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## **Illinois Pension Bout Tests Nation Grappling With Shortfalls.**

(Bloomberg) — Illinois's remedy for the state's worst-in-the-nation \$111 billion pension-funding shortfall was disliked by lawmakers who voted for it, the new governor who inherited it and public employee unions who sued to void it.

Attorney General Lisa Madigan on Wednesday asked the state's Supreme Court to resurrect it.

The 2013 measure to cut cost-of-living increases and boost the retirement age was struck down last year by an Illinois judge who found it violated the state constitution's ban on reducing public worker retirement benefits. The dispute is being watched around the country as state and local governments faced total pension shortfalls of more than \$1 trillion in 2013.

Illinois Solicitor General Carolyn Shapiro argued Wednesday that the state should be able to invoke its "police powers" in a time of fiscal crisis.

"Invoking police powers is not something the state could do willy nilly," Shapiro said responding to a question from Justice Robert Thomas. "Raising taxes cannot always be the answer to a fiscal crisis."

### **Few Questions**

The state Supreme Court's seven-judge panel asked few questions during Wednesday's hearing and gave no timeframe for a ruling. To win a reversal, Madigan must convince at least four of the court's seven justices that the constitutional provision — which says a public worker's pension membership is a contract "the benefits of which shall not be diminished or impaired" — is something less than absolute.

Thomas pressed Shapiro on whether the drafters of the provision intended to protect those benefits in difficult economic times. When Shapiro replied she didn't believe that was the entirety of the intent, Thomas asked if it would be "problematic" if the court believed it was.

The state cannot be forced to surrender its sovereign power to protect the general welfare of the people, Shapiro responded.

Gino DiVito, an attorney for the suing unions, countered that the provision was "explicit, clear and unambiguous" regardless of the state's argument for recognition of a possible "doomsday scenario."

Illinois has the lowest credit among the 50 U.S. states. Last month, Governor Bruce Rauner, who defeated Democrat Pat Quinn in November, proposed an array of spending cuts to close a \$6.2 billion budget shortfall.

### **Pension Repair**

If the pension fix is upheld, Illinois will save about \$1 billion on its \$7.5 billion contribution

requirement for 2015, which means that money can be spent elsewhere, said Laurence Msall, president of the Civic Federation, a Chicago-based independent budget watchdog group.

As a candidate, Rauner criticized the pension-repair bill, under which lawmakers planned to save about \$145 billion over 30 years.

Before the legislators voted on it, Rauner said the plan “barely scratches the surface of the problem.” The Republican, a former venture capitalist, has called for shifting some public employees to a defined-contribution plan, similar to a 401(k).

Illinois pension changes were attained in 2013 following years of legislative gridlock and an unsuccessful attempt by Quinn to dock lawmakers’ pay to force a resolution.

Public worker unions, banding together as a coalition called We Are One Illinois, sued to block the measure in January 2014, arguing its members’ benefit plans are inviolable. Springfield Judge John Belz put the plan on hold in May and declared it void in November.

## **Health Plans**

His ruling came just four months after the state Supreme Court rejected Illinois’ attempt to reduce its contributions for government retiree health-insurance plans. The justices, in a 6-1 decision, relied on the same constitutional provision.

“We believe the language of the pension clause is very clear,” said Anders Lindall, a spokesman for the American Federation of State County and Municipal Employees Council 31, which has more than 75,000 members.

The provision was added to the state constitution to protect public workers from lawmakers making “irresponsible choices” and then looking to retirees’ life savings for a remedy, Lindall said.

## **Super-Contracts**

Madigan maintains that interpreting the constitution that way would create super-contracts and nullify the state’s power to act for the greater good.

“If the pension clause really bars the state’s exercise of its police powers under every possible circumstance, no matter how dire, then the ‘contractual relationship’ the clause creates is unlike any other contractual relationship recognized in American law,” she said in court papers.

Illinois House Speaker Michael Madigan, the attorney general’s father, won’t comment on the issue, his spokesman Steve Brown said. State Senate President John Cullerton believes the law violates the Illinois constitution, spokeswoman Rikeesha Phelon said.

“He supported last year’s pension reform so that it could advance as a test case,” Phelon in a March 9 e-mail. Both legislative leaders are Democrats.

Nationally, state and local government pension plans in 2013 had about 72 percent of the money needed to meet retirement obligations, according to a study released in June by the Center for Retirement Research at Boston College.

State constitutions have been invoked elsewhere to try to prevent cuts to public pensions. In Rhode Island, unions settled with the state over pension cuts before their constitutional challenge could be put to the test. In municipal bankruptcy cases in Detroit and California, judges ruled that federal law overrode state bans on cutting pensions.

With the Supreme Court arguments looming, two lawsuits involving changes to Chicago employee benefits have been put on hold because their fate might hinge on what the justices decide.

“The governor’s office will take appropriate action depending on how the Illinois Supreme Court rules,” said Rauner’s press secretary, Catherine Kelly. “The current pension system is unaffordable and is choking the state’s budget.”

The case is *In re Pension Reform Litigation*, 118585, Illinois Supreme Court (Springfield).

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