment in Illinois is 6,107,200 workers.[18]

The largest pension fund is the Teachers Retirement System, which, as of 2014, has 133,000 active members and 104,000 retirees.[19] That translates into about 1.3 workers per retiree. These active teachers not only have to contribute to their own pensions, but they must also pay for existing retirees. The State Employees' Retirement System is in an even worse demographic situation, with 63,000 active members and 56,000 retirees.[20] That amounts to 1.1 active workers per retiree. The Illinois State Universities Retirement System has 69,000 active members and 52,000 retirees, or 1.3 workers per retiree.[21] The Judges Retirement System has about 961 active members and 802 retirees, and the General Assembly Retirement System has 145 active members and 308 retirees.[22]

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[16] "Record of Proceedings: Sixth Illinois Constitutional Convention." *Illinois Digital Archives,* July 10 – August 5, 1970, p. 4516.
http://www.idaillinois.org/cdm/compoundobject/collection/isl2/id/7417/rec/6
[17] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016.
http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf and Dabrowski, Ted, "Pension Solutions 2016: State-Worker Retirement Ages." *Illinois Policy Institute,* April 2016.
[18] "Illinois: Economy at a Glance." *Bureau of Labor Statistics*, July 21, 2015.
http://www.bls.gov/eag/eag.il.htm
[19] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016.
http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf and Dabrowski, Ted, "Pension Solutions 2016: State-Worker Retirement Ages." *Illinois Policy Institute,* April 2016.
[20] Ibid.
[21] Ibid.
[22] Ibid.

The pensions received by retirees are generous compared with the U.S. average household income of $51,000 annually.[23] In 2014, teachers received an average salary of $68,581 and an average pension of $73,000 after 30 years of service.[24] The top pensioners in the teachers' system receive over $7 million in lifetime benefits.[25]

Judges received average salaries of $184,354 and average pensions of $174,600 for those who served for 30 years.[26] The top pensioners in the judges' system received over $4 million in lifetime benefits.[27]

Members of the General Assembly received an average salary of $80,065, and an average pension of $134,400 for members who served for 30 years.[28] The top pensioners in the General Assembly system received up to $7.1 million in lifetime benefits.[29]

State employees received an average salary of $70,388, and an average pension of $50,000 for members who served for 30 years.[30] Unlike the other employees mentioned above, these employees also collect Social Security. Top pensioners in this system can collect $6 million in lifetime benefits.[31]

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[23] "Household Income: 2013." *U.S. Census Bureau,* September 2014. https://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-02.pdf

[24] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf and Dabrowski, Ted and Klingner, John. "What's Driving Illinois $111 Billion Pension Crisis?" *Illinois Policy Institute,* March 2016.

[25] Dabrowski, Ted and Klingner, John. "Out of Sync: Employee Contributions vs. Benefit Payouts." *Illinois Policy Institute,* April 2016.

[26] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf and Dabrowski, Ted and Klingner, John. "What's Driving Illinois $111 Billion Pension Crisis?" *Illinois Policy Institute,* March 2016.

[27] Dabrowski, Ted and Klingner, John. "Out of Sync: Employee Contributions vs. Benefit Payouts." *Illinois Policy Institute,* April 2016.

[28] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf and Dabrowski, Ted and Klingner, John. "What's Driving Illinois $111 Billion Pension Crisis?" *Illinois Policy Institute,* March 2016.

[29] Dabrowski, Ted and Klingner, John. "Out of Sync: Employee Contributions vs. Benefit Payouts." *Illinois Policy Institute,* April 2016.

[30] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf and Dabrowski, Ted and Klingner, John. "What's Driving Illinois $111 Billion Pension Crisis?" *Illinois Policy Institute,* March 2016.

[31] Dabrowski, Ted and Klingner, John. "Out of Sync: Employee Contributions vs. Benefit Payouts." *Illinois Policy Institute,* April 2016.

Employees of state universities received an average salary of $50,103, and an average pension of $71,600 for members who served for 30 years.[32] One pensioner in the state university system is estimated to receive $18 million in lifetime benefits.[33]

Those receiving pensions (with the exception of those in the state employees system) do not have to pay into Social Security and do not receive Social Security. The average career TRS annuitant received $73,000 in benefits (or five times more than the average Social Security payment).[34] A recently retired teacher in 2013 received a pension that was double the maximum allowable Social Security payment.[35]

These amounts are increased by a three percent annual compound cost of living adjustment, particularly generous when compared to other states and greater than the Social Security cost-of-living increases in recent years. The cost-of-living adjustment annually increases the total amount Illinois owes to its retirees, and this is the single largest factor driving increasing state pension costs.[36]

III. Losers from the Pension System

Just as the pension system has beneficiaries, it also has losers. State employees earn more than employees on private payrolls, as can be seen in Figure 1, below. According to American Enterprise Institute scholar Andrew Biggs, Illinois state government workers earn an annual salary of $56,919 and receive annual received or accrued benefits of $55,791. In contrast, private sector employees in Illinois earn an average of $59,765 and receive annual benefits of $19,725. This difference in benefits means that total earnings for state government employees add up to $112,710 versus $79,490 for comparable private sector workers, a difference of 39.6 percent.[37]

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[32] "Illinois State Retirement Systems: Financial Condition as of June 30, 2015." Commission on Government Forecasting and Accountability, March 2016. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysMar2016.pdf and Dabrowski, Ted and Klingner, John. "What's Driving Illinois $111 Billion Pension Crisis?" *Illinois Policy Institute,* March 2016.
[33] Dabrowski, Ted and Klingner, John. "Out of Sync: Employee Contributions vs. Benefit Payouts." *Illinois Policy Institute,* April 2016.
[34] Ibid.
[35] Klingner, John. "Pension Solutions: Cost-of-Living Adjustments Are Supersizing State Pensions." *Illinois Policy Institute*, November 26, 2013. https://www.illinoispolicy.org/reports/pension-solutions-cost-of-living-adjustments-are-supersizing-state-pensions/
[36] Ibid.
[37] Biggs, Andrew. "Public Sector Compensation in Illinois." *Americans for Prosperity Foundation Illinois,* June 12, 2015. https://www.aei.org/publication/public-sector-compensation-in-illinois/

While government worker contributions to Illinois' five pension systems have increased by 75 percent since 1998, taxpayer contributions have increased by 427 percent over the same period. In 2012 alone, Illinois taxpayers contributed $3.5 billion more to the pension systems than did state workers.[38] This is shown in Figure 2.

