Sen. Matt Murphy

Filed: 3/10/2011

AMENDMENT TO SENATE BILL 36

AMENDMENT NO. ______. Amend Senate Bill 36 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Pension Funding and Fairness Act.

Section 5. Definitions. As used in this Act:

"Monthly pro rata pension payment" means the average monthly pension payment calculated by dividing the total fiscal year annual pension payment by 12 months.

"Pension payment" means the total annual required pension payment for each fiscal year as defined by the Commission on Government Forecasting and Accountability following generally accepted accounting principles.

"Revenue" means taxes and fees collected by the State.

"State general funds" has the meaning ascribed to that term in Section 201.5 of the Illinois Income Tax Act.

"State spending" has the meaning ascribed to that term in Section 201.5 of the Illinois Income Tax Act.

"Tax" means any amount raised for the general support of government functions.

Section 30. Past Due Paydown Fund. The Past Due Paydown Fund is established as a special fund in the State treasury and must be administered for the purposes identified in this Section. At the close of the lapse period of each fiscal year, the State Comptroller shall identify the amount of State general funds unappropriated surplus above the State spending limitation set forth in Section 201.5 of the Illinois Income Tax Act and transfer to the Past Due Paydown Fund any amount necessary up to the total past due operating debt owed by the State as of the close of that fiscal year.

The General Assembly may authorize transfers, appropriations, and allocations from the Fund only to fund the costs of paying down the remaining past due debt until that debt is zero. Any remaining funds shall be transferred to the State Budget Stabilization Fund.

Section 35. State Budget Stabilization Fund. The State Budget Stabilization Fund is established as a special fund in the State treasury and must be administered for the purposes identified in this Section. At the close of the lapse period of each fiscal year, the State Comptroller shall identify the amount of State general funds unappropriated surplus above the State spending limitation set forth in Section 201.5 of the Illinois Income Tax Act and above the amount necessary to fully fund and pay down the past due operating debt to zero. The Fund may not exceed 8% of the total State general funds revenues received in the immediately preceding fiscal year.

The General Assembly may authorize transfers, appropriations, and allocations from the Fund to fund only the costs of State government up to the expenditure limit calculated under Section 10 in years when State revenues are less than the amount necessary to finance the level of expenditures permitted under Section 10. Transfers require a three-fifths supermajority vote of the General Assembly.

The money in the fund may be invested as provided by law, with the earnings credited to the Fund. At the close of every month during which the Fund is at the 8% limitation, the State Comptroller shall transfer the excess to the Taxpayer Relief Fund.

Section 40. Taxpayer Relief Fund. The Taxpayer Relief Fund is established as a special fund in the State treasury and must be administered for the purposes identified in this Section. At the close of the lapse period of each fiscal year, the State Comptroller shall identify the amount of the State general funds unappropriated surplus above the State spending limitation set forth in Section 201.5 of the Illinois Income

Tax Act and above the amount necessary to fully fund the Past Due Paydown Fund and the Budget Stabilization Fund.

By August 1st annually, the State Comptroller shall notify the Commission on Government Forecasting and Accountability and the Department of Revenue of the amount in the Fund as a result of the transfers.

If the amount in the Fund exceeds 1% of State general funds expenditures, then the General Assembly shall, by November 15th, enact legislation to provide for the refund to taxpayers of amounts in the Fund. Refunds may take the form only of temporary or permanent broad-based tax rate reductions.

If the General Assembly does not enact legislation by November 15th to provide refunds, then the State Comptroller shall, by November 30th, notify the Department of Revenue of the amount in the Fund. The Department of Revenue shall calculate a one-time bonus personal exemption refund. The amount of the personal exemption refund must be calculated by dividing the amount in the Fund identified by the State Comptroller by the number of personal exemptions claimed on income tax returns filed for the tax year beginning in the previous calendar year. The Department of Revenue shall issue a refund by December 30th to a taxpayer who filed an income tax return by April 15th of the same calendar year based on the number of exemptions claimed (times refund per exemption) on the taxpayer's return without regard to the taxpayer's tax liability for the year.

