

Illinois legislature power plays threaten USD 500m in savings
By Gunjan Banerji and Andrew Scurria
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The Illinois legislature could override Governor Bruce Rauner's veto of a union-backed bill, straining the governor's bargaining position and the state's finances, said two public finance attorneys and a labor attorney.

The Illinois Senate will decide today whether or not to override Rauner's veto of SB 1229, which allows an arbitrator to decide between Rauner's proposal of union contracts and the unions' amidst an impasse. An override requires a supermajority vote in both the Senate and the House.

General state workers have never before made a power play to strip the governor's office of the authority to negotiate terms and conditions of employment, said Seyfarth Shaw attorney Ronald Kramer.

A veto override takes a major bargaining tool off the table for Governor Rauner: the ability to reach impasse in bargaining and then to unilaterally implement his bargaining proposal, said John Schomberg of Clark Hill. Schomberg served as general counsel to former Illinois Governor Pat Quinn.

However, for most executives, imposing a solution on the unions is a last resort. Unilateral implementation often results in the unions striking in response, which disrupts state services, Schomberg said.

Supporting Senate Bill 1229 is the influential American Federation of State, County and Municipal Employees Council (AFSCME) 31, an active lobbyist and litigator of Illinois public pension and employment matters.

Economically, the bill could strain an already stressed state, said Michael Sullivan, an attorney at Goldberg Kohn. Rauner has proposed healthcare cuts for the unions and other fringe benefit reductions, Schomberg said. This could save an estimated USD 500m for the state, as reported. The Illinois legislature faces a budget deficit as high as USD 9bn next year.

SB 1229 provides an alternative to striking, according to a public statement from AFSCME.

Tipped in the unions' favor

Moving the process from mediation to arbitration would not require a showing that the state failed to bargain in good faith, Kramer said. SB 1229 initiates mediation 30 days after the contract expiration date regardless of the progress of negotiations; 30 days after that, either side can demand arbitration.

"It's not like there has to be a magic trigger," Kramer said. "There is not even a requirement that the mediator have a certain number of sessions to try to bring the parties to agreement. The union could demand arbitration after 30 days even if the parties met with the mediator only once."

Outside of this legislation, the Illinois Labor Relations board determines if both parties have been negotiating in good faith or not and declare whether a formal impasse had been reached, Schomberg said. The governor can also turn to the Labor Relations Board to quash a strike, but only if he agrees to arbitration, Kramer said.

Legislators are caught between “a rock and a hard place,” with pressure from the governor on one side of this bill and from the unions on the other, Schomberg said.

Logistically, it would be challenging for both houses of the General Assembly to override the governor. Originally, 38 senators voted for the bill while 17 voted against it; 67 representatives voted for the bill and 25 against. Based on that, there is a decent chance of the Senate having a successful override vote, but an uphill battle for the House, Schomberg said.

By its nature, the arbitration process would be stacked in favor of AFSCME, Kramer said, since the governor would bear the burden of proving that proposed adjustments to salary levels or hiring and firing rules are necessary.

“Because of that, it is very difficult for employers that need to have changes to the contract to change operations or reduce costs to convince the arbitrator,” Kramer said.

The proposal contains a sunset provision that would keep the arbitration route in place for four years after its passage. This provision conveniently removes the threat of arbitration for future governors, Schomberg said.

The bill fundamentally alters the balance of power in collective bargaining, Sullivan said. It allows for an arbitrator who has not been elected to impose contract terms on the parties, Sullivan said.

Backdrop of budgetary woes

The state legislature is still in its “theatrics” phase, said two municipal credit analysts. There is a dichotomy between the services that are being provided to citizens and the lack of budget movement, Schomberg said.

The state’s courts are basically running their finances, the first municipal credit analyst said. It is clearly unsustainable to have money flowing at a court’s order rather than through a budgetary process, the analyst said. The courts have passed legislation to provide funds to appropriation debt, state workers, and other recipients of state funds, as reported. This is the latest in a series of bills to address the state’s budgetary standstill.

It may take some more real “pain” on behalf of the state before it reaches a budget agreement, Schomberg said.

The state is rated A- with a negative outlook by Standard & Poor’s and A2 by Moody’s Investors Service. Fitch pegs the bonds at A- with a negative outlook while Kroll Bond Rating Agency has them at AA+ with a stable outlook.