THE PUBLIC SECTOR

Doing the right thing on pensions (isn't easy or obvious)

by Jonathan Holtzman

California's pension roller derby has been picking up speed. The "Pension Reform Act" would have made sweeping pension changes, but it was withdrawn by its sponsors after the attorney general's ballot summary and title were released. The summary stated, among other things, that the measure would "eliminate constitutional protections for current and future public employees' vested pension benefits."

Simultaneously, the governor's office released draft statutory and constitutional language for his "12-point" pension reform initiative, which requires current employees to split the "normal cost" of pensions with the employer on a 50/50 basis. That would be real progress. Both measures contemplate constitutional amendments and therefore require voter approval.

Complex issues

Those who watch pension issues are beginning to wonder how the dispute is going to work out for the best, and the public has no idea what to believe. Vested rights. Amortization. Unfunded liability. Normal cost. Discount rates. Defined benefits. Hybrid plans. Spiking. Two-tiered retirement plans. Fiduciary duties. Before voters can make an informed judgment, they will need to take a Berlitz course in pension-speak.

But a few things are becoming clear:

- Almost everyone supports reduced benefits for *future* public employees, but those savings are far in the future, especially because most public agencies are downsizing. The emerging consensus is, above all else, that the risks associated with pension plans should be shared by employees and the employer.
- The big legal and politcal issue is what to do about the future benefits of current public employees. On the legal side, everyone agrees that benefits already earned are generally vested. But what about future accruals of benefits and the amount employees contribute to pensions? Can those be changed for current employees when they are specified under charter or other law?
- Despite many good features, Governor Jerry Brown's measure doesn't deal with the cost of paying for the enormous unfunded liability that has arisen in public pension plans due to large retroactive increases in benefits and the pension plans' failure to achieve projected returns. The governor's initiative increases current employees' pension *contributions*. But the plain truth is that no one — public employers, employees, or taxpayers — has enough money to keep pensions afloat without some prospective *benefit* changes affecting current employees.
- The law of vesting is at the center of the roller derby. California courts' take on vesting law — the extent to which the government is contractually bound to maintain benefits for current employees — is stricter than most. The issue is ripe for a *simple* citizen initiative with a clear summary that doesn't say vested rights are being "*eliminated*."

My two cents: The core issue — which was one small but critical part of the withdrawn citizen initiative — is amending the California Constitution to expressly permit reasonable, limited prospective changes in benefits and contributions for current employees. For example, perhaps police and fire pension plans should be subject to prospective change only when the plan is funded at less than 80 percent (based on market valuation) or the employer contribution exceeds, say, 25 percent of pensionable compensation, or both. For nonsafety employees, the employer contribution limit presumably would be lower.

Bottom line

We are running out of time and options. Although the point is sometimes lost in the debate, employees also have an interest in making sure their benefits are adequately funded and jobs aren't vaporized or employee contribution rates increased dramatically to feed the pension beast.

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