The contribution schedule mandated by current law requires taxpayers to pay greater contribution costs going forward to pay for both the system's normal cost and its current unfunded liabilities. Rather than the $385 billion being paid off in equal installments, Illinois law requires contributions to increase over time. This will have the effect of driving people out of Illinois and into neighboring states, or to states in other parts of the country.

Data from the Tax Foundation show that between 2000 and 2010, 518,000 individuals and businesses left Illinois for other states,[39] many of them states with lower taxes such as Florida and Texas.[40] In *Rich States, Poor States*, Art Laffer and Steve Moore have documented the movement of individuals from high-tax to low-tax states.[41]

In 2014, taxpayers contributed $6.8 billion to the pension systems. By 2045, they are expected to contribute $16.3 billion, or about $3,300 for every household in Illinois. To look at it another way: Over the next 30 years, that amounts to nearly $72,000 per household and more than four times what state workers are expected to contribute.[42]

These numbers understate the extent of the problem. In February, due to the budget problems, Moody's Investors Service lowered the credit rating of Northeastern Illinois University and Northern Illinois University to just above junk status, and lowered the

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[38] Commission on Government Forecasting and Accountability. "Illinois State Retirement Systems: Financial Condition as of June 30, 2014." *Illinois General Assembly,* February 2015. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysFeb2015.pdf

[39] Tax Foundation, "State to State Migration Data." Accessed April 4, 2016. http://interactive.taxfoundation.org/migration/

[40] Tax Foundation, "State Individual Income Tax Rates, 2000-2014." April 1, 2013. http://taxfoundation.org/article/state-individual-income-tax-rates

[41] Laffer, Arthur, Jonathan Williams, and Stephen Moore. "Rich States, Poor States: 8th Edition." *American Legislative Exchange Council,* January 21, 2016. https://www.alec.org/publication/rich-states-poor-states/

[42] "Illinois State Retirement Systems: Financial Condition as of June 30, 2014." Commission on Government Forecasting and Accountability, February 2015. http://cgfa.ilga.gov/Upload/FinConditionILStateRetirementSysFeb2015.pdf

rating of Eastern Illinois University to below investment grade. As credit ratings get downgraded the economy will worsen, increasing liabilities for taxpayers.[43]

Taxpayer contributions to the plans have been growing faster than employee contributions, as can be seen from Table 2. Taxpayer contributions in 2012 were more than 5 times the amount in 1998, but employee contributions did not even double. By 2045 taxpayers will be paying more than $16 billion a year if current trends continue. Clearly, something needs to be done.

As well as increased contributions from taxpayers, Illinois has reduced spending on other forms of state social services to balance the budget and meet the shortfall. Illinois Governor Rauner suspended $26 million in social services and public health grants in order to reduce a $1.6 billion shortfall in the current state budget.[44] On April 30, 2015, Rauner restored the budget cuts after higher-than-expected income tax revenues.

Programs targeted for elimination include funding to pay for the funerals and burials of public-assistance recipients, saving $6.9 million; addiction prevention ($1.6 million); teen programs ($3.1 million); and autism, HIV, and AIDS programs. Breandan Magee, senior director of programs for the Illinois Coalition for Immigrant and Refugee Rights, said "There are 299 jobs across 60 different immigrant-services agencies at risk."

IV. Solutions to the Pension Crisis

Illinois has six options for solving the pension crisis. These are: raising taxes; cutting spending; moving new workers to a defined contribution 401 (k)-type program; moving all workers to a defined contribution program; and cutting benefits and raising contributions. Under current law, moving all workers to a defined contribution program and cutting benefits and raising contributions would require either a constitutional amendment, or a mechanism for overriding existing law or existing constitutional provisions.

This section briefly summarizes these options and proposes a way to override existing Illinois law.

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[43] Douglas-Gabriel, Danielle. "Illinois Budget Battle Leads Moody's to Downgrade Several State Universities." *Washington Post,* February 25, 2016. https://www.washingtonpost.com/news/grade-point/wp/2016/02/25/illinois-budget-battle-leads-moodys-to-downgrade-several-state-universities/

[44] "Rauner Suspends $26 Million in Social Services, Public Health Grants." *Chicago Tribune,* April 4, 2015. http://www.chicagotribune.com/news/local/politics/chi-rauner-social-services-20150404-story.html

The 2013 bill signed into law by Governor Pat Quinn was ruled unconstitutional by the Illinois Supreme Court in May 2015. The bill would have capped pension payments, raised retirement ages, ended automatic cost-of-living increases, and limited the amount of salary used as a base for calculating pensions. After the State Supreme Court's ruling, the state legislature's hands have been tied. The legal precedent that has now been set would make nearly every mandatory plan to restructure pensions for current state workers (though not new hires) outside of a constitutional amendment unconstitutional.

Governor Rauner has his own solution to the pension crisis, based on a plan offered in 2013 by Illinois Senate President John Cullerton, a Democrat.[45] The essence of the plan is to give workers a choice between having their future pay increases count toward a pension, or receiving larger cost-of-living adjustments in retirement.

However, like the last reforms that were proposed, it could be ruled unconstitutional—even Cullerton admits he is unsure of its constitutionality.[46] The courts *should* uphold the proposal because it is voluntary; it does not force any worker to accept a reduction in vested benefits. The Illinois Supreme Court has recently made clear that the Illinois Constitution allows employees to agree to a reduction in pension benefits in exchange for consideration; that is, they can give up their contractual right to pension benefits in the same way that they could give up any other contractual right.[47]

But there is no guarantee that the Illinois Supreme Court would uphold even this proposal, especially given its apparent hostility to all pension reform.