Section 45. Pension payments.

(a) Notwithstanding any other law, beginning with fiscal year 2012 and for each fiscal year thereafter, the General Assembly's first appropriation each year, after transfers for debt service, must be directed to make the full annual pension payment defined by the Commission on Government Forecasting and Accountability, acting in compliance with generally accepted accounting principles. This appropriation must be made first, and executing it (making the actual payments required by it) shall take precedence over any other appropriation or expenditure.

Exceptions may be made to the pension payment requirement in this subsection (a) if authorized by a law approved by a three-fifths vote of each chamber of the General Assembly and approved by the Governor. Any exceptions made by the General Assembly shall specify the dollar amount and purposes of appropriations that shall be made prior to the pension payment.

(b) By March 1 of each year, the State Comptroller shall take the total annually required pension payment for the upcoming fiscal year (beginning on July 1) and divide that number by 12. This amount becomes the monthly pro rata pension payment for each month of the upcoming fiscal year.

If, during the fiscal year, the Commission on Government Forecasting and Accountability adjusts the annually required pension payment for the current year upward, the State

Comptroller shall recalculate the monthly pro rata pension payment upward accordingly and allocate the increase evenly over the remaining months to ensure that the full annual pension payment is made for the fiscal year.

If, during the fiscal year, the Commission on Government Forecasting and Accountability adjusts the annually required pension payment downward, the original payment schedule shall be maintained. Payments in excess of the revised payment schedule shall be allocated to any existing unfunded pension liability.

If, during the fiscal year, the Commission on Government Forecasting and Accountability adjusts the annually required pension payment downward, and if there is no remaining unfunded pension liability as calculated by the Commission on Government Forecasting and Accountability in compliance with generally accepted accounting principles, then the State Comptroller shall recalculate the monthly pro rata pension payment downward accordingly and allocate the reduction evenly over the remaining months to ensure that the full annual pension payment is made for the fiscal year.

By no later than the 5th of each month, the Comptroller shall disburse funds as authorized by the pension payment appropriation to the various State retirement systems so that the total payment equals the monthly pro rata pension payment. The payments shall be allocated proportionally to each retirement fund as calculated by the Commission on Government

Forecasting and Accountability.

There shall be no exceptions to this subsection (b) except as authorized by a law approved by a three-fifths vote of each chamber of the General Assembly and approved by the Governor.

(c) If for any reason the monthly pro rata pension payment is not made by the 5th of the month, or if for any reason the accumulated payments for the year do not equal the sum of the monthly pro rata pension payments for the months having passed during the fiscal year, then the State Comptroller shall cease all payments from State resources until such time as the pension payment is brought current for the year.

There shall be no exceptions to this subsection (c) except as authorized by a law approved by a three-fifths vote of each chamber of the legislature and approved by the Governor.

Section 90. The State Finance Act is amended by adding Sections 5.786, 5.787, and 5.788 as follows:

(30 ILCS 105/5.786 new)

<u>Sec. 5.786. The Past Due Paydown Fund.</u>

(30 ILCS 105/5.787 new)

<u>Sec. 5.787. The State Budget Stabilization Fund.</u>

(30 ILCS 105/5.788 new)

<u>Sec. 5.788. The Taxpayer Relief Fund.</u>

Section 95. The Illinois Income Tax Act is amended by changing Section 201.5 as follows:

(35 ILCS 5/201.5)

Sec. 201.5. State spending limitation and tax reduction.

(a) If, beginning in State fiscal year 2012 ~~and continuing through State fiscal year 2015~~, State spending for any fiscal year exceeds the State spending limitation set forth in subsection (b) of this Section, then the tax rates set forth in subsection (b) of Section 201 of this Act shall be reduced, according to the procedures set forth in this Section, to 3% of the taxpayer's net income for individuals, trusts, and estates and to 4.8% of the taxpayer's net income for corporations. For all taxable years following the taxable year in which the rate has been reduced pursuant to this Section, the tax rate set forth in subsection (b) of Section 201 of this Act shall be 3% of the taxpayer's net income for individuals, trusts, and estates and 4.8% of the taxpayer's net income for corporations.

