

THE CIVIC FEDERATION AND THE FEDERAL RESERVE BOARD OF CHICAGO

AFTER DETROIT: HOW WILL ILLINOIS AND ITS COMMUNITIES RESPOND?

**THE UNFUNDED PENSION OBLIGATION CRISIS:
IS CHAPTER 9 BANKRUPTCY THE ULTIMATE REMEDY?
ARE THERE BETTER RESOLUTION MECHANISMS?***

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I. CAN PENSION BENEFITS AND OPEBS BE ROLLED BACK OR REDUCED OR CHANGED?

A. States and Municipalities Have Attempted to Enact Legislation to Reduce or Eliminate Pension and OPEB Underfunding to Address the Problem.

- State and local governmental workers are 12% of the nation's workforce and since 1970 have increased 60% in number.
- According to the U.S. Department of Labor, state and local government workers averaged \$42.09 in total compensation per hour (pay and benefits) compared to \$29.11 for private industry employees.
- Over 40 states between 2010 and 2012 have addressed pension reform (8 in 2012, 32 in 2011, and 21 in 2010). Between 2009 and 2011, 28 states increased employer contributions and 7 states have increased employee contributions for new hires. Also between 2009 and 2011, 28 states have increased the retirement age and service requirement and 18 have reduced post-retirement benefit increases such as COLA.
- California: 2012 pension reform estimated to save between \$42 billion to \$55 billion over 30 years for CALPERS and \$22.7 billion for CALSTRS.
- Rhode Island's Pension Reform Regulation: Suspends new cost of living adjustments to retirees until pension funds and systems are better funded but provides for intermittent COLA every five years until 80 percent fully funded in aggregate; moves all but public safety employees to hybrid pension plans; increases minimum retirement age for most employees not already eligible to retire; preserves accrued benefits earned through June 30, 2013; and begins to address independent local plan solvency. Labor's Court challenge to the constitutionality of this reform now appears headed for trial given the breakdown in the mediation resulting from the police union rejection of a proposed settlement. It is always possible that mediation efforts could resume.
- Illinois Pension Legislation of 2010: While more extensive reforms are needed, Illinois in 2010 took a step to stem the draconian increase in state pension underfunding. While the 2010 legislation did not solve the Illinois or local government pension crises, leaving untouched the benefits of current employees, the legislation creates reduced pension benefits for new state employees hired after January 1, 2011, including the following modifications:
 - Raises the retirement age to 67 with ten years of service for full retirement. Some retirement plans currently allow full retirement at age 55 or even lower.
 - Raises the early retirement age to 62 with ten years of service for a reduced benefit.

- Limits the maximum pensionable salary to the 2010 Social Security wage base of \$106,800. Previously there was no limit to the salary from which a worker could draw a pension for any of the pension plans included in the reforms.
- Eliminates “double-dipping” by suspending the pension of any retiree who goes to work for a government that participates in another pension system until that employment ends.
- Illinois Pension Reform 2013: Provided supplemental contributions and funding guarantee by state, reduction of 1% of contributions by workers, and annual COLA adjustment for a cost reduction of state pension by \$160 billion over 30 years.
- City of Chicago Municipal Laborer Pension Reform Legislation:
 - COLA reduced to 3% or 50% of CPI (which ever is less) for Tier 1.
 - COLA pause 2017, 2019 and 2028 with an additional one year delay for Tier 1 and 2.
 - Retirement age for Tier 2 reduced to 65 from 67.
 - Increase of 2.5% for total of 11% employee contribution.
- Maine, Minnesota, New Jersey, Rhode Island, South Dakota and Colorado have enacted legislation and in some cases litigated and won COLA reform and adjustments. In February of 2014, Arizona Supreme Court struck down as unconstitutional pension reform legislation that reduced COLA because it affected judicial pensions that were not to be altered under the constitution from what was earned.
- San Diego, San Jose and other cities have imposed pension reform for new hires and current employees to reduce cost and expense. The San Jose pension reform legislation was challenged in state court and while the court agreed pensions could be adjusted, struck down portion of the legislation as violating vested rights of workers.
- In 2012, the cities of Stockton and San Bernardino, California filed for Chapter 9 protection due to unaffordable and unsustainable costs including pension and OPEB costs.
- California League of Cities has noted:
 - Pension costs have risen 25% or more in the last three years for California municipalities.
 - By 2013-2014, it will be common for California municipalities to pay 50% of a policeman’s salary, 40% of a firefighter’s salary and 25% of other worker’s salaries for pensions.
- Most cities since 2007 and the economic recession have had to resort to layoffs, furloughs, reductions in work force, deferral of preventative maintenance on infrastructure and use of one time reserve to get by.
- If pension costs are not mitigated and there remains increasing underfunding and if pension obligations are not reduced, California cities as well as similar cities in other states will be financially unsustainable and politically untenable.

