

**Civic Federation & Federal Reserve Bank of Chicago Forum
Navigating Pension Reform in Illinois: What Lies Ahead?**

**Proposed Model Guidelines for a
Constitutional Amendment or Legislative Public Pension
Funding Policy to Address Illinois Public Pension Crisis**

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I. Overview of How the State and Local Government Public Pension Underfunding Problem Developed

A. State and Local Government Pension Funds Status:

1. Approximately 4,000 public sector retirement systems for state and local governments in the United States with \$3.8 trillion in assets, 14.4 million current employees, 9 million retirees and annual aggregate benefit distributions of \$228.5 billion.
2. The amount of pension underfunding for states and local governments is estimated to range between \$1 to \$3 trillion.
3. This unfunded liability for pensions can be compared to the estimated FY2016 revenue of \$3.3 trillion for state and local governments.
4. A recent national survey of 168 leading state and local government credit analysts were asked “What do you think are the five most important issues/trends facing the municipal bond market right now [March 2018]? Ninety-two percent responded, “public pension funding levels, pension obligation bonds.” See PNC, U.S. Municipal Bond Market, Municipal Bond Analyst Survey 2018 (April 5, 2018), Thomas Kozik.

I. Overview of How the State and Local Government Public Pension Underfunding Problem Developed

- B. Public Pension Benefits from Gratuities to Contractual Obligations.
- C. Changes in Demographics of Public Workers Over the Last 60 Years Added to the Pension Underfunding Problem – the Dynamic of Longer Lifespans and Lower Retirement Ages.
- D. Economic Downturns and the Need to Balance the Budgets Contributed to Deferred Pension Funding and Increasing Benefits to Make Up for Delayed Funding.

II. Efforts to Address Pension Underfunding Problem with Involuntary Pension Reforms, Resulting in Pension Reform Litigation

A. Recent Pension Reform and Litigation:

1. Between 2010 and 2015, over 45 states have addressed pension reform. To date, since 2011, there have been over 20 major state or federal state court decisions dealing with pension reforms by state and local governments.
2. Eighty percent (80%) (16 out of 20) of those decisions affirmed the pension reform, which covered reduction of benefits, including cost of living adjustments (“COLA”), or increase of employee contributions, as necessary, many times citing the higher public purpose of assuring funds for essential governmental services and infrastructure.

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3. Of the four states that did not approve the pension reform, two states, Oregon and Montana, cited the failure of the proponents of reform to prove a balancing of equities in favor of reform for a higher public purpose.
4. Another state, Arizona, included state court judges in the reform, which violated another of that state's constitutional provisions about improper influence over judicial officers during service.
5. The recent Illinois Supreme Court rulings appear to stand singularly against pension reform for a higher public purpose or as a reasonable effort to save an insolvent pension system.

II. Efforts to Address Pension Underfunding Problem with Involuntary Pension Reforms, Resulting in Pension Reform Litigation

B. Examples of Recent Pension Reforms and Pension Reform Litigation:

1. **California:** California's Pension Reform of 2012.
2. **Rhode Island:** COLA suspension and created hybrid plan.
3. **COLA Litigation:** Maine, Minnesota, New Jersey, Rhode Island, South Dakota, Colorado and others. The Arizona Supreme Court case.
4. **Successful Illinois Pension Reform:** Illinois Pension Legislation of 2010 for new employees as of January 1, 2011 was not seriously challenged and is effective. This created tier II for new employees with reduced pension benefits.

II. Efforts to Address Pension Underfunding Problem with Involuntary Pension Reforms, Resulting in Pension Reform Litigation

5. Illinois Pension Reform Declared Unconstitutional:

- Illinois pension reform legislation in 2013, providing a claimed \$160 billion in savings over a 30-year period, was struck down by the Illinois Supreme Court as unconstitutional in the case of *In re Pension Reform Litigation* (Ill. Supreme Court, May 8, 2015, hereinafter “*Illinois State Pension Reform Case*”).
- The supreme court held the reform legislation was unconstitutional under the pension protection clause of the Illinois Constitution Art. XIII § 5 (hereinafter “*Pension Protection Clause*”) whereby, according to the Illinois court, benefits accrue to the public worker once an individual begins work and becomes a member of a public retirement system, and those contractual provisions cannot be impaired or diminished even in the face of an important public purpose argument.
- The court held that there could be no exercise of police power to disregard the express provision of the Pension Protection Clause, and the failure of the legislature to act consistent with the Pension Protection Clause in the face of the well-known need for funding of the unfunded pension obligations undermines the police power argument.

