THE PUBLIC SECTOR

Muzzling the voters on pensions

by Jon Holtzman

Last month, a unanimous California Public Employees' Retirement System (CalPERS) board tentatively approved a roughly 50% hike in the employer pension contribution rate. The increase in rates will take effect in fiscal year 2014-2015 for state and school employees and in fiscal year 2015-2016 for local governments, with a five-year phase-in period. CalPERS's previous approach, which involved ever greater "smoothing" of asset returns (sometimes referred to as "super-smoothing") was to keep rates low despite catastrophic losses. However, continued economic uncertainty and changes in Government Accounting Standards Board (GASB) rules have made super-smoothing unpalatable and subjected CalPERS to increasing, well-founded attacks.

There's no question that CalPERS faces financial difficulty: The fund lost $100 billion between 2007 and 2009, reducing the projected assets needed to cover future pensions from 101% in 2007 to a low of about 61% in 2009. Since then, it has been recovering slowly. The fund had regained some $96 billion by early 2013, bringing the value of assets back up to about 73% of liabilities, based on market valuation of assets.

In some ways, CalPERS's willingness to "come clean" is refreshing. Until now, it seems to have done everything it could to prevent the public from understanding the magnitude of the pension crisis it had a significant hand in creating. Even with this change, CalPERS is counting on a 7.5% return rate when its own predictions suggest an average of seven percent returns for the next 15 years.

On the other hand, I don't know a single CalPERS city that can survive increases of the magnitude CalPERS envisions without a large influx of new tax revenues and drastic cuts in services. Remember, the ability to raise revenue is highly restricted by Propositions 13 and 218, and the ability to cut services in cities is limited by the need to provide for the health and safety of residents.

What we really need (and didn't get) from the Public Employees' Pension Reform Act (PEPRA), the governor's recent pension reform bill, is true pension reform. Now, that can come only from the voters. Yet in a variety of ways, the opportunity to place pension measures on the ballot is under attack. Recently, a Public Employment Relations Board (PERB) administrative law judge purported to strike down San Diego's pension reform measure—which was placed on the ballot through the signatures of San Diego's residents, not through a vote of the city council. This decision is plainly wrong because, simply put, the mayor had no authority to place a measure on the ballot in his official capacity and therefore had no obligation to negotiate over it. And certainly, the citizens who signed the petition placing the measure on the ballot had no ability or obligation to negotiate with city unions.

Similar challenges to ballot measures affecting labor issues abound. A PERB judge is still mulling over a challenge to 2010's Proposition G in San Francisco, which, among other things, reformed San Francisco Municipal Railway's method of setting compensation and requires that bargaining impasses be submitted to arbitration. And, of course, San Jose is facing both PERB complaints and civil lawsuits challenging its pension measure on any number of grounds.

During the debates over PEPRA, various unions attempted to use the legislation to eliminate the risk of initiatives on pensions. That attempt largely fizzled, but a bill recently introduced by Assemblyman Isadore Hall, a Democrat from Los Angeles, would expressly block citizen initiatives on pension matters.

Seeing the damage that Proposition 13 has done to California, I have reservations about citizen initiatives. But pension obligations are one of the biggest sources of municipal debt. If the public is required to vote on general obligation bonds, shouldn't it have a say in an even larger obligation that extends for 30 years or more?

Under the California Constitution, all power resides in the people. If state government is perceived as defying the will of local voters, government reforms sought will become broader and more fundamental, and a statewide ballot initiative reinforcing local "home rule" seems more probable. CalPERS's recent actions ensure the pension issue isn't going away anytime soon. We had best begin looking for real solutions.

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