B. States Take Different Approaches to Whether Pensions Can Be Impaired. States take different approaches in analyzing pension rights of public employees and whether those

rights can be modified. A few states (e.g., Arkansas, Arizona, Hawaii, Illinois, Louisiana, Michigan and New York) have a specific state constitutional provisions prohibiting impairment or diminishment of public employee pensions. Nine other states have general constitutional prohibitions against impairment of contracts and the remaining states generally have state statutes or case law prohibiting some form of impairment of public employee pensions.

- C. **Impairment Prohibition Has Its Limits.** Non-impairment law is not intended to stretch pensions beyond their elastic limits. Over 40 years ago, pensions and post-employee benefits were viewed as gratuities that could be paid as long as the government was willing and able. Then there was the development of constitutional, statutory and contractual provisions for a right or contractual obligation that could be enforced without regard to the arbitrary willingness of the government to pay. However, state and local governments cannot be required to honor pension obligations the funding of which would impair providing essential governmental services at required levels. Pension obligations can be and need to be adjusted if the payment of them frustrates the fundamental purpose of government of providing the required essential governmental services. State and local government can not bargain away, contract or surrender their basic mandate to fund essential governmental services at an acceptable level.
- D. **Examples of Ability to Modify Promised Pension Benefits.** Non-impairment laws are not all-encompassing and have been held not to reach:
- Benefits that accrue in the future;
 - Reduction in mandatory retirement age;
 - Reduction in hours and salary;
 - Losses of benefits for non-compliance with plan;
 - Dismissal of public employees;
 - Cost of living increases for retirees;
 - OPEB obligations which are viewed as, not pensions, but gratuities in most states; and
 - Modifications that provide a real benefit to the pension system and its viability.
- E. **Need for Flexibility in Labor Agreement.** There are other actions that can also help to resolve the pension crisis. Labor contracts or agreements should be written to permit reductions and changes that are required based on the ability of the governmental body to pay and at the same time assure that the ability to provide essential governmental services at an acceptable level is not impaired.
- F. **The Challenge of Voluntary – Consensual Adjustments.** Outside the Bankruptcy Court (and possibly use of Pension Authority, Receiver, Emergency Manager and Restructuring Boards and Commissions), changes of pension obligations or any unilateral reductions are practically and politically unlikely but may provide the best results.

II. **CHECKLIST OF ALTERNATIVES AVAILABLE TO STATE AND LOCAL GOVERNMENTS CHALLENGED BY UNAFFORDABLE AND UNSUSTAINABLE PENSION AND OPEB OBLIGATIONS – SEE APPENDIX A FOR THE CHECKLIST**

- A. **Purpose of the Checklist and Need for Action.** This Checklist and Analysis of the Alternatives available to the states and their municipalities concerning pension underfunding obligations and OPEB is designed to demonstrate the paucity of effective alternatives, and

the fact that prompt, decisive action is needed now. After all available options are considered, as the Checklist demonstrates, it comes down to adjustments required to assure the continued provision of essential governmental services to the citizens of the state and its municipalities so that they may continue to encourage economic growth and attract new business and citizens. This will stimulate economic growth and jobs and provide the infrastructure of education, health, safety and welfare necessary for the state and its municipalities to succeed and grow. In order to do so, the pension obligations of both the state and municipalities need to be sustainable and affordable and not interfere with providing those essential governmental services at an acceptable level. In order to do that, the state and municipality, either by themselves or with the help of some independent, objective authority or organization must determine the cost of providing essential governmental services at an acceptable level and then determine what practically can be afforded to be spent on future pension and labor obligations.