II. Efforts to Address Pension Underfunding Problem with Involuntary Pension Reforms, Resulting in Pension Reform Litigation

6. Chicago Pension Reform Denied:

- City of Chicago Labor Pension Reform litigation involving public laborers and workers (Ill. Supreme Court, March 24, 2016, hereinafter “*City of Chicago Pension Reform Case*”) resulted in the Illinois Supreme Court ruling that the reforms were unconstitutional as a violation of Pension Protection Clause for the reasons set forth in the Illinois State Pension Reform case.
- The court further found that the alleged consideration for the modification was already required funding and not sufficient to justify the change in benefits.
- Further, the Illinois Supreme Court ruled that Section 22-403 of the Illinois Pension Code in effect prior to 1970, which provided that the State of Illinois and City of Chicago were not obligated to fund more than the statutory required payment that the City had consistently funded, was superseded by the Pension Protection Clause.
- The Supreme Court, at the same time, recognized the timing and amount of funding the pension obligation was a legislative power of the city that the court could not then order or interfere with, and it was up to the city to decide the time and amount of funding.

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7. San Jose and San Diego Attempts.

8. Arizona Public Safety Workers Constitutional Amendment.

C. Involuntary Modifications of Public Pensions Outside of Chapter 9 Bankruptcy Is Difficult–(Illinois does not authorize its municipalities to file Chapter 9).

D. Many State and Local Governments Have No Current Pension Funding Problem or Have Resolved It.

E. Survival of the State or Local Government Is Key to Long-term Survival and Funding of Pensions.

III. Recent Illinois Supreme Court Decisions Elevate the Pension Protection Clause of the Illinois Constitution Above the Police Power

In its 2008 Report on State of Illinois Constitutional Convention Fiscal Issues, the Civic Federation accurately predicted the recent crisis with respect to public pension benefits. The Civic Federation noted that, because pension benefits are perceived to be constitutionally guaranteed, there is little interest or incentive by employees to accept or support any changes to existing retirement systems.

A. The Kanerva Case. In *Kanerva vs. Weems*, 2014 IL 115811 (2014) (“*Kanerva*”), the court held that the state’s provision of health insurance premium subsidies for retirees is a benefit of membership in a pension or retirement system within the meaning of the Illinois Constitution Pension Protection Clause.

III. Recent Illinois Supreme Court Decisions Elevate the Pension Protection Clause of the Illinois Constitution Above the Police Power

- B. **Illinois State Pension Reform Legislation.** The following year, in the *In re Pension Reform Litigation*, 2015 IL 118585 (2015), the Illinois State Pension Reform Case, the Illinois Supreme Court clarified that pension benefit protections attach when the public employee is first employed and so the Pension Reform modifications and reduction provisions of the public act in question violated the Pension Protection Clause and were unconstitutional.

III. Recent Illinois Supreme Court Decisions Elevate the Pension Protection Clause of the Illinois Constitution Above the Police Power

- C. **City of Chicago Pension Reform Litigation**. More recently, in *Jones vs. Municipal Employees Annuity and Benefit Fund of Chicago*, 2016 IL 119618 (2016), the City of Chicago Pension Reform Case, the Illinois Supreme Court, consistent with its earlier decisions, ruled that the annuity reducing provisions of a public act which amended the Illinois Pension Code as it pertains to certain City of Chicago pension funds contravened the Pension Protection Clause and that exigent circumstances were no justification for such reduction.