In any event, a bigger problem with the Cullerton/Rauner plan is that it is not likely to solve the pension crisis. The assumption that there will be savings if that plan passes is severely flawed. The concept of the "consideration" option is that people get a choice between bigger cost of living adjustments (COLAs) post-retirement and no raises pre-retirement, or smaller COLAs post-retirement and raises pre-retirement. This does not

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[45] Dabrowski, Ted. "Rauner Making moves on Pension Reform." *Illinois Policy Institute,* January 21, 2016. https://www.illinoispolicy.org/rauner-making-moves-on-pension-reform/

[46] Petrella, Dan. "Rauner Indicates Cullerton Pension Proposal Support." *Herald & Review,* January 31, 2016. http://herald-review.com/news/state-and-regional/govt-and-politics/rauner-indicates-cullerton-pension-proposal-support/article_5d83c3dd-71fe-512d-a8ff-2cfce0d83554.html

[47] *See Jones v. Mun. Employees' Annuity & Benefit Fund of Chi.*, 2016 IL 119618, ¶ 53 ("[N]othing prohibits an employee from knowingly and voluntarily agreeing to modify pension benefits from an employer in exchange for valid consideration from the employer.").

reduce pension spending on individuals who have already retired or are close to retirement, and that is the overwhelming majority of the problem.

With respect to younger employees and new hires, there will be no savings unless people make decisions that are economically irrational. People have to actually decide to take less money than they would otherwise receive (on average) for savings to occur. Even if the plan is constitutional, it solves nothing and Illinois will need another idea.

Raising Taxes

The Illinois Civic Federation has proposed a tax increase to fund public pensions. Specifically, the federation suggests raising the corporate tax rate to 8.5 percent and the income tax rate to 4.25 percent until 2018. The Federation also proposes to taxing non-social security retirement savings, as do 41 other states. In order to further save funds, the Federation proposes freezing discretionary spending at current levels temporarily and expanding the Earned Income Tax Credit as a sweetener.[48]

Illinois taxes are already high by national standards, and raising them further would cause the state to be less attractive to businesses and residents. The Tax Foundation has calculated that Illinois' tax burden is the 13th highest in the nation.[49] Illinois' property tax is the second highest in the nation.[50] Overtaxed Illinois citizens and businesses would leave and go to other states. As was shown above, raising taxes causes the tax base to gradually disappear.

Between 2000 and 2010, half a million people left Illinois, and over $20 billion in net adjusted gross income vanished with them, according to the Tax Foundation. About $2.8 billion went to neighboring Wisconsin and Indiana.[51] In 2012, a record 31,025 taxpayers of all income brackets and age groups left Illinois, reducing total adjusted

[48] The Institute for Illinois' Fiscal Sustainability. "State of Illinois FY2016 Budget Roadmap." Civic Federation. February 12, 2015. https://www.civicfed.org/iifs/publications/FY2016IllinoisRoadmap
[49] Malm, Liz, and Prante, Gerald. "Annual State-Local Tax Burden Ranking FY 2011." *Tax Foundation*, April 2, 2014. http://taxfoundation.org/article/annual-state-local-tax-burden-ranking-fy-2011
[50] Walczak, Jared. "How High Are Property Taxes in Your State?" *Tax Foundation*, August 13, 2015. http://taxfoundation.org/blog/how-high-are-property-taxes-your-state
[51] "State to State Migration Data." *Tax Foundation*, accessed August 26, 2015. http://interactive.taxfoundation.org/migration/

gross income in the state by $3.7 billion.[52] Now that Wisconsin and Indiana are implementing even more innovative reforms, Illinois is under pressure to keep up. Labor and capital are mobile in a global economy, and even more so between states.

The Illinois Civic Federation's estimates do not include the loss of population and income that will be a result of the tax increases. Its estimates also ignore how the over $30 billion in additional revenue from Illinois' last income tax increase was directed to pensions, but did not make any meaningful dent in the funding problem.[53]

Cutting Spending

Cutting spending is constitutional, but it would be difficult for politicians to find enough savings to solve the pension problems of Illinois. Though there are plenty of savings to be found by lowering public costs through consolidation, privatization, and healthcare reform, cutting $100 billion from the budget over the next 30 years will be difficult to achieve politically. The total enacted budget in 2015, according to the Illinois Office of Management and Budget, stood at $91 billion.[54] Further budget cuts would be desirable, but may be difficult to achieve.

Of Illinois' $91 billion annual budget, about $4 billion is service on debt obligations. Another $6.9 billion represents taxpayer contributions to the retirement systems.[55] Many other programs are mandatory or have dedicated sources of revenue that cannot be repurposed to shore up the retirement system, either by law or by political necessity. Using highway toll collections to fund pension payments would never be allowed. The Illinois general fund, from which the savings would most likely come, only represents $31 billion annually—approximately a third of Illinois' total spending. Using only the general fund to plug the pension funding gap would necessitate immediate spending cuts of more than 10 percent in all general fund programs. Such austerity would be deeply unpopular and likely not survive the next election.

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[52] Lucci, Michael. "Illinois Is Losing Taxpayers From Every Income Bracket and Age Group." *Illinois Policy Institute,* August 26, 2015. https://www.illinoispolicy.org/illinois-is-losing-taxpayers-from-every-income-bracket-and-age-group/

[53] VanMetre, Benjamin. "Illinois' $31.6 Billion Tax Hike: Where Did the Money Go?" *Illinois Policy Institute*. https://www.illinoispolicy.org/policy-points/illinois-31-6-billion-tax-hike-where-did-the-money-go/

[54] "Fiscal Year 2015: Enacted Budget." Illinois Office of Management and Budget. Accessed Feb 3, 2016. http://www.illinois.gov/gov/budget/Pages/BudgetBooks.aspx

[55] Ibid.

John D. Colombo, the interim dean at the University of Illinois' College of Law, has proposed that the state push pension costs down to lower levels of the bureaucracy. For instance, Illinois could make public universities or local school districts fund 401(k) plans for teachers.[56][57] However, even if the State did this, it would remain constitutionally the guarantor of pensions that the lower levels did not pay, and the lower levels of the bureaucracy are just as bad off financially as the State and share the same taxpayers, so of course that solves nothing.

Furthermore, in order to raise tuition enough to cover the costs of the pension shortfall, tuition would have to rise by 90 percent.[58] With increases of this magnitude, students would go elsewhere. State universities would become far less attractive and the state would lose talent.