(b) The State spending limitation is ~~for fiscal years 2012 through 2015 shall be~~ as follows: (i) for fiscal year 2012, $28,998,000,000 ~~$36,818,000,000~~; (ii) for fiscal year 2013 and thereafter, 1.5% above the previous fiscal year's State spending limitation ~~, $37,554,000,000; (iii) for fiscal year 2014, $38,305,000,000; and (iv) for fiscal year 2015, $39,072,000,000~~.

(c) Nothwithstanding any other provision of law to the contrary, the Auditor General shall examine each Public Act authorizing State spending from State general funds and prepare a report no later than 30 days after receiving notification of the Public Act from the Secretary of State or 60 days after the effective date of the Public Act, whichever is earlier. The Auditor General shall file the report with the Secretary of State and copies with the Governor, the State Treasurer, the State Comptroller, the Senate, and the House of Representatives. The report shall indicate: (i) the amount of State spending set forth in the applicable Public Act; (ii) the total amount of State spending authorized by law for the applicable fiscal year as of the date of the report; and (iii) whether State spending exceeds the State spending limitation set forth in subsection (b). The Auditor General may examine multiple Public Acts in one consolidated report, provided that each Public Act is examined within the time period mandated by this subsection (c). The Auditor General shall issue reports in accordance with this Section through June 30, 2015 or the effective date of a reduction in the rate of tax imposed by subsections (a) and (b) of Section 201 of this Act pursuant to this Section, whichever is earlier.

At the request of the Auditor General, each State agency shall, without delay, make available to the Auditor General or his or her designated representative any record or information requested and shall provide for examination or copying all records, accounts, papers, reports, vouchers, correspondence, books and other documentation in the custody of that agency, including information stored in electronic data processing systems, which is related to or within the scope of a report prepared under this Section. The Auditor General shall report to the Governor each instance in which a State agency fails to cooperate promptly and fully with his or her office as required by this Section.

The Auditor General's report shall not be in the nature of a post-audit or examination and shall not lead to the issuance of an opinion as that term is defined in generally accepted government auditing standards.

(d) If the Auditor General reports that State spending has exceeded the State spending limitation set forth in subsection (b) and if the Governor has not been presented with a bill or bills passed by the General Assembly to reduce State spending to a level that does not exceed the State spending limitation within 45 calendar days of receipt of the Auditor General's report, then the Governor may, for the purpose of reducing State spending to a level that does not exceed the State spending limitation set forth in subsection (b), designate amounts to be set aside as a reserve from the amounts appropriated from the State general funds for all boards, commissions, agencies, institutions, authorities, colleges, universities, and bodies politic and corporate of the State, but not other constitutional officers, the legislative or judicial branch, the office of the Executive Inspector General, or the Executive Ethics Commission. Such a designation must be made within 15 calendar days after the end of that 45-day period. If the Governor designates amounts to be set aside as a reserve, the Governor shall give notice of the designation to the Auditor General, the State Treasurer, the State Comptroller, the Senate, and the House of Representatives. The amounts placed in reserves shall not be transferred, obligated, encumbered, expended, or otherwise committed unless so authorized by law. Any amount placed in reserves is not State spending and shall not be considered when calculating the total amount of State spending. Any Public Act authorizing the use of amounts placed in reserve by the Governor is considered State spending, unless such Public Act authorizes the use of amounts placed in reserves in response to a fiscal emergency under subsection (g).

(e) If the Auditor General reports under subsection (c) that State spending has exceeded the State spending limitation set forth in subsection (b), then the Auditor General shall issue a supplemental report no sooner than the 61st day and no later than the 65th day after issuing the report pursuant to subsection (c). The supplemental report shall: (i) summarize details of actions taken by the General Assembly and the Governor after the issuance of the initial report to reduce State spending, if any, (ii) indicate whether the level of State spending has changed since the initial report, and (iii) indicate whether State spending exceeds the State spending limitation. The Auditor General shall file the report with the Secretary of State and copies with the Governor, the State Treasurer, the State Comptroller, the Senate, and the House of Representatives. If the supplemental report of the Auditor General provides that State spending exceeds the State spending limitation, then the rate of tax imposed by subsections (a) and (b) of Section 201 is reduced as provided in this Section beginning on the first day of the first month to occur not less than 30 days after issuance of the supplemental report.

(f) For any taxable year in which the rates of tax have been reduced under this Section, the tax imposed by subsections (a) and (b) of Section 201 shall be determined as follows:

(1) In the case of an individual, trust, or estate, the tax shall be imposed in an amount equal to the sum of (i) the rate applicable to the taxpayer under subsection (b) of Section 201 (without regard to the provisions of this Section) times the taxpayer's net income for any portion of the taxable year prior to the effective date of the reduction and (ii) 3% of the taxpayer's net income for any portion of the taxable year on or after the effective date of the reduction.

(2) In the case of a corporation, the tax shall be imposed in an amount equal to the sum of (i) the rate applicable to the taxpayer under subsection (b) of Section 201 (without regard to the provisions of this Section)

times the taxpayer's net income for any portion of the taxable year prior to the effective date of the reduction and (ii) 4.8% of the taxpayer's net income for any portion of the taxable year on or after the effective date of the reduction.

(3) For any taxpayer for whom the rate has been reduced under this Section for a portion of a taxable year, the taxpayer shall determine the net income for each portion of the taxable year following the rules set forth in Section 202.5 of this Act, using the effective date of the rate reduction rather than the January 1 dates found in that Section, and the day before the effective date of the rate reduction rather than the December 31 dates found in that Section.

(4) If the rate applicable to the taxpayer under subsection (b) of Section 201 (without regard to the provisions of this Section) changes during a portion of the taxable year to which that rate is applied under paragraphs (1) or (2) of this subsection (f), the tax for that portion of the taxable year for purposes of paragraph (1) or (2) of this subsection (f) shall be determined as if that portion of the taxable year were a separate taxable year, following the rules set forth in Section 202.5 of this Act. If the taxpayer elects to follow the rules set forth in subsection (b) of Section 202.5, the taxpayer shall follow the rules set forth in subsection (b) of Section 202.5 for all

purposes of this Section for that taxable year.

(g) Notwithstanding the State spending limitation set forth in subsection (b) of this Section, the Governor may declare a fiscal emergency by filing a declaration with the Secretary of State and copies with the State Treasurer, the State Comptroller, the Senate, and the House of Representatives. The declaration must be limited to only one State fiscal year, set forth compelling reasons for declaring a fiscal emergency, and request a specific dollar amount. Unless, within 10 calendar days of receipt of the Governor's declaration, the State Comptroller or State Treasurer notifies the Senate and the House of Representatives that he or she does not concur in the Governor's declaration, State spending authorized by law to address the fiscal emergency in an amount no greater than the dollar amount specified in the declaration shall not be considered "State spending" for purposes of the State spending limitation.

(h) As used in this Section:

"State general funds" means the General Revenue Fund, the Common School Fund, the General Revenue Common School Special Account Fund, the Education Assistance Fund, and the Budget Stabilization Fund.

"State spending" means (i) the total amount authorized for spending by appropriation or statutory transfer from the State general funds in the applicable fiscal year, and (ii) any amounts the Governor places in reserves in accordance with subsection (d) that are subsequently released from reserves following authorization by a Public Act. For the purpose of this definition, "appropriation" means authority to spend money from a State general fund for a specific amount, purpose, and time period, including any supplemental appropriation or continuing appropriation, including ~~but does not include~~ reappropriations from a previous fiscal year. For the purpose of this definition, "statutory transfer" means authority to transfer funds from one State general fund to any other fund in the State treasury, but does not include transfers made from one State general fund to another State general fund.

"State spending limitation" means the amount described in subsection (b) of this Section for the applicable fiscal year.

(Source: P.A. 96-1496, eff. 1-13-11.)

Section 99. Effective date. This Act takes effect upon becoming law.".