IV. These Recent Illinois Supreme Court Decisions Appear to Be Contrary to the Holdings of the United States Supreme Court, Which Has Consistently Ruled That States Cannot Abdicate Their Inalienable Governmental Power to Provide Essential Governmental Services

A. The Contract Clause of the United States Constitution Does Not Prevent the Exercise of Police Power:

1. In a Government Contractual Relationship, the Government Does Not Surrender Essential Governmental Powers: For nearly 200 years, the United States Supreme Court has held that legislatures lack the power to “surrende[r] an essential attribute of [their] sovereignty” or “bargain away the police power of a State” *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 23 (1977) (quoting *Stone v. Mississippi*, 101 U.S. 814, 817 (1880)). As the U.S. Supreme Court explained in *Butchers’ Union Slaughter-House & Live-Stock Landing Co. v. Crescent City Live-Stock Landing & Slaughter-House Co.*, 111 U.S. 746, 751 (1884), “[t]he preservation of [the public health and morals] is so necessary to the best interests of social organization, that a wise policy forbids the legislative body to divest itself of the power to enact laws for the preservation of health and the repression of crime.”
2. The Police Power Is Paramount to any Contractual Rights and the Implied Reservation of the Rights of Government.

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B. The United States Supreme Court Recognizes Balancing of Interests as Applied to the Contract Clause:

1. *Homebuilding & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934) (“*Blaisdell*”), the United States Supreme Court upheld the Minnesota Mortgage Foreclosure Moratorium Law as a valid exercise of the police power, noting that the constitutional protection against the abrogation of contracts was qualified by the authority the state possesses to safeguard the vital interests of its people and that the legislature cannot bargain away the public health or the public morals.
2. Further, the economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding any interference with contracts.

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3. Importantly for this analysis, the *Blaisdell* court noted that there needs to be a *rational compromise* between individual rights and the public welfare. It articulated the conditions that justify interference with contractual rights, including: (1) an emergency is present, (2) the legislation is addressed to a legitimate end, (3) the relief afforded is of a character appropriate to the emergency and (4) the conditions do not appear to be unreasonable. *Id.* at 444.
4. **U.S. Supreme Court Cases Support Impairment of Pension Benefits for a Higher Public Purpose – General Welfare of Citizens:** The wisdom of the above-cited United States Supreme Court cases should reinforce the appropriate interpretation of the Pension Protection Clause that unaffordable pension benefits whose funding would interfere with the appropriate funding of governmental services and infrastructure must be reasonably adjusted for the sake of all concerned.

IV. **These Recent Illinois Supreme Court Decisions Appear to Be Contrary to the Holdings of the United States Supreme Court, Which Has Consistently Ruled That States Cannot Abdicate Their Inalienable Governmental Power to Provide Essential Governmental Services**

C. The Recent Illinois Pension Clause Decisions Fail to Apply the Test of the United States Supreme Court to the Contractual Right Created by the Illinois Pension Protection Clause.

D. The Illinois Supreme Court Has in Past Decisions Recognized the Right of the State to Exercise Police Power and Impair Contracts for a Higher Purpose: The Illinois Supreme Court has held that “the contract clause does not immunize contractual obligations from every conceivable kind of impairment *or from the effect of a reasonable exercise by the States of their police power.*” *George D. Hardin, Inc. v. Vill. Of Mount Prospect*, 99 Ill.2d 96, 102 (1983) (emphasis added).

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E. Current Pension Obligations of the State and Certain Local Governments Are Not Sustainable and Affordable and Threaten the Provision of Essential Services and Needed Infrastructure Improvements:

1. State of Illinois Public Pension Burden:

- Pension contribution from general funds more than quadrupled to \$6.9 billion in FY2017 from \$1.6 billion in FY2008 and are expected to increase to \$7.0 billion in FY2018 or approaching 23% of the general fund revenues in FY2018.
- The State of Illinois unpaid bills reached \$6.997 billion by FY2016 and were, as of the end of FY2017, approximately \$14.7 billion.
- According to the Civic Federation, by the end of FY2016 the State of Illinois unfunded liability had grown to \$129.1 billion based on the market value of assets and funded ratio about 40%, which is one of the lowest among the states.

