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LRB097 21820 JWD 70454 r

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HOUSE JOINT RESOLUTION

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WHEREAS, The 97th General Assembly of the State of Illinois has submitted House Joint Resolution Constitutional Amendment 49, a proposal to amend the Illinois Constitution, to the voters of Illinois at the November 2012 general election; and

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WHEREAS, The Illinois Constitutional Amendment Act requires the General Assembly to prepare a brief explanation of the proposed amendment, a brief argument in favor of the amendment, a brief argument against the amendment, and the form in which the amendment will appear on the ballot, and also requires the information to be published and distributed to the electorate; therefore, be it

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RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that the proposed form of new Section 5.1 of Article XIII shall be published as follows:

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"ARTICLE XIII

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GENERAL PROVISIONS

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(ILCON Art. XIII, Sec. 5.1 new)

1 SECTION 5.1. PENSION AND RETIREMENT BENEFIT INCREASES

2 (a) No bill, except a bill for appropriations, that
3 provides a benefit increase under any pension or retirement
4 system of the State, any unit of local government or school
5 district, or any agency or instrumentality thereof, shall
6 become law without the concurrence of three-fifths of the
7 members elected to each house of the General Assembly. If the
8 Governor vetoes such a bill by returning it with objections to
9 the house in which it originated, the provisions of Article IV,
10 Section 9 shall govern the passage of that bill except that
11 such bill shall not become law unless, upon its return, it is
12 passed by a record vote of two-thirds of the members elected to
13 each house of the General Assembly. If the Governor returns
14 such a bill with specific recommendations for change to the
15 house in which it originated, the provisions of Article IV,
16 Section 9 shall govern the acceptance of those specific
17 recommendations except that such recommendations may be
18 accepted only by a record vote of two-thirds of the members
19 elected to each house of the General Assembly, regardless of
20 the bill's date of passage or effective date.

21 For purposes of this subsection, the term "benefit
22 increase" means a change to any pension or other law that
23 results in a member of a pension or retirement system receiving
24 a new benefit or an enhancement to a benefit, including, but
25 not limited to, any changes that (i) increase the amount of the

1 pension or annuity that a member could receive upon retirement,
2 or (ii) reduce or eliminate the eligibility requirements or
3 other terms or conditions a member must meet to receive a
4 pension or annuity upon retirement. The term "benefit increase"
5 also means a change to any pension or other law that expands
6 the class of persons who may become a member of any pension or
7 retirement system or who may receive a pension or annuity from
8 a pension or retirement system. An increase in salary or wage
9 level, by itself, shall not constitute a "benefit increase"
10 unless that increase exceeds limitations provided by law.

11 (b) No ordinance, resolution, rule, or other action of the
12 governing body, or an appointee or employee of the governing
13 body, of any unit of local government or school district that
14 provides an emolument increase to an official or employee that
15 has the effect of increasing the amount of the pension or
16 annuity that an official or employee could receive as a member
17 of a pension or retirement system shall be valid without the
18 concurrence of three-fifths of the members of that governing
19 body. For purposes of this subsection, the term "emolument
20 increase" means the creation of a new or enhancement of an
21 existing advantage, profit or gain that an official or employee
22 receives by virtue of holding office or employment, including,
23 but not limited to, compensated time off, bonuses, incentives,
24 or other forms of compensation. An increase in salary or wage
25 level, by itself, shall not constitute an "emolument increase"
26 unless that increase exceeds limitations provided by law.

1 (c) No action of the governing body, or an appointee or
2 employee of the governing body, of any pension or retirement
3 system created or maintained for the benefit of officers or
4 employees of the State, any unit of local government or school
5 district, or any agency or instrumentality thereof that results
6 in a beneficial determination shall be valid without the
7 concurrence of three-fifths of the members of that governing
8 body. For the purposes of this subsection, the term "beneficial
9 determination" means an interpretation or application of
10 pension or other law by the governing body, or an appointee or
11 employee of the governing body, that reverses or supersedes a
12 previous interpretation or application and either (i) results
13 in an increase in the amount of the pension or annuity received
14 by a member of the pension or retirement system or (ii) results
15 in a person becoming eligible to receive a pension or annuity
16 from the pension or retirement system. The term "beneficial
17 determination" shall not include a beneficial determination
18 mandated by a final decision of a court of competent
19 jurisdiction.