Move Newly-Hired Workers to Defined Contribution Plans

One way to keep Illinois competitive and remodel the state as an attractive place to do business is to switch new workers from its current defined-benefits plan to a defined-contributions plan, as has proposed the Illinois Policy Institute (IPI), a nonpartisan research organization. Before the Illinois Supreme Court ruled it unconstitutional, the Illinois Policy Institute has suggested maintaining existing benefits for workers, but moving subsequent public employees to defined-contribution plans. The plan would also freeze cost-of-living adjustments for all retirees, which would dramatically reduce payouts in the long term. Finally, IPI would raise the retirement age for future retirees.[59] The policy group cites Alaska as a state that successfully carried out this sort of transition by putting all of its workers on 401(k) plans.[60] Nevada and Utah also moved workers to defined-contribution plans. This is based on Illinois' own SURS self-managed plan, which is becoming popular with professors.[61]

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[56] Colombo, John, and Phil Ciciora. "Solutions for Fixing State's Pension Crisis." The News-Gazette. May 5, 2015.

[57] Dabrowski, Ted, "Five Reasons Why Local Pension Accountability Is Right for Illinois," Illinois Public Policy Institute, June 30, 2012, https://www.illinoispolicy.org/five-reasons-why-local-pension-accountability-is-right-for-illinois/

[58] This is calculated by taking current taxpayer contributions to university pension plans ($986m) and dividing it by the University of Illinois system total revenue from tuition and fees ($1,098m).

[59] Dabrowski, Ted, and Benjamin VanMetre. "Budget Solutions 2014: Pension Reform." Illinois Policy. February 27, 2013. https://www.illinoispolicy.org/reports/budget-solutions-2014/

[60] Illinois Policy Institute. "Alaska's Bold Solution to It's Pension Crisis." *Illinois Policy Institute.* July 25, 2013. https://www.illinoispolicy.org/alaskas-bold-solution-to-its-pension-crisis/

[61] VanMetre, Benjamin. "A Record Number of Illinois Government Workers Opt Out of Pension Plans Into 401(k)-Style Plans, Illinois Policy Institute, September 3, 2014,

Moving from a defined-benefit system to one modeled on 401(k)s for new workers would not change the state's obligation to meet benefits for current workers and retirees. Often opponents of this change claim that it would slash benefits for retirees and older workers. This claim is false, as the change would only affect benefits that are set to be earned in the future. Shifting from defined benefits to defined contributions is the first step towards returning solvency to a broken system that, if left unchanged, will not be able to meet the benefits promised to current or future retirees. If other states can do it, then Illinois can do so as well. Moving new hires to defined-contributions plans is permissible even with the court's ruling.

Though it is still within Illinois' power to move new workers into a 401(k)-style retirement plan going forward, that alone will not fix Illinois' crisis. Pension programs will go bankrupt long before the benefits of 401(k) systems can help set the budget on the right path.

Move All Workers to Defined Contribution Plans

Illinois would be even better off if all workers could be moved to defined contribution plans, if the State could get permission to do so. Not only would savings be greater, but this would give employees the opportunity to leave state government employment and take some of their benefits with them. Currently they are trapped in state government employment by the vesting rules, because they lose benefits increases that accrue with longer tenure if they go elsewhere.

Given the recent Illinois Supreme Court ruling, changing existing workers to a defined-contribution plan without a constitutional amendment might be struck down by the court if it were implemented. This is a legal question outside the scope of this paper.

Wisconsin has been able to reduce the costs of its pension system by ensuring that state workers pay half of their pension contributions, amounting to 5.8 percent of their paychecks. This plan was passed by the state legislature in 2011 and signed into law by Governor Scott Walker. In 2012, the Wisconsin system introduced reforms such as strengthening work-hour requirements and introducing a five-year vesting period, in

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https://www.illinoispolicy.org/record-number-of-illinois-government-workers-opt-out-of-pensions-into-401k-style-plans/

order to further protect taxpayers.[62] Still, this vesting period is less than in many other states, such as New Jersey[63] and Alabama.[64]

States with both Republican and Democratic legislatures, including Alaska, Rhode Island, Michigan, and Utah, have begun to move away from using a defined-benefit plan to relying on 401(k) style savings accounts for public workers. Phasing out the defined-benefit system has helped Alaska improve the shape of its pension system substantially and it would also help Illinois.[65] Michigan has shifted all state government employees hired after 1998 to a defined contribution plan. More than half of Michigan state government employees are now in the defined contribution plan,[66] which naturally means the state-only pension liability there is at least limited to pre-1998 hires.

Constitutional Amendment

Governor Rauner is seeking a constitutional amendment on the ballot in November 2016 that would allow the legislature to make his desired changes in pension laws, as well as those signed into law by Governor Quinn.[67] Such changes could include reducing benefits, increasing contributions, and putting in place defined contribution plans for all state employees.

While Rauner has not released the text of a specific amendment, many speculate it would repeal Article 13, Section 5 of the Illinois state constitution, which labels membership in a pension or retirement system as an "enforceable contractual relationship." A similar amendment[68] was introduced in the Illinois state House this

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[62] Gokhale, Jagadeesh. "The Momentum of Pension Reform in Wisconsin Must Be Extended to Health Insurance for Public Employees and Retirees." *National Center for Policy Analysis,* November 2014. http://www.ncpa.org/pdfs/st360.pdf
[63] "Considerations for Choosing Between the Public Employees' Retirement System or the Alternative Benefit Program." *State of New Jersey Department of the Treasury, Division of Pensions and Benefits,* February 2015. http://www.state.nj.us/treasury/pensions/epbam/exhibits/pdf/ea0235.pdf.
[64] "ERS Member Handbook." *Alabama Employees' Retirement System,* 2013. http://www.rsa-al.gov/uploads/files/ERS_Member_Handbook_T1_bookmarked.pdf
[65] Illinois Policy Institute. "Alaska's Bold Solution to Its Pension Crisis." *Illinois Policy Institute*, July 25, 2013. https://www.illinoispolicy.org/alaskas-bold-solution-to-its-pension-crisis/
[66] Randazzo, Anthony. "Pension Reform Case Study: Michigan." *Reason Foundation,* 2014. http://reason.org/files/pension_reform_michigan.pdf.
[67] Erickson, Kurt. "Rauner Pension Amendment Could Be Tough Sell." *The Southern Illinoisan,* May 12, 2015. http://thesouthern.com/news/local/govt-and-politics/rauner-pension-amendment-could-be-tough-sell/article_ce18cfeb-db5e-52a5-bfd8-029b073130bf.html
[68] Sosnowski, Joe, and Thomas Morrison. "Constitutional Amendment HC0009." *Illinois General Assembly,* Accessed November 13, 2015. http://www.ilga.gov/legislation/99/HJRCA/PDF/09900HC0009lv.pdf

year. However, the long, slow amendment process means that it could have no effect on Illinois' immediate budget shortfall.[69]

Even if Illinois passed a constitutional amendment, public-sector unions would likely challenge that amendment in court, arguing that it violates the contracts clause of the U.S. Constitution. However, the real problem is the legacy liability, not new or recent hires who are already in Tier II. So, it is not even 100% clear that an Illinois Constitutional Amendment would make a dent in the problem -- even assuming that passage of such an amendment was realistic.