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2. Public Pension Obligations Demand Too Large a Percentage of the State of Illinois' General Fund:

- Michael Cembalest of J.P. Morgan Asset Management, in his 2014 and 2016 Reports, calculated that approximately 40% of Illinois' state revenue collected over the next 30-year period would be required to pay (a) interest on bonded debt, and the state's share of (b) defined benefit plan actuarial required contributions (ARC), (c) retiree health care costs, and (d) defined contribution plan expenses with level payments and a 6% pension investment return.
- This is a clear demonstration of crowding out needed funding of Governmental Services.
- Only eleven other states are above 15% of state revenues collected being used for pension-related obligations, and only three states, including Illinois, are above 25%. Illinois had the highest percentage of revenues collected required to pay pension underfunding obligations at approximately 40% of state revenues collected over a 30-year period.

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3. The State of Illinois Public Pension Problem Has a Long History:

- In 1995, when the state enacted previous pension reform legislation, the unfunded pension obligation for the State of Illinois was \$19.8 billion. There has been a 650% increase in the unfunded pension obligations over the last 20 years to \$129.8 billion.
- The unfunded pension fund liabilities for the state's pension plans of \$129.8 billion as of FY2016 is approximately 333% of the State of Illinois general fund revenues for FY2016.
- Pension obligations being underfunded by 100% to 200% of annual revenues collected by government is a very difficult challenge but underfunding exceeding 300% of a government's annual revenues collected is fatal to government services and clearly unaffordable and unsustainable.

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4. There Does Not Appear to Be the Ability to Fully Fund Pension and Fund Essential Services and Needed Infrastructure Improvements:

- The Wirepoints Report on Illinois public pension situation noted:
 - Illinois household income has grown by 111% over the last 30 years, promised pension benefits have grown 1,061%.
 - Illinois has contributed \$24 billion more to pensions than the original 1994 Edgar ramp required for the period up to 2018.
 - Illinois has the third highest in the nation growth of accrual of pension obligations between 2003 and 2015 namely 7.5% with the two higher ones being New Hampshire and New Jersey at 7.8%. At the same time, Illinois total pension assets grew at only 5.9%.
 - Illinois pension benefits for its five state pension plans grew at 8.8% since 1987. (Report at 22). In addition, the Report asserts that there would have been no crisis or underfunding issue if pension benefits had grown at 5.4% since 1987.

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F. If Needed Pension Reforms in Illinois Have Failed or Appear to Be Impossible, Does It Mean That Public Pension Contractual Obligations Cannot Be Altered and the State and Various Local Governments Will Suffer Unbalanced Budgets, Deficits and the Inability to Fund Necessary Governmental Services and Infrastructure Improvements? No, that is not necessarily the result.

1. The essential mission of government is to provide needed governmental services and infrastructure improvements at an acceptable level for the health, safety and welfare of its citizens.
2. The U.S. Supreme Court rulings permit impairment of contracts for a higher public purpose such as modifying public pension contracts for the public health, safety and welfare of citizens and to allow sufficient funds to pay for needed essential services and infrastructure improvements.

IV. These Recent Illinois Supreme Court Decisions Appear to Be Contrary to the Holdings of the United States Supreme Court, Which Has Consistently Ruled That States Cannot Abdicate Their Inalienable Governmental Power to Provide Essential Governmental Services

3. There are at least four possible alternatives available to state and local governments who face this serious problem of needed pension reform. These alternatives assume that all traditional pension reform efforts have been explored including raising taxes and reducing expenditures to the extent possible and needed pension plan adjustments and modifications appear to be impossible legally or on a consensual basis. The four alternatives to be considered by the state or local government employees are:
 - (A) Prepackaged Chapter 9 plan of debt adjustment (which requires state authorization to file Chapter 9 which Illinois has not so authorized municipalities to file Chapter 9, however, HB 438 and 501 were introduced in 2017 and provide for Illinois municipalities to file Chapter 9 – these bills did not come out of committee),