B. Bankruptcy.

- The States. Under our Constitution, the federal government is charged with enacting uniform laws governing insolvency. Bankruptcy, Chapter 9 of the Federal Bankruptcy Code, is not available to states since they are co-sovereigns with the federal government and, given the Tenth Amendment, not a sub-sovereign or subject to federal government control over their government, affairs, property or revenue.
- Municipalities. Municipalities of a state can only file for Chapter 9 if they are specifically authorized by the state. The state of Illinois as a sovereign equal to the federal government cannot file for Chapter 9. Further, the state of Illinois has not authorized its municipalities to file for Chapter 9 municipal bankruptcy. Only 12 states allow their municipalities to file for Chapter 9 bankruptcy if they so choose without other conditions or requirements (*i.e.*, Alabama, Arizona, Arkansas, Idaho, Minnesota, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, Washington). Another 12 states allow their municipalities to file Chapter 9 conditioned on further review, consent or administrative process by a state official or agency (*i.e.*, California, Connecticut, Florida, Kentucky, Louisiana, Michigan, New Jersey, North Carolina, New York, Ohio, Pennsylvania, Rhode Island). Three states allow a limited authorization for specific types of municipalities (Colorado – special tax districts; Oregon – Irrigation District; Illinois – Illinois Power Agency). Two states generally prohibit filing a Chapter 9 (*i.e.*, Georgia and Iowa). The remaining states are unclear or do not have specific authorization (*i.e.*, Arkansas, Delaware, Hawaii, Kansas, Maine, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Mexico, Maryland, South Dakota, Tennessee, Utah, Virginia, Vermont, West Virginia, Wisconsin, Wyoming). Since 1937, there have only been 656 Chapter 9 filings, generally small tax districts and small municipalities with the exception of Orange County, California – 1994; Vallejo, California – 2008; Jefferson County, Alabama – 2011; Stockton, California – 2012; San Bernardino, California – 2012; and Detroit, Michigan – 2013. Further, the timing, cost and uncertainty of Chapter 9, along with the stigma in the capital markets as to access and increase in cost of borrowing, have led major municipalities to find other alternatives (New York City 1975 – Municipal Assistance Corporation; Cleveland 1978 – State Aid; and Philadelphia 1991 – Intergovernmental Cooperation Act). See Appendix B charts on analysis of Chapter 9 filings and state authorization to file Chapter 9 and Appendix C charts comparing Chapter 9 to Chapter 11. See also Appendix A-1 and A-2 – Alternatives to Bankruptcy and Appendix B-1 and B-2 – Application of Bankruptcy Provisions on Pension Obligations.

- C. Receivership or Emergency Manager.** While 47 states (exception Alaska, Minnesota and Wisconsin) provide some form of receivership for municipal enterprises that issue revenue bonds, there is limited authority for a receivership or emergency manager of a city or county

(see e.g., Rhode Island, Michigan, Massachusetts, Indiana and Kentucky for counties). Further, the power to adjust or modify pension and labor contracts by a receiver and emergency manager is likely to be challenged in Court. There is no constitutional, statutory or case law basis for receivership of states. States could provide legislation for receivership for municipalities or pension funds. Further, a Court may exercise equitable powers to appoint a receiver but the Court will have to determine that it is not interfering with state's rights.