Passage of a constitutional amendment is complex. It must be introduced in either house of the General Assembly. It must pass both houses with a three-fifths majority. It then can be put on the ballot after at least six months. The amendment must be published at least one month before the election. The amendment is ratified "if approved by either three-fifths of those voting on the question or a majority of those voting in the election."[70]

Illinois has a Democratic legislature and a plurality of Democratic voters. Even though Illinois Democrats tend to resist changes to fix public pension programs, when the alternative is not being able to fund the pensions or other core government services, it is possible that voters and their elected representatives will decide that action is necessary. Still, other options should also be explored.

Federal Legislation Permitting Reform of Pension Obligations

Another alternative would be for the federal government to empower states to reform their own insolvent pension or health plans by preempting state laws that prohibit the state from making reforms to laws that they created in the first place. Under this system, the federal government would allow those laws passed by state assemblies to reform pensions to take effect. This preemption of state law would require new legislation from the federal government. This is different from the proposal from

[69] VanMetre, Benjamin. "Rauner's Plan B for Pension Reform: Amend the Constitution." *Illinois Policy Institute,* April 9, 2015. https://www.illinoispolicy.org/rauners-plan-b-for-pension-reform-amend-the-constitution/

[70] "Constitution of the State of Illinois: Article XIV: Constitutional Revision." *Illinois General Assembly*, Accessed July 28, 2015. http://www.ilga.gov/commission/lrb/con14.htm

University of Pennsylvania law professor David Skeel to allow states and public corporations to file for bankruptcy.[71]

Congress could create a "Proceeding to Protect Essential State Actions" as a new Section 113 of the U.S. Bankruptcy Code. This would give states an additional tool to solve their own pension problems. This would not allow states to declare bankruptcy. Rather, it would allow them to reform their pensions after the legislature has voted to do so. Under such a law, states would have the opportunity to solve crises attributable to pensions, even though existing state laws prohibit changes to such obligations. States could change pension benefits not at will, but only after a serious analysis shows that funding for pensions impedes other state actions. States would publish their analysis after a public notice, and then file a proceeding in a federal court to identify suggested changes. One example of proposed legislation is in the Appendix.

The authority for such a statute comes from the Bankruptcy Clause of the U.S. Constitution, which gives Congress the specific power to enact "uniform laws on the subject of bankruptcies throughout the United States."[72] Authority for preemption goes back to *Sturges v. Crowninshield*, which is one of the first examples of federal preemption, and which allowed Congress to enact both insolvency and bankruptcy laws.

If this law had been effect in 2013, the General Assembly would have passed legislation and the State would then have sought to implement it through the actions of a U.S. bankruptcy court.

The Proceeding to Protect Essential State Actions would only involve pension debt, and not the entire debt of the state. In the past, the Supreme Court has ruled that it is not necessary to have identical treatment for every class of creditor. In *Railway Labor Executives' Association*, the Supreme Court stated that the Constitution "does not impair Congress' ability under the Bankruptcy Clause to define classes of debtors and structure relief accordingly."[73]

[71] A brief summary can be found in David Skeel, "A Puerto Rican Solution for Illinois," *Wall Street Journal*, August 4, 2013, found at http://www.wsj.com/articles/david-skeel-a-puerto-rican-solution-for-illinois-1407099069.
[72] U.S. Constitution, art. I, § 8, cl. 4. (the "Bankruptcy Clause").
[73] *Railway Labor Executives' Association*, 455 U.S. at 473.

Furthermore, since each state would have to decide whether to opt in to the provisions of the new law, it would still retain its sovereign powers. This ensures that the state legislature approves any plan to reduce pension debt.

Conclusion

The Illinois pension funds are unsustainable for the state and its taxpayers. For decades, state and employee contributions have been less than payouts. There is no possibility that those contributions will sufficiently support the system going forward. Current liabilities are far greater than current assets; the program is insolvent. Taxpayers have paid an ever-growing share of an ever-growing state pension program. The pension plan's insolvency is growing, not shrinking. At some point, the cost of the program will be more than state taxpayers can support.

Illinois has a number of solutions to reform its state pension plan to be financially sound and solvent. It could raise taxes, cut spending, move newly-hired workers to defined contribution plans, move all workers to defined contribution plans, trim benefits, and raise contributions. Raising taxes, cutting spending, and moving newly-hired workers to defined contribution plans will not solve the problem quickly. The other measures require either a constitutional amendment, or federal legislation to allow the state legislature to make the required changes by preemption of the state constitution. Neither a constitutional amendment nor federal preemption of pension reform are easy options, but Illinois has no other practical long-term alternatives.

These problems are not unique to Illinois. Illinois is in severe financial condition, but 46 other states also have funding ratios lower than 50 percent. The legislation proposed in this paper will help all states and municipalities that want to reform their pensions but are prevented from doing so by existing state laws. States would be authorized to enact pension benefit changes only after determining that funding obligations impair the performance of essential state services. They would publish the basis for their determination, conduct public hearings, and file a proceeding in a bankruptcy court identifying the changes. Affected parties could seek judicial review of these changes by filing a challenge with the bankruptcy court.

Article 1 of the U.S. Constitution grants Congress the power to enact "uniform laws on the subject of bankruptcies." (US Const., Art. 1, S8,cl.4 "the Bankruptcy Clause"). This proposal is consistent with Congress's actions during the Great Depression during the 1930s, when it created Chapter 9 to allow municipalities to continue providing essential

services. The Supreme Court has deferred to Congress's exercises of its bankruptcy powers on numerous occasions, finding that the Bankruptcy Clause is a malleable tool that permits legislative acts aimed at addressing the pressing commercial needs of the day.