IV. These Recent Illinois Supreme Court Decisions Appear to Be Contrary to the Holdings of the United States Supreme Court, Which Has Consistently Ruled That States Cannot Abdicate Their Inalienable Governmental Power to Provide Essential Governmental Services

- (B) Creation of a special federal bankruptcy court for insolvent public pension funds (which requires federal legislation to be enacted),
- (C) Government Oversight, Refinance and Debt Adjustment Commission (“*GORDAC*”) to assist where public pension reform is otherwise legally or practically impossible (which is similar to the LGPA proposed by the Civic Federation and in 2017 HB 2575 was introduced that follows the LGPA model, but the bill did not come out of committee), and
- (D) Model Guidelines for a state constitutional amendment or legislative public pension funding policy for a higher public good: the necessity of pension benefits adjustment for the public safety and welfare in those situations where state constitutions, statutes or case law appear to prohibit any impairment or reduction of pension benefits.

IV. These Recent Illinois Supreme Court Decisions Appear to Be Contrary to the Holdings of the United States Supreme Court, Which Has Consistently Ruled That States Cannot Abdicate Their Inalienable Governmental Power to Provide Essential Governmental Services

4. Model Guidelines for a state constitution amendment or legislative public pension funding policy for a higher public purpose appear a reasonable solution since Chapter 9 state authorization to file Chapter 9 legislation, GORDAC or LGPA legislation have in some form already been submitted to the Illinois legislature (2017 HB 2575, 501 and 438) and a federal bankruptcy court for public pension funds is dependent on the United States Congress to enact a law.

V. Amendment to the Illinois Constitution May Not Be the Politically Most Likely Approach to the Problem of Resolving Illinois Public Pensions

A. The Provisions of the Illinois Constitution Regarding Constitutional Revision Will Be Difficult to Satisfy:

1. **Amendment by Constitutional Convention.** The Illinois General Assembly voted to place the question of a convention on the ballot and three-fifths of those voting on the question or a majority of those voting in the election approved (*“Favorable Election Vote”*). See Section 1 of Article XIV of the Illinois Constitution.
2. **Amendment by Action of the Legislature.** The General Assembly may initiate a proposed amendment by a vote of three-fifths of both Houses and a Favorable Election Vote. See Section 2 of Article XIV of the Illinois Constitution.

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3. **Amendment by Petition of Citizens.** Petition by at least 8% of the total votes cast for candidate for Governor in the preceding gubernatorial election but subject matter of the amendment build to structural and procedural subject contained in Article IV of the Legislature Articles. See Section 3 of Article XIV of the Illinois Constitution.

B. **Amendment of the Illinois Pension Protection Clause Can Only Be Done by Constitutional Convention or Legislative Action Alternatives:** The education of citizens to the extent of the public pension funding problem is essential to any successful efforts.

C. **There Are Few Precedents Available from States with Constitutional Provisions Protecting Pensions to Guide any Proposed Constitutional Amendment:** See *e.g.*, Arizona.

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D. Model Guidelines for a Constitutional Amendment or Legislative Public Pension Funding Policy Where State Constitutional and Statutory Provisions and Court Rulings Appear to Prohibit or Impair Needed Pension Reform:

MODEL GUIDELINES FOR A CONSTITUTIONAL AMENDMENT OR LEGISLATIVE FUNDING POLICY TO PREVENT A PUBLIC PENSION CRISIS

1. ***Balanced Budget.*** Balanced Operating Budget for Governmental Entity for the fiscal year where all expenses and liabilities that are due and payable do not exceed anticipated revenues of the Governmental Entity (“*Balanced Budget*”).

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2. ***Pay Annually the ADC.*** The Governmental Entity shall pay in each and every fiscal year the actuarially determined contribution (“ADC”) it is liable for under its pension or retirement system for (“*Pension Benefits*”) for that fiscal year provided the effect of any modification or reduction of pension benefits required by these Guidelines or determined by its legislative body are included in such calculations. The state may from time to time enact standards and accepted reasonable assumptions to be used in calculating the ADC.
3. ***Reasonable and Necessary Modification Permitted.*** Reasonable modification and reduction of Pension Benefits of the Governmental Entity shall be permitted that are necessary for a higher important public purpose of fully funding and providing for essential governmental services at an acceptable level including needed infrastructure and capital improvements (“*Governmental Services*”) as determined in good faith by the Governmental Entity’s legislative body or its equivalent (“*Legislative Body*”). Again, the state may from time to time enact standards or further guidelines for what is sustainable and affordable and an acceptable level of Governmental Services.