20 (d) Nothing in this Section shall prevent the passage or
21 adoption of any law, ordinance, resolution, rule, policy, or
22 practice that further restricts the ability to provide a
23 "benefit increase", "emolument increase", or "beneficial
24 determination" as those terms are used under this Section.";
25 and be it further

1 RESOLVED, That a brief explanation of the proposed
2 amendment, a brief argument in favor of the amendment, a brief
3 argument against the amendment, and the form in which the
4 amendment will appear on the ballot shall be published and
5 distributed as follows:

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**PROPOSED AMENDMENT
TO ADD SECTION 5.1 TO ARTICLE XIII
OF THE ILLINOIS CONSTITUTION**

**That will be submitted to the voters
November 6, 2012**

This pamphlet includes

- EXPLANATION OF THE PROPOSED AMENDMENT***
- ARGUMENTS IN FAVOR OF THE AMENDMENT***
- ARGUMENTS AGAINST THE AMENDMENT***
- FORM OF BALLOT***

1 *To the Electors of the State of Illinois:*

2 The purpose of a state constitution is to establish a
3 structure for government and laws. The Illinois Constitution:
4 provides citizens with rights and protections; creates the
5 executive, judicial, and legislative branches of government;
6 clarifies the powers given to local governments; limits the
7 taxing power of the State; and imposes certain restrictions on
8 the use of taxpayer dollars. There are three ways to initiate
9 change to the Illinois Constitution: (1) a constitutional
10 convention may propose changes to any part; (2) the General
11 Assembly may propose changes to any part; or (3) the people of
12 the State by referendum may propose changes to the Legislative
13 Article. Regardless of the method of initiating change, the
14 people of Illinois must approve any changes of the Constitution
15 before they become effective.

16 The proposed amendment adds Section 5.1 to the General
17 Provisions Article of the Illinois Constitution. The new
18 section would require a three-fifths majority vote to approve
19 any pension or retirement benefit increase for public employees
20 and officials. At the general election to be held on November
21 6, 2012, you will be called upon to decide whether the proposed
22 amendment should become part of the Illinois Constitution.

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EXPLANATION

1 The proposed amendment adds a section to the Illinois
2 Constitution requiring a three-fifths majority vote to approve
3 any pension or retirement benefit increase for public employees
4 and officials.

5 The proposed amendment requires a three-fifths vote of each
6 chamber of the General Assembly (the Senate and the House of
7 Representatives) for a bill that provides a pension benefit
8 increase, except for appropriation bills. "Benefit increase"
9 means a change to any pension or other law that results in a
10 member of a pension or retirement system receiving a new
11 benefit or an enhancement, including any changes that (i)
12 increase the amount of a member's pension, or (ii) reduce or
13 eliminate the eligibility requirements or other terms or
14 conditions a member must meet to receive a pension. It also
15 means a change to any pension or other law that expands the
16 class of persons who may become members of any pension or
17 retirement system. An increase in salary or wage level, by
18 itself, does not constitute a "benefit increase," unless the
19 increase exceeds limitations provided by law.

20 The proposed amendment would also require a two-thirds vote
21 for lawmakers to override a governor's veto or accept a
22 governor's proposed changes in a rewrite of pension increase
23 legislation. Currently, it takes a three-fifths vote to
24 override a veto and only a simple majority to accept a
25 governor's changes.

26 The proposed amendment requires approval of three-fifths

1 of the members of the governing body of a unit of local
2 government or school district for any ordinance, resolution,
3 rule, or other action that provides an enhancement or emolument
4 increase to an employee or officer that has the effect of
5 increasing the pension of that employee or officer. "Emolument
6 increase" means the creation of a new, or enhancement of an
7 existing, advantage, profit, or gain that an official or
8 employee receives by virtue of holding office or employment,
9 which includes compensated time off, bonuses, incentives, or
10 other forms of compensation. An increase in salary or wage
11 level, by itself, does not constitute an "emolument increase,"
12 unless the increase exceeds limitations provided by law.

13 The proposed amendment requires approval of three-fifths
14 of the members of the governing body of a pension or retirement
15 system for any action that results in a "beneficial
16 determination." A "beneficial determination" is an
17 interpretation or application of law that reverses or
18 supersedes a previous decision if that interpretation or
19 application (i) results in an increase in the overall amount of
20 pension benefits received by a member or (ii) results in a
21 person becoming eligible to receive a pension. "Beneficial
22 determination" does not include a final decision mandated by
23 the courts.