This proposal is not a bailout. It gives states the tool they need to reform their own pension systems – without calling for a handout or a bailout from federal taxpayers. Neither does it infringe on states' rights. Rather, it gives states' governors and legislatures the option to use the new federal law to enact their own state solutions in the same manner in which they enact other bills. The proposal does not hurt state bond holders and other creditors. It only gives state legislatures and governors an option to enact reforms to their public pension systems. Since pensions of current retirees would not be affected, it would not hurt current retirees.

Hence, this proposal is a win-win for all concerned. The model legislation in the Appendix should be considered by Congress not just to assist Illinois, but to assist all states in difficulties.

APPENDIX

PROPOSED FEDERAL LEGISLATION

Section 113. PROCEEDINGS TO PROTECT ESSENTIAL STATE ACTIONS

(a) In this section—

(1) "Essential State Action" shall mean any undertaking by the State in furtherance of—

(A) providing for the health, safety, or welfare of persons residing within the State;

(B) addressing, remedying, or preventing fiscal emergencies of the State or any subdivision, agency, or municipality thereof; and/or

(C) ensuring the ability of the State and its subdivisions, agencies, and municipalities, to fund essential governmental services on reasonable terms.

(2) "Pension Benefits" shall mean any accrued or prospective, vested or unvested, pension, health, or other employee or retiree benefits, which a State, or any subdivision, agency, or municipality thereof, funds or is required to fund.

(4) "Petition in Support of Essential State Action" shall mean a petition passed by a State legislature in the same manner required for passage of a statute of general applicability within the State and approved by its Governor that includes: (a) a finding that the the current or projected cost of Pension Benefits diminishes or impairs the State's (or any subdivision, agency, or municipality thereof's) ability to perform one or more Essential State Actions; and (b) reforms of Pension Benefits to be implemented and effectuated by an order of a United States Bankruptcy Court following approval of the Petition pursuant to the procedures in subsection (c) herein.

(b) Notwithstanding any prohibition against or limitations on changes to Pension Benefits contained in, *inter alia*, any State constitution, statute, law, regulation, judicial decision, contract, or other local legal document, decision, or rule, Pension Benefits may be modified to ensure the performance of Essential State Actions. Such changes may be prospective, retrospective, or both, and may include modifying the vesting or qualification requirements for or reducing Pension Benefits provided by the State or any subdivision, agency, or municipality thereof.

(c) In order to change Pension Benefits under this subsection,

(1) the State shall—

(A) publish a proposal at least three legislative days prior to the public hearing or hearings under subsection (c)(1)(C), which contains changes to Pension Benefits that, in the State's view, are necessary and/or appropriate to ensure the undiminished and unimpaired performance of any Essential State Action by the State or any subdivision, agency, or municipality thereof;

(B) make reasonably available to the public the factual basis upon which the proposed Petition in Support of Essential State Actions is based in order to permit parties affected by any proposed changes to Pension Benefits to understand and assess the basis for the same;

(C) conduct one or more public hearings as the State deems appropriate regarding the proposal and/or the factual basis described in subsection (c)(1)(B) above;

(D) pass changes to Pension Benefits that are approved by the legislature in the same manner required for the passage of general statutes of that state, and approved by the Governor, following the public hearing or hearings, in a Petition in Support of Essential State Action; and

(E) within five days of approval of the Petition in Support of Essential State Action by the state legislature and Governor:

(i) file the Petition in a United States Bankruptcy Court, in a venue permitted by 28 U.S.C. § 1408(b);

(ii) provide notice of the Petition to the chief judge of the court of appeals for the circuit embracing the court in which the Petition is filed with a request that said judge designate a bankruptcy judge to hear the Petition;

(iii) provide notice of the Petition by first-class mail to the last known address of those whose Pension Benefits would be affected by the Petition if effectuated by order of the United States Bankruptcy Court; and

(iii) publish the Petition in Support of Essential State Action in the newspaper having the largest circulation among those who would be affected by the Petition if effectuated by order of the United States Bankruptcy Court.

(2) The chief judge of the court of appeals for the circuit embracing the court in which the Petition is filed shall designate the bankruptcy judge to hear the case within seven days of the chief judge's receiving notice of the Petition.

(3) If no challenge with respect to the Petition is filed within 20 days of its filing, or upon all such challenges being denied by the court, the Bankruptcy Court shall order that the modifications to Pension Benefits contained in such Petition are implemented.

(3) Any challenge to the Petition in Support of Essential State Action must be filed no later than 20 days after the filing of the Petition in the Bankruptcy Court. All timely challenges will be consolidated pursuant to Federal Rule of Civil Procedure 42(a).

(d) If a challenge to the Petition in Support of Essential State Action is timely filed, the Bankruptcy Court shall hold a hearing to address said challenge(s) within 30 days of the filing of the first challenge to the Petition. At that hearing, a representative of the State, and/or the affected subdivision, agency, or municipality thereof, will have the initial burden to prove, by a preponderance of the evidence, that:

(1) the Petition was proposed in good faith by the legislature of the affected State;

(2) the Petition was passed in the same manner in which that state would pass a statute of general applicability; and

(3) the affected State (or subdivision, agency, or municipality thereof) can fund the affected Pension Benefits as modified by the Petition, such that the passage of the Petition is not likely to be followed either by passage of a subsequent Petition in Support of Essential State Activities effecting the same Pension Benefits or by a proceeding pursuant to chapter IX of this Code for the particular State, subdivision, agency, or municipality affected by the Petition.

(e) If the affected representative of the State (or subdivision, agency, or municipality thereof) satisfies its initial burden as described in subsection (d), an affected person may challenge the Petition by demonstrating, by clear and convincing evidence, that the Petition is unnecessary because the State (or subdivision, agency, or municipality thereof) has sufficient actual or protected revenue to pay all of its Pension Benefits and

all other obligations, without modification and without having any material impact on the performance of any Essential State Functions. In evaluating challenges made pursuant to subsection (d), the Bankruptcy Court shall defer to the judgment of the state legislature and the governor regarding revenue and spending levels unless it has no rational basis.

(f) The Court may extend the time for the commencement of such hearing for a period not exceeding seven days where the interests of justice require such extension, or for additional periods only if the State (or subdivision, agency, or municipality thereof) and challenging parties agree to the same.