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4. ***Fully Funding of Governmental Services at Acceptable Level.*** The Governmental Entity's Legislative Body shall in good faith determine the amount of full funding of Governmental Services at the acceptable level required for the welfare of its citizens and the appropriate operation of its government.
5. ***Reasonableness of Modification of Public Pension Benefits in Relation to Governmental Entity's Ability to Fully Fund and Afford Governmental Services and Pension Benefits.*** The Governmental Entity's Legislative Body shall make a good faith determination of the reasonableness of any modification or reduction of Pension Benefits in relation to the Governmental Entity's ability to fully fund and provide Governmental Services and afford and fund actuarially determined Pension Benefits as well as maintain a Balanced Budget for the current fiscal year and the foreseeable future. The inability to do so requires the reasonable modification or reduction of Pension Benefits to that which is affordable and sustainable in the good faith determination of the Legislative Body consistent with these Model Guidelines.

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6. ***Priority of Public Pension Modifications So That to the Extent Possible Any Modification Will Be First Made to Unearned Future Benefits and Any Impairment of Vested Rights Would Be Subject to a Court Validation Process.*** Any required modification or reduction of Public Pension Benefits may be for Pension Benefits to be earned prior to or after the effective date of the modification or reduction with the priority that any modification or reduction first be made to the extent reasonable possible to Pension Benefits to be earned in the future. Any modification or reduction of Pension Benefits earned shall be effective only after a court validation proceeding that confirms the need for the modification or reduction of Pension Benefits in accordance with the Model Guidelines and permitted impairment of contractual rights for a higher public purpose. The Government Entity may also seek a court validation of any reduction or modification of Pension Benefits including Pension Benefits to be earned in the future. This court validation process would follow a statutory procedure similar to bond validation proceedings where the court will validate the reduction or modification after a petition by the Governmental Entity; a hearing with notice to affected parties who have an opportunity to appear determining the modifications and reductions are permitted for a higher public purpose pursuant to these Model Guidelines and required actions and legislative findings have been made.

V. Amendment to the Illinois Constitution May Not Be the Politically Most Likely Approach to the Problem of Resolving Illinois Public Pensions

7. ***Public Pension Benefits Should Be Affordable and Sustainable by the Governmental Entity.*** The Legislative Body in any increase in public Pension Benefits to be granted by a Governmental Entity should determine consistent with the Model Guideline that any increase in benefits are affordable and sustainable by the Governmental Entity.

V. Amendment to the Illinois Constitution May Not Be the Politically Most Likely Approach to the Problem of Resolving Illinois Public Pensions

8. ***Additional Legislative Findings for Any Modification of Pension Benefits.*** These legislative findings, in addition to those legislative findings and determination as noted above, would generally consist of:
 - (A) ***Existence of Governmental Emergency.*** A governmental emergency exists or will occur in the foreseeable future that will adversely affect the health, safety and welfare of its citizens and the Governmental Entity's ability to fully fund and provide Governmental Services. Any further increase in taxes and any further reduction in expenditures are in the good faith judgement of the Legislative Body unreasonable and contrary to the interest of citizens and tax payers as well as contrary to financially responsible government.

V. Amendment to the Illinois Constitution May Not Be the Politically Most Likely Approach to the Problem of Resolving Illinois Public Pensions

- (B) *Modifications Are Mandated for the Public Good.* Any modification or reduction of Pension Benefits by the Legislative Body are required in the exercise of its governmental powers in order for the Governmental Entity to be able to fund and provide Governmental Services for other higher public purpose of the health, safety and welfare of its citizens.