- D. Financial Control Boards, Commissions and Refinance Authorities.** While there are at least 15 states that have some form of Financial Control Boards, Commissions and Refinance Authorities for financially distressed municipalities, only 7 states provide authority to freeze, adjust or modify labor costs and benefits (Connecticut, Indiana, Michigan, New York, Nevada, North Carolina and Pennsylvania). The exercise of that power to freeze, adjust or modify labor costs and benefits has been met with Court challenges and uncertainty.
- E. Mandamus Action to Require Funding.** Mandamus is an action by a creditor of a governmental entity requesting the Court to order a government official to levy taxes sufficient to pay the legal obligations of the government. Lawsuits such as mandamus to require payment of pension funding are possible but success is doubtful because Courts have said that, given the separation of powers, they cannot force the legislature to fund particular expenditures. (Generally, all the Court would do is require payment of pension benefits currently due and payable to retirees).
- F. Declaratory Judgment by State or Municipality for Adjustment to Pension Obligations for an Important Public Purpose or Best Interest of the Pension System.** The state or a municipality may request declaratory judgment or other judicial relief that pension costs be adjusted since the requirement to provide essential governmental services at an acceptable level cannot be sacrificed due to unaffordable and unsustainable labor and pension benefit costs. The U.S. Supreme Court has recognized that contracts may be impaired for an important public purpose (health, safety and welfare of its citizens as required by essential governmental services). This approach will be challenged in Court, and the local politics and the political will of elected officials will be tested. Any adjustment would have to be a reduction to the "most that can be afforded for the sake of providing essential governmental services" and hopefully a recovery plan to stimulate growth of business and commerce and increased jobs and taxpayers which, in the long term, will provide additional revenues to support payments and future increases that are sustainable and affordable.
- G. Slow Pay or No Pay Repudiation Leads to Litigation.** The state and municipality can, as sovereigns, attempt to repudiate the indebtedness or pay the obligation when they want in the amount they want (no pay/slow pay). That would eventually lead to litigation. Again, based on the past case law, the litigation more likely than not will be unsuccessful except to require payments of current amounts due for payment to retirees.
- H. Use of Public Pension Authority (such as the Illinois Municipal Protection Authority (IMPA) proposed by the Civic Federation) to Make Need Adjustments to Pension Obligations Is Possible But Not Yet Authorized.** Pension obligations can, in very extreme circumstances, be discharged where necessary to serve an important public purpose such as to ensure maintenance of essential governmental services at an appropriate level.
- The Public Pension Authority for a state like Illinois is a mechanism that provides a quasi-judicial authority, either by the voluntary petitioning by affected parties or through triggering criteria where either funding of a pension or other financial distress of the governmental body requires review and assistance with regard to public services and pension funding.

- Establishing IMPA as a fact-finding and determining commission or authority that can determine the then existing critical facts necessary for funding or restructuring unfunded pension obligations such as:
 - The ability and willingness to increase taxes and to fund pensions can be determined by IMPA with recommendations to local government to increase taxes if necessary and appropriate, through home rule legislative boards (city council, etc.) or by referenda of the local electorate.
 - The need to determine whether adjustments to wages and pension benefits are necessary in order to assure that essential governmental services will be provided at an acceptable level.
 - The elected officials, public workers and electorate can make an informed decision based on facts determined by IMPA as to the ability of the local government body to pay based upon the relationship between (a) realistic projection of revenues compared to the amount of tax dollars required to pay for essential governmental services at an acceptable level and (b) the remaining funds available to pay wages and pension benefits. There would be a quasi-judicial independent, objective and professional determination by IMPA whether the wages and pension benefits are reasonable, sustainable and affordable by the local government.
 - Issues of affordability of wages or pension benefits (in light of the costs of essential governmental services) can be determined by the authority and those determinations can be binding on the state, local government and public workers in future labor negotiations or resolutions.
 - The adverse effect on younger workers caused by not addressing the issue earlier can be mitigated by prompt actions now.
 - Either (a) increase in pension funding (if necessary and feasible through tax increases, increased contributions by employees or employer or state intercepts) so that the actuarially required payment is made annually by the government body or (b) adjustment of pension benefits and employee contributions so that which can be reasonably paid is paid as sustainable and affordable and the actuarially required payment is made annually.
- The Illinois legislature can establish minimum level of pension funding required (“Target Percentage”) and can require mandatory participation in IMPA review and determination of whether Target Percentage has been triggered and there is an inability of the governmental body to sustain over time providing essential governmental services and fully-funded pension benefits and wages (“Governmental Functions Emergency” or “GFE”).
- While government workers and government bodies may voluntarily seek the aid of IMPA, upon the determination of a GFE, IMPA should have the jurisdiction to make any and all determinations related to pensions and the appropriate pension funding at a level that is sustainable while assuring that the local government will have funds available to provide essential governmental services.
- IMPA will provide transparency and an independent fact determination and can recommend increased pension funding or state intercept of taxes otherwise available to the local governmental body to be used for funding pension payments so that they are the actuarially-required payment or, if necessary, will determine there must be a restructuring in order to avoid a breakdown of essential governmental services and a

GFE. In recommending a restructuring, IMPA can determine what is affordable and sustainable and recommend changes to the local governmental body and workers or it can be empowered to require such restructuring, if necessary, through a pre-packaged plan in Chapter 9 filing.