(g) The Court shall rule on any challenge to the Petition within thirty days after the date of the commencement of the hearing before the Court under subsection (d). The Court may extend the time for such ruling only if the State and challenging parties agree to such an extension. If the Court does not rule on such challenge within thirty days after the date of the commencement of the hearing before the Court under subsection (d), or within such additional time to which the parties may agree, the Court shall order the Petition implemented pending the ruling of the Court on such challenge.

(h) For the avoidance of doubt, upon the representative State's satisfaction of its burden as described in subsection (d), and upon the overruling of all timely-filed challenges to the Petition (if any), the Pension Benefit(s) at issue shall be deemed modified consistent with the Petition, and the relevant municipal entity (whether State, subdivision, agency, or municipality thereof) shall be discharged from any debt or obligation inconsistent with the Pension Benefit(s) as modified by the Petition.

* * * * *

To accommodate the addition of this new Section 113, at least three other Code sections, and one section of the Judicial Code, would have to be slightly amended. Section 106 of the Code, Waiver of Sovereign Immunity, would be amended to permit the judicial review contemplated under proposed Section 113. Specifically, Section 106(a)(1) would include a reference to Section 113 as follows: "(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following: (1) Sections 105, 106, 107, 108, 113 . . . of this title."

Second, the bankruptcy venue provisions of 28 U.S.C. § 1408 would be amended to enable states to seek relief under Section 113 without filing a case in chief under

title 11. The title of 28 U.S.C. § 1408 would be changed to: "Venue of cases under Title 11 and of any Limited Proceeding to Ensure the Undiminished and Unimpaired Performance of Essential State Action." The existing text of section 1408 would become subsection (a) of that section. The following sentence would be added to section 1408 as a new subsection (b): "Any limited proceeding under section 113 of title 11 may be commenced in any United State Bankruptcy Court in the State that issued a Petition in Support of Essential State Actions as defined in 11 U.S.C. § 113(a)(4)."

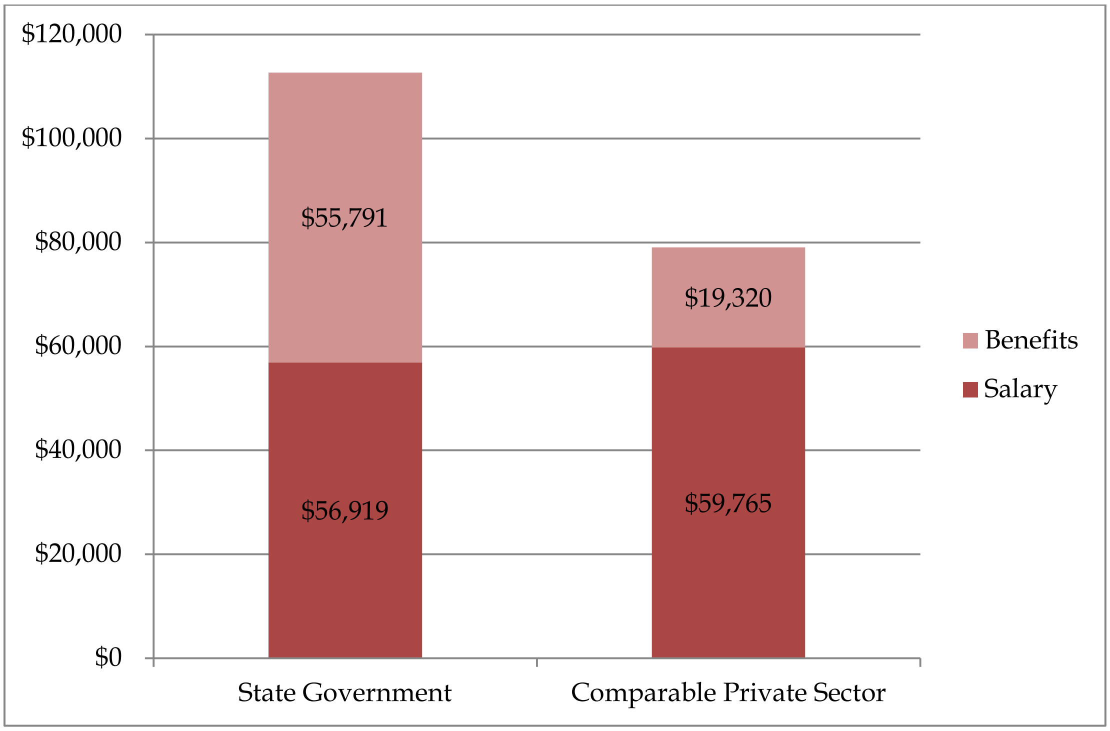
Third, Section 903 of the Code—which limits municipalities' abilities to provide under state law relief different than that provided by Chapter 9 of the Bankruptcy Code—would be, out of an abundance of caution, amended to explicitly permit the operation of this new statute. We would propose adding "except as provided in Section 113 of this chapter" after the "but" and before the dash in 11 U.S.C. § 903.

Finally, 28 U.S.C. § 157(b)(2) would add a subsection (Q) which would add, as a "core" proceeding to occur in the Bankruptcy Court- "any proceeding pursuant to 11 U.S.C. § 113."