V. Amendment to the Illinois Constitution May Not Be the Politically Most Likely Approach to the Problem of Resolving Illinois Public Pensions

- (C) ***Any Modification Is Reasonable in Relation to the Governmental Emergency and the Extent of Any Impairment with Pension Benefits Paid to the Fullest Extent Possible.*** A modification or reduction of Pension Benefits is appropriate and reasonable in relation to the governmental emergency and adverse effects set forth in the legislative finding and the extent of any impairment of Pension Benefits, Pension Benefits should be funded to the fullest extent possible and paid without modification or reduction so long as no governmental emergency exists and there is full funding of and provision for Governmental Services as mandated by the enactment of the Model Guidelines.

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- (D) ***The Harm to Pension Beneficiaries Due to a Modification Is Outweighed by the Harm Suffered by the Governmental Entity and the Citizens.*** The harm caused by any modification or reduction of Pension Benefits to the beneficiaries pursuant to these Model Guidelines are, in the reasonable judgement of the Legislative Body, the least required under the requirements of these Guidelines and is outweighed by the harm to be suffered by the Governmental Entity and its citizens if such modification and reduction of Pension Benefits required hereunder are not made to address the governmental emergency and the lack of funding for providing Governmental Services to its citizens.

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- (E) *The Financial Creditability of the Governmental Entity Preserved.* In the reasonable judgment of the Legislative Body, its financial credibility and access to the credit markets are encouraged by any Legislative Body's action hereunder and are not adversely affected or limited by any modification and reduction to such Pension Benefits required hereunder.

V. Amendment to the Illinois Constitution May Not Be the Politically Most Likely Approach to the Problem of Resolving Illinois Public Pensions

9. ***Any Modification or Reduction of Pension Benefits Pursuant to These Principles Is Not Considered an Impairment or Diminishment.*** Any modification or reduction of Pension Benefits in compliance with these Model Guidelines hereunder shall not be considered under applicable state constitution, statutes and court rulings to be an impairment or diminishment of the contractual right to Pension Benefits because such Pension Benefits could not realistically be paid by the Governmental Entity due to limited financial resources and the Governmental Entity could not at the same time pay the Pension Benefits without such modification or reduction and fulfill its primary mission of fully funding provisions for Governmental Services along with its financial survival.

V. Amendment to the Illinois Constitution May Not Be the Politically Most Likely Approach to the Problem of Resolving Illinois Public Pensions

- E. If No Constitutional Amendment Pursuant to the Model Guidelines to the Pension Protection Clause of the Illinois Constitution Is Possible Then the Proposed Model Guidelines Can Be Adopted by Governmental Entities as a Statement of Public Pension Policy and Enforced Through Litigation, If Necessary.
- F. In the Long Run Public Education of the Extent and Seriousness of the Crisis Must Be Accomplished.
- G. Precise Public Pension Reform under the Model Guidelines and Corresponding Public Pension Policy Is Left to Each Governmental Entity to Decide for Itself Given Its Unique Circumstances.

VI. Conclusion

- A. If pension reform efforts under current state law have failed and state constitutional and statutory provisions are obstacles to any needed pension reform efforts, the answer should not and cannot be that the government reduces funding for essential governmental services, services decline to unacceptable levels, the government melts financially and corporate and individual taxpayers leave.
- B. If public pension funding issues are an unwillingness to pay from a government that has the ability to pay, then the government must step-up and fund the underfunded pension obligation.

VI. Conclusion

- C. If the government has the inability, financially, to pay the underfunded public pension obligations, and it attempts a voluntary or negotiated needed pension reform has failed or appear impossible due to the Constitutional Pension Protection Clause and court rulings, then the Model Guidelines for a constitutional amendment or a legislative public pension funding policy should be considered to address or resolve the public pension issues. (This assumes that taxes have been raised to the fullest extent legally possible or prudent, and the expenses have been reduced to the extent reasonably practical.)

VI. Conclusion

- D. The answer should never be that the needed public pension reforms have failed or appear impossible so the government itself fails and all parties suffer the worst outcome possible.

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