



Allen Steinberg, President, Law Offices of Allen T. Steinberg, PC.

Illinois State Pensions: *How Did We Get Here and Where Are We Going?*

On October 30, 2013, Allen Steinberg presented “Illinois State Pensions: How Did We Get Here and Where Are We Going?” as part of the Center’s Employee Benefits Lunch & Learn Series.

Steinberg is the founder and president of the Law Offices of Allen T. Steinberg, PC. He has more than 30 years of employee benefits experience. A long-time owner at Hewitt Associates, Steinberg served as an advisor to the Taxpayer Action Board, appointed by Governor Quinn in 2009 to identify opportunities for improving Illinois state finances.

Today, the state employee pension system in Illinois is \$100 billion underfunded, representing liabilities for benefits already considered “earned.” How does Illinois reduce this liability? May it do so? Steinberg noted that the anti-cutback rules of ERISA are largely inapplicable to governmental plans.

Next, Steinberg addressed the constitutional issue at the crux of future reform—the Illinois Constitution, Article XIII, Section 5. Pension and Retirement Rights:

“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.”

There are two main interpretations of this language, which Steinberg referred to as the Madier/Carpenter Debates.

Eric Madier (Chief Legal Counsel to Illinois Senate President John J. Cullerton and Parliamentarian of the Illinois Senate) interprets the language as “an enforceable contractual relationship” with protection of contribution rates and subsequent benefit increases arising on the date the employee becomes a member of the pension system. Solutions, then, “must derive from either paying the outstanding liabilities or reducing benefits to current employees via legitimate contract principles.”

By contrast, David Carpenter (Sidley Austin) believes that pension benefits, like salaries, are part of compensation earned in exchange for service; and where a salary may be reduced prospectively, so may pension benefits to be earned in the future. Then, “even if the pension clause protected future benefits, like any other contract, this contract can be modified by the General Assembly in lieu of terminating employees or reducing salaries.”

Steinberg made it clear that how Illinois moves forward with pension reform really hinges on which interpretation of the pension clause is used. Madier’s view would allow only mutually agreed upon contract amendments; Carpenter’s view would allow for pension provisions to be changed unilaterally.

Steinberg’s presentation was an informative and fascinating take on the Illinois pension crisis, and questions from the audience were energetic and passionate. The audience may have walked away with different views on “where do we go from here?” but there was definitely a consensus that we need to go somewhere...soon. ■

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Steinberg began his presentation with an overview of the dozens of plans governed by the Illinois Pension Code. The primary focus of the presentation was on five plans funded by the state, including those for the general assembly, state employees, state university workers, judges, and teachers outside the City of Chicago. As Steinberg explained, plan provisions can only be modified by the General Assembly, and severe underfunding of these and other state plans is due, in large part, to weak and inadequate funding requirements—which requirements were further weakened by legislative manipulation over the years.

In 2012, Illinois had the most underfunded pension system in the nation, with a dismal 39% pension funding. Yet, as Steinberg pointed out, the Illinois Legislature had never missed a funding payment. Instead, the problem arose from using certain actuarial assumptions and continuously changing funding rules. In fact, the accuracy of disclosures regarding Illinois funding methodology has already been challenged by the SEC, with Illinois agreeing to settle the claims (see *SEC release 2013-2017*).



by

Ann Schmidt
JD '12, LLM in Employee Benefits '13

Note: On December 5, 2013, Governor Quinn signed a major overhaul to the main state pension plans, P.A. 98-0599. The Act, passed by the General Assembly on December 3, contains significant changes affecting current employees and retirees. The focus of the Illinois pension debates will now move to the courts.