Tables and Graphs

Figure 1

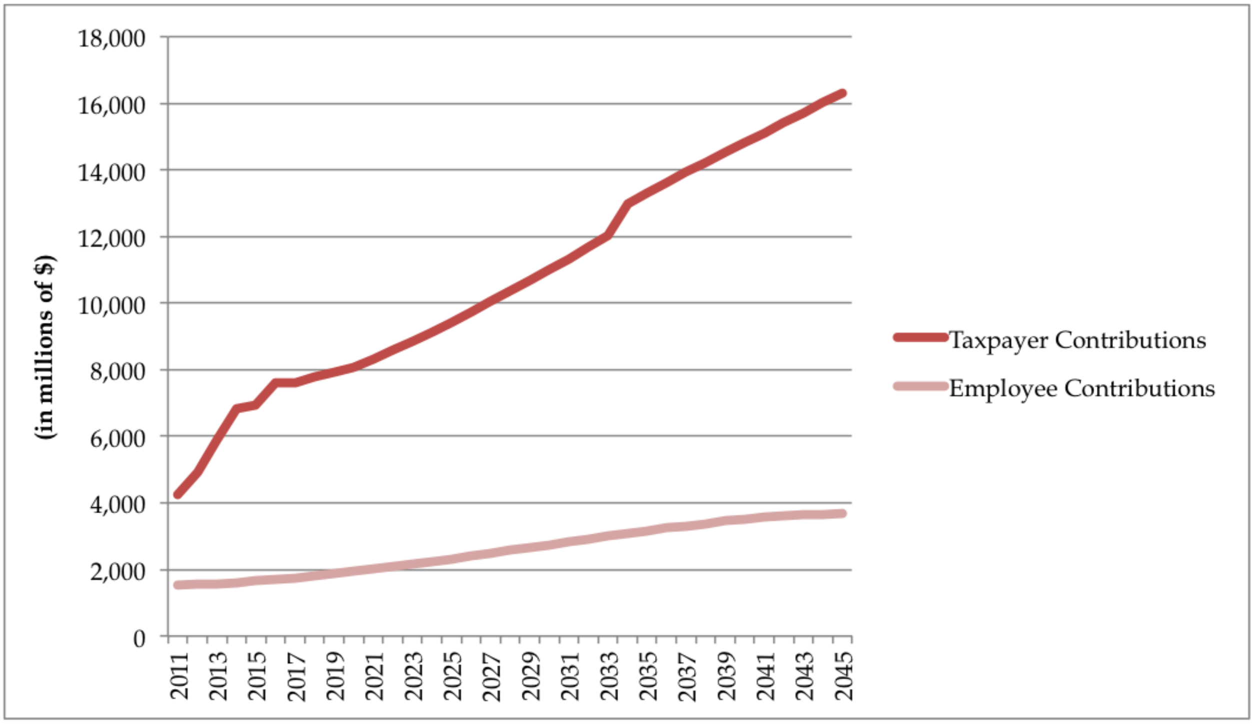
Average Annual Salaries and Benefits for Illinois State Government Employees and Comparable Private Sector Workers



Source: Andrew Biggs, *Public Sector Compensation in Illinois.* American Enterprise Institute, June 12, 2015.

Figure 2

Illinois Taxpayers Will Bear Brunt of Increasing State Pension Costs



Source: Commission on Government Forecasting and Accountability, *Annual Financial Report on the Financial Condition of Illinois State Retirement Systems*. February 2015.

Table 1

Unfunded Liabilities of State Pension Systems

State	Funding Ratio[74]	Funding Ratio Rank	Unfunded Per Capita Liability[75]	Per Capita Liability Rank
Wisconsin	67%	1	$6,720	49
South Dakota	52%	2	$9,511	43
North Carolina	50%	3	$8,225	47
Tennessee	46%	4	$6,531	50
Delaware	45%	5	$10,924	40
New York	44%	6	$15,670	19
Idaho	43%	7	$10,135	42
Washington	43%	8	$12,708	31
Florida	42%	9	$9,380	44
Maine	42%	10	$12,042	34
Georgia	41%	11	$10,239	41
Iowa	41%	12	$12,807	29
Utah	41%	13	$16,350	17
Oregon	40%	14	$18,886	12
California	39%	15	$19,671	10
Texas	39%	16	$11,196	39
Nebraska	38%	17	$8,387	46
Wyoming	38%	18	$19,698	9
Missouri	37%	19	$14,192	23
Indiana	36%	20	$7,304	48
Montana	36%	21	$14,611	21
Arizona	35%	22	$8,871	45
Arkansas	35%	23	$13,512	26
Minnesota	35%	24	$16,952	16
Virginia	35%	25	$11,674	37
Ohio	34%	26	$25,028	3
Nevada	33%	27	$21,472	8
New Mexico	33%	28	$22,251	6
Vermont	33%	29	$11,375	38

[74] The funding ratio is the ratio of the total assets held by pension plans in the 50 states to the present value of all currently known future liabilities, using a discount rate of 2.734 percent.
[75] The unfunded per capita liability is the portion of discounted future liabilities minus assets, divided by the number of people in the state.

Colorado	32%	30	$17,672	15
Maryland	32%	31	$14,062	24
Oklahoma	32%	32	$12,254	32
Pennsylvania	32%	33	$14,235	22
Rhode Island	32%	34	$16,050	18
West Virginia	32%	35	$11,944	36
Alabama	31%	36	$13,450	27
South Carolina	31%	37	$13,280	28
Louisiana	30%	38	$18,264	14
Michigan	30%	39	$13,779	25
New Jersey	30%	40	$22,491	5
Hawaii	29%	41	$21,852	7
Massachusetts	29%	42	$15,545	20
North Dakota	29%	43	$12,192	33
Kansas	28%	44	$12,762	30
New Hampshire	28%	45	$12,026	35
Mississippi	27%	46	$18,722	13
Alaska	25%	47	$40,639	1
Kentucky	24%	48	$18,976	11
Connecticut	23%	49	$24,080	4
Illinois	22%	50	$25,740	2
TOTAL	36%	-	$15,052	-

Source: Joe Luppino-Esposito, *Promises Made, Promises Broken 2014: Unfunded Liabilities Hit $4.7 Trillion*. State Budget Solutions, November 12, 2014. All data are drawn from the 2013 Comprehensive Annual Financial Reports of state-level pension plans.

Table 2

Taxpayer and Employee Contributions to State Pensions (millions of dollars)

Pension System	1998 Employee Contribution	1998 Taxpayer Contribution	2012 Employee Contribution	2012 Taxpayer Contribution	2045 Employee Contribution	2045 Taxpayer Contribution
TRS	441.0	502.9	917.7	2,561.3	2,335.8	8,484.1
SERS	155.9	200.7	259.1	1,391.4	515.0	4,409.0
SURS	221.7	227.7	258.2	985.8	613.7	3,181.7
JRS	10.8	15.7	16.4	63.6	28.7	200.1
GARS	1.2	3.1	1.6	10.5	4.1	43.6
Combined	**830.6**	**950.2**	**1,453.1**	**5,012.6**	**3,497.3**	**16,318.5**

Source: Commission on Government Forecasting and Accountability, *Annual Financial Report on the Financial Condition of Illinois State Retirement Systems*. February 2015.

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