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## **Courts next battleground after pension reform bill squeaks by**

With more than a dozen Senate Democrats reversing their previous vote on a pension reform bill that guts retirement benefits to public workers and retirees, the new version of Senate Bill 1 passed both chambers of the Illinois General Assembly Tuesday afternoon and was headed to Governor Pat Quinn's desk for what is expected to be a quick signature.

The legislative fight now over, the real war now appears headed for the court system where an immediate legal challenge to the constitutionality of the new law is expected.

IASA has had retired judge Gino L. DiVito, an attorney who is very experienced in matters involving pension and constitutional law, on legal retainer for the past couple of years. DiVito previously has advised IASA that a cap on pensionable salaries and limiting the automatic annual increases, or the COLAs, violate the Pension Protection Clause of the Illinois Constitution. DiVito cited previous court rulings, including cases where the Illinois Supreme Court has consistently invalidated amendments to the Pension Code where the result is to diminish benefits.

IASA will be meeting with other stakeholders in this legal fight to map out a coordinated strategy to challenge the provisions of SB 1 that we believe to be unconstitutional.

Tuesday's drama began with a subject matter hearing in front of the Senate Conference Committee on SB 1. However, that was a dog-and-pony show as nine of the 10 members of the pension conference committee already had signed off on the proposal Monday night, and the testimony that was given was a rehash of points made in previous hearings.

The only member who refused to sign off on the proposal was Democrat Senator Linda Holmes, who has steadfastly argued that the new SB 1, like the old version, is patently unfair to public workers and retirees.

"This is a budgetary problem, not a pension problem," Holmes said during the Senate floor debate. "This is no different than a thief coming in the night and stealing your valuables. But it isn't a thief, it's elected legislators looking you in the eye and saying 'We're going to steal your future.' ...It's reprehensible."

IASA Executive Director Dr. Brent Clark submitted a [letter in opposition to SB 1](#), specifically noting how the pensionable salary cap likely would cause a decrease in the quality of candidates for school administrator positions in the future.

The House passed the measure that closely resembled House Speaker Michael Madigan's original SB 1 by a 62-53-1 vote, with 47 Democrats and 15 Republicans voting for the measure. The Senate passed the legislation with a bare minimum of 30 votes, including 10 Republican votes after Senate Republican Leader Christine Radogno (Lemont) pushed hard. The Republicans had one defection from the original SB 1 vote when gubernatorial candidate Kirk Dillard switched his vote to "no," but Karen McConnaughay (R-St. Charles) switched to a "yes" vote.

That meant that 14 Senate Democrats who had voted against the original SB 1 supported the new bill. They were led by Senator Kwame Raoul (Chicago), who chaired the pension conference committee and even admitted SB 1 was not the bill he preferred. The list of Senate Democrats who voted no on the first SB 1, but switched Tuesday also included Senators Bill Cunningham (Chicago), Mattie Hunter (Chicago), Michael Jacobs (East Moline), Emil Jones III (Chicago), Dan Kotowski (Park Ridge), Iris Martinez (Chicago), Pat McGuire (Joliet), Julie Morrison (Deerfield), John Mulroe (Chicago), Antonio Munoz (Chicago), Martin Sandoval (Chicago), Ira Silverstein (Chicago), and Patricia Van Pelt (Chicago).

The pension bill is 327 pages long, but a two-page [IASA summary](#) is available. Some of the main items include:

- A reduction in the cost-of-living adjustment (COLA) to 3 percent of the *lesser* of the total annuity payable at the time of the increase or \$1,000 multiplied by an employee's years of service.
- Retirement age for current employees would be increased by four months for every year an employee is under age 46 as of June 1, 2014, for up to five years.
- A cap on pensionable earnings will be set at the *greater* of the current Tier 2 cap plus subsequent increases, current annual creditable earnings of contracts and collective bargaining agreements in place on the effective date of the legislation, or the final stated creditable earnings in grandfathered contracts or collective bargaining agreements.

As discussed in Tuesday's *Capitol Watch*, it is expected that a lawsuit challenging SB 1 would be heard in Circuit Court, where a judge might issue a stay, which would prevent the provisions from being implemented until the lawsuit is resolved, or make the state place funds in escrow for the pension benefits in question until there is a final resolution. A Circuit Court ruling could be appealed to the Appellate Court or could go directly to the Illinois Supreme Court. Most legal observers believe the court fight could last as long as one or two years.

In her remarks during the Senate floor debate, Senator Toi Hutchinson (D-Olympia Fields) asked several questions regarding whether the state had explored all other options to get a

handle on its fiscal problems. She was told that there were other options, but slashing pension benefits was what the "political climate" would allow.

Hutchinson quoted from one of the sponsors of the pension protection clause in the 1970 Constitutional Convention who was seeking to protect the future benefits of public workers and retirees. Hutchinson, who is an attorney, concluded by saying, "I am not a constitutional lawyer...but I can read."

[Senate Roll Call](#)

[House Roll Call](#)

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