24 Voters that believe the Illinois Constitution should be
25 amended to require a three-fifths majority vote to approve any
26 pension or retirement benefit increase for public employees and

1 officials should vote "YES" on the question. Three-fifths of
2 those voting on the question, or a majority of those voting in
3 the election, must vote "YES" in order for the amendment to
4 become effective. Voters that believe the Illinois
5 Constitution should not be amended to require a three-fifths
6 majority vote to approve any pension or retirement benefit
7 increase for public employees and officials should vote "NO" on
8 the question.

9 **Arguments in Favor of the Proposed Amendment**

10 (1) A higher vote requirement would help prevent unfunded
11 future liability for pension benefits.

12 (2) Requiring a three-fifths vote would provide better
13 accountability.

14 (3) A three-fifths vote requires greater consensus among
15 parties.

16 **Unfunded Liability**

17 Currently, the public retirement system is not financially
18 stable and is significantly underfunded. A higher vote
19 requirement to enact pension benefit increases will help to
20 maintain fiscal responsibility and make it more difficult to
21 further burden the public retirement system.

1 **Provide More Accountability**

2 The proposed amendment provides more accountability in the
3 legislative process by requiring more votes to pass a pension
4 benefit increase. Since the cost of benefit increases comes at
5 a later date, the price to the taxpayers is not always noticed
6 immediately. A higher vote requirement will signify to the
7 governing body that they are taking a serious action and will
8 encourage greater in-depth thought before passage.

9 **Greater Consensus**

10 A three-fifths vote requirement means the members of the
11 governing body, regardless of political affiliation, will need
12 to work together to reach an agreement. A greater consensus
13 would provide for better decisions and more serious
14 deliberation. Given the importance of pension benefit
15 increases, and their subsequent impact on taxpayers, greater
16 agreement would be beneficial.

17 **Arguments Against the Proposed Amendment**

18 (1) A higher vote requirement may limit the bargaining
19 power of employers and employees.

20 (2) There is the possibility of disagreement on what

1 constitutes a benefit increase.

2 (3) Requiring a supermajority for pension benefit
3 increases could make it more difficult to recruit the best
4 people to work in government service.

5 **Decreased Bargaining Power**

6 Many government employees are represented by labor unions
7 that bargain on their behalf for particular benefits. This
8 constitutional amendment may make it more difficult for unions
9 to bargain for certain increased benefits for their employees.
10 In addition, many government employers may prefer to bargain
11 over these benefits to give incentives to employees to do their
12 jobs well. This constitutional amendment could remove
13 bargaining power from both the government employer and
14 government employee.

15 **Possibility of Disagreement on Terms**

16 The proposed amendment creates new definitions for the
17 terms "benefit increase," "emolument increase," and
18 "beneficial determination," which are not defined in other
19 statutes or in existing case law. These definitions could
20 generate litigation, resulting in additional costs. There may
21 also be disagreement amongst the governing body on whether a
22 bill, resolution, or other action constitutes a "benefit

1 increase," "emolument increase," or "beneficial
2 determination."

3 **Recruiting Employees for Government Jobs**

4 Like any employer, units of government wish to attract good
5 employees. This constitutional amendment may make it more
6 difficult for employers to increase benefits to employees and,
7 therefore, make it harder to attract the best people to
8 government service.

9 **FORM OF BALLOT**

10 Proposed Amendment to the 1970 Illinois Constitution

11 Explanation of Amendment

12 Upon approval by the voters, the proposed amendment, which
13 takes effect on January 9, 2013, adds a new section to the
14 General Provisions Article of the Illinois Constitution. The
15 new section would require a three-fifths majority vote of each
16 chamber of the General Assembly, or the governing body of a
17 unit of local government, school district, or pension or
18 retirement system, in order to increase a benefit under any
19 public pension or retirement system. At the general election to
20 be held on November 6, 2012, you will be called upon to decide
21 whether the proposed amendment should become part of the

1 Illinois Constitution.

2 If you believe the Illinois Constitution should be amended to
3 require a three-fifths majority vote in order to increase a
4 benefit under any public pension or retirement system, you
5 should vote **"YES"** on the question. If you believe the Illinois
6 Constitution should not be amended to require a three-fifths
7 majority vote in order to increase a benefit under any public
8 pension or retirement system, you should vote **"NO"** on the
9 question. Three-fifths of those voting on the question or a
10 majority of those voting in the election must vote "YES" in
11 order for the amendment to become effective on January 9, 2013.

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13 YES For the proposed addition
14 ----- of Section 5.1 to Article XIII
15 NO of the Illinois Constitution.
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