- IMPA answers the basic problem of failing to connect pension benefits to an affordable dedicated source of the annual payment of the ARC, defined herein, while assuming the funding of essential governmental services without pension payment holidays or other smoke and mirror gimmicks that have to date significantly contributed to the pension underfunding issue.
- For details on the Civic Federation's proposal for The Illinois Municipal Protection Authority thereon is attached as Appendix D – the Proposal.

I. **Three Possible Alternatives Currently Available.** In reality, at this time, there are basically three options for the state and municipalities:

- **Voluntary Reduction.** Voluntary reduction to maximize the ultimate benefit to all which, given the practicality and politics, does not seem likely at the present time. Obviously, this is the best path, and some states and municipalities have been able to choose this alternative with some success, normally primed by a pension adjustment proposal by governmental body.
- **Impose Pension Adjustment.** The state or municipality by legislation or executive order could enact an adjustment and defend it as an important public purpose and an exercise of police power in order to preserve its essential function of providing essential governmental services that are affordable and sustainable at an acceptable level. These pension adjustments must be justified as necessary to make the pensions sustainable and affordable and that this is the least drastic action available. There are obviously political and practical considerations to that action.
- **Claim Not Legally Responsible for Underfunding.** Through Court determination, obtain a ruling that the state or municipality is not responsible for underfunding since the state or municipality has paid what the legislation required, and it is now the pension fund that has the responsibility of paying the pensions. This is supported by the assertion that there has been mismanagement of the pension fund, that the increased benefits awarded to the public employees are not sustainable and affordable and that such benefits are therefore unauthorized acts which are not enforceable against the state or the municipality. Politically and practically, there are difficulties with the Court's enforcing that argument. Further, it might reduce but not eliminate the underfunding issue.

J. **Paying All That Is Affordable Is Not an Impairment or Diminishment.** In discussions with representatives of public workers on the unfunded pension issue, they raise the constitutional protection against impairing or diminishing pension payments. However, there are limits to what the state and the municipality can actually pay. If you raise taxes above a certain level, there are examples that will demonstrate that the governmental body will lose taxpayers and have less tax revenues. Based on that, if pension obligations are unrealistic, unaffordable and unsustainable, it is not an impairment or diminishment of the benefits if the state or a municipality adjusts the pensions to what is sustainable and affordable given an acceptable level of essential governmental services which need to be paid first for an important purpose. That is recognizing reality as opposed to perpetuating a myth of what can be paid on pension obligations.

K. Can IMPA Provide the Best Means of Implementing an Appropriate Pension Adjustment.

- The state of Illinois can voluntarily choose to have unfunded pension and OPEB liabilities resolved through the equivalent of a quasi-judicial authority established by the state law to objectively determine what is sustainable and affordable to pay wages, pensions and OPEB obligations after paying the costs of essential governmental services at an acceptable level.
- The municipality would propose a Recovery Plan that is sustainable and affordable that: (a) provides for payment of essential governmental services, (b) maintains public safety and welfare at acceptable level and encourages business development, increases jobs, taxpayers and tax revenues, and (c) provides for payment of the sustainable and affordable payment of labor costs including pension and OPEB without sacrificing essential governmental services or the future of the state or municipalities.
- Other interested parties, public workers, taxpayers and major creditors can provide objections or comments as to the treatment provided by the Recovery Plan to IMPA and IMPA would determine and enforce the Recovery Plan with modifications as deemed necessary so that it is sustainable and affordable and in the best interest of all.
- The determinations by IMPA of what are sustainable and affordable labor costs, pensions and OPEB as well as the Recovery Plan as modified by IMPA would become the law of the state and enforceable if the state legislature did not within a set short period of time enact legislation to the contrary.
- The state could consider whether a program providing the equivalent of social security benefits to state and local government employees should be enacted to provide a safety net to assure payment of a specific benefit funded through public or private insurance programs. This safety net could work similar to the PBGC as far as assuring benefits at least at the equivalent of social security benefits for those who have IMPA's approval of financial soundness.

III. WHAT CAN STATE OR LOCAL GOVERNMENTS DO TO SOLVE PENSION AND OPEB PROBLEMS (WITHOUT RESORTING TO A COURT PROCEEDING)?

A. Define the Problem.

- First, determine whether the problem is an unwillingness to pay or inability to pay problem.
- Unwillingness to pay can be resolved.
- Public Pension Authorities, Receivers and Emergency Managers are examples of alternatives intended to provide an independent objective, expert analysis of what is sustainable and affordable and mechanism for the governmental body to implement a program to pay what can be paid without sacrificing essential governmental services.

B. Increase Pension Contributions Where Possible. If there is determined to be an unwillingness to pay and there is an ability to pay, there can be a recommendation of increase in annual pension contributions or an increase in taxes to fund them.

C. Make Adjustments When Inability to Pay Is the Problem. While both lead to the same result, the inability to pay may require more drastic action. The government cannot pay that which it does not have funds to pay and payment of pension obligations should not short providing essential governmental services.

- D. **The Reality of Consensual Adjustments.** Voluntarily consenting to rollback benefits for the employees sufficient to solve the problem.
- Voluntary reductions are not likely and results are uncertain.
 - If employees know the worse case, voluntary consent may be possible because it is probably the best case for them.
 - IMPA and other mechanisms that provide an objective third party determination of the ability to pay rather than the illusion that taxes can always be raised. The independent, objective determination of what is feasible and affordable may provide the backdrop for an objective analysis for the sake of all workers, young and old, to a solution that makes practical sense.
- E. **The Practical Need for Consensual Adjustments.** Encouraging voluntary and consensual resolution to the extent possible (as difficult as that may seem).
- F. **Placing the Need for Consensual Adjustment Into Perspective.** Provide the reality backdrop of IMPA or other objective determination of what is affordable and sustainable which can encourage voluntary consensual resolution and, if needed, demonstrate the harsh reality of what can be afforded and paid with consequences of future enforcement of a determined sustainable payment program including pre-packaged Chapter 9 or Court enforcement with even harsher results for all.
- G. **What IMPA Can Do.** What IMPA can help determine:
- What Is It? Unwillingness to pay or inability to pay?
 - Consensual rollback of benefits – when less is more.
 - Mandated changes – actuarially required when pension plan rescue is necessary and determine what level of pension benefits are sustainable and affordable without adversely affecting providing the required level of essential governmental service.
 - Necessary voluntary steps can be taken as some states are doing or hope to do.
 - There are fourteen steps state or local governments can take that would reduce or eliminate pension underfunding as outlined in the attached appendix (See [Appendix E – Fourteen Steps States and Municipalities Can Take to Address Pension Underfunding](#)).
- H. **Now Is the Time.** Failure to address the issues now will lead to potential larger problems later:
- Should pension benefits be a defined contribution or defined benefit plan and does that make a practical difference?
 - What distinction can be made as to new employees versus vested employees?
 - Has there been a misuse of contribution holidays and how can that be prevented?
 - Is there a lack of dedicated source of funding?
 - Is there a requirement to make the equivalent of the annual required contribution (ARC)?
 - Are all increases in pension benefits predicated on a real existing dedicated source of funding?

- Are the pension benefits too big to realistically be paid?
 - Should there be reduction or elimination of cost of living increases?
 - Is there a need for significant increase in employer and/or employee contribution?
- I. **Need for Determination of What Is Sustainable and Affordable.** Voluntary action (14 steps noted above) may not be possible and changes in benefits may not be possible on a voluntarily basis and cannot be agreed to between workers and the government without additional persuasive mechanisms such as enforceable determinations of what is sustainable and affordable by IMPA.
- J. **More Disclosure May Help Focus and Encourage Resolution of the Pension and OPEB Underfunding Problem.**
- Disclosure of the underfunding on a standardized reporting basis with realistic return of investments and discount rates.
 - Disclosure of what municipalities are authorized by the state to file Chapter 9 municipal bankruptcy or are not so authorized.
 - Disclosure of whether state or municipal debt is protected by statutory lien, constitutional or statutory priority of payment, set asides, special revenues or other enhancement that provides a priority of payment or pledge of revenues that cannot be impaired.
 - Disclosure of state law protection for payment or assistance, limitations on debt or limitations on taxes, available state oversight or refinance authority for state supervision or financial review of financially-challenged local governments.
- IV. **A SOLUTION IS REQUIRED TO AVOID EVENTUAL MELTDOWN**
- A. **Just Raise Taxes.** Workers demand for full funding now. Is this possible, feasible and in the best interest of all?
- B. **Can Government Promise What It Is Not Capable of Paying?** Demand to invalidate unjustified pension obligations by taxpayers and other creditors. The growing taxpayer revolt against outsized pension benefits that are larger than the private sector.
- C. **Without Change Melt Down Is Certain.** The only way out is change. The inability to pay is a reality that must be recognized and dealt with.
- D. **The Need for an “Or Else”.** Ultimately in order to provide capacity for growth and change in those situations where voluntary and consensual resolution has not worked, it is necessary to provide a draconian “or else” as a clear alternative (Chapter 9 or Pension Fund Receivership as discussed herein) that is clearly capable of producing a harsher result than negotiated resolutions.
- E. **Mandatory Change Is Necessary.** If there is an inability to pay the current level of promised pension benefits or to do so would cause a GFE (where the government cannot afford essential governmental services) then reductions in required payments for pension benefits or increases in workers contributions will be mandatory if not consensually agreed to in order to provide essential governmental services and pension funding at targeted affordable and sustainable levels.

V. **MECHANISMS TO SOLVING THE SEVERE PENSION UNDERFUNDING PROBLEM FOR STATES AND LOCAL GOVERNMENTS**

- A. **Chapter 9 – Municipal Bankruptcy.** Municipalities can use Chapter 9 municipal debt adjustment in an attempt to solve those problems which cannot consensually or voluntarily be resolved. Chapter 9 carries with it its own stigma and potential limitations including potential adverse ability to access and to borrow in the capital markets. As noted above, states do not have the ability to file a Chapter 9 as a co-sovereign with the federal government. However, states can repudiate debt or slow pay or no pay which are not desired solutions and have significant financial consequences to the future financial survival of a state. See [Appendix A](#).
- B. **Receiverships, Commissions and Board of Adjustment.** States' receiverships, commissions and boards of adjustment have been used in past times of financial distress to make necessary determinations of the inability of the state and local government to pay, to approve plans of adjustment, adjust payments and prevent governmental function meltdowns and the serious consequences of impaired governmental services. These quasi-judicial state authorities, like IMPA, have addressed financial distress and provided reduced levels of payments and services or provided governmental funding assistance when it was financially sound and affordable as bridge financing in times of revenue shortfalls or determined what level of services and payment were affordable and provided the means of implementing such a plan.
- C. **IMPA and Determination of Critical Issues.** Likewise, given the pension underfunding crisis, IMPA can provide a supervised forum to assist in determining critical issues such as:
- What contribution increases are necessary by both public employers and employees?
 - What adjustments of pension benefits are required?
 - Can or should taxes be raised to fund pensions?
 - What level of pension benefits are sustainable and affordable without impairing essential government services?
 - Are intercepts of state revenue necessary to provide a source of funding?
 - Can the annual ARC for pensions be made or is it unreasonable, unaffordable and not sustainable?
 - Will continued funding of ARC cause the government to be unable to fund the costs of essential governmental services?
 - What cost-cutting measures are required to achieve affordable benefits?
 - What past employment benefits are affordable and what ones, if any, are not?
 - What adjustments to past employment benefits are mandated to avoid a governmental functions meltdown or GFE?
 - What is the minimum acceptable funding percentage for funding pension benefit the Target Percentage?
 - The determination of IMPA can be enforced in state or federal court or in authorizing the filing of a pre-package Chapter 9 bankruptcy plan.

- D. **Contract Litigation.** The state or a municipality may bring a legal action (by declaratory judgment or exercise of police power) to adjust pension obligations that are not affordable and sustainable and that interfere with providing essential governmental services at an acceptable level.
- **Adjustment of Pensions for Important Public Purpose.** States and municipalities may discharge or impair contractual obligations for an important public purpose such as providing essential governmental services at an acceptable level or the exercise of police powers to preserve and protect the health, safety and welfare of their citizens. However, the adjustment of pensions must be the least drastic action in order to avoid the prohibition against impairing or diminishing legitimate contract rights.
 - **Determine Award of Pension Benefit as *Ultra Vires* or Unauthorized Action.** The unwise decisions to increase labor costs and benefits without regard to the source of payment and the ability to pay may have led to fiscally unsustainable costs of certain wages, benefits and pension obligations, given the anticipated revenues of the state and municipalities. Certain pension benefits in place today are unrealistic, unattainable and not affordable. The state or municipality cannot take action that threatens its essential mission of providing essential governmental services to its citizens. Actions by the state or municipalities to pay pension benefits or OPEB costs that are not affordable or sustainable without threatening acceptable essential services are *ultra vires* or unauthorized and should not be enforceable.
 - **Adjustment Without Real Impairment or Diminishment.** If wages, benefits or pension obligations are not sustainable or affordable and threaten the public purpose of the state or municipality, then there is no “impairment or diminishment of the pension benefit” because that which is attainable as adjusted would be paid, that which is unrealistic and unaffordable without interfering with essential governmental services should not be paid. The beneficiaries are receiving all that practically could be paid.
- E. **Receivership for Public Pension Funds.** Public Pension Funds, to the degree that they are insolvent (cannot pay debt as they mature – future obligations not adequately provided for), could, based upon their organizational documents, either be placed into a receivership or into a bankruptcy proceeding, to the extent interested beneficiaries believe it is necessary to preserve and protect the basic purpose of the pension fund that is to provide pensions to all of its constituents in a fair and equitable manner.
- **Receivership May Protect Younger Workers’ Interests.** Younger workers could choose to protect their future interests which are in serious jeopardy by bringing an action for receivership given the insolvency of the pension fund and its future inability to make payments to them to the same degree that earlier retirees were paid and the inability to pay them what was promised. Such a cause of action could be brought in state or federal court.
 - **A Federal Cause of Action May Exist.** An action could be framed in federal court as an action to enforce the U.S. Constitutionally protected rights of the younger workers to be treated fairly and denial of their constitutional rights by the inevitable insolvency of the pension fund and its inability to pay them what has been promised and the denial of their “civil rights” under the color of state law, as well as due process and equal protection of the younger workers given the real and practical limits on what state and local governments can pay for public pensions and still meet their government mandated purpose of providing essential governmental services.
 - **The Benefit of Federal Court Supervision.** A federal court may be viewed as more objective (free of local politics and elected judges) and the federal court may decided to

appoint either special master or a commission to administer and appropriately adjust pension contributions and benefits to that which is sustainable and affordable similar to IMPA.

- **IMPA Is Preferred.** Receivership of the pension fund is a drastic step and should be avoided if at all possible. Instead voluntary adjustments or resolution of pension underfunding through the use of IMPA is not only preferred but desired.

VI. CONCLUSION

- A. **The Insanity Can Not Continue.** One definition of insanity is doing the same thing over and over again and expecting different results. That is a fair summary of how the public pension underfunding crisis has generally been dealt with so far.
- B. **Action and Resolution Is Required Now.** Pension underfunding crisis has reached a level of concern so that now is the time for action, change, adult supervision and necessary determinations of what is affordable and what is not.
- **Strong Remedies May Bring Consensual Resolutions.** Bankruptcy, IMPA or Pension Fund Receivership appear to be examples of the “or else” that can provide clarity as to why voluntary and consensual resolution should be preferred. There is a need for strong remedies to be able to be taken to bring about the change necessary in pension funding, contributions and benefits so that essential governmental services are not threatened and benefits are appropriately adjusted to what is sustainable and affordable and fair and equitable for all.
 - **Essential Public Services Cannot Be Sacrificed.** Whether it is the use of IMPA, a Receivership or Oversight Commission for pension funds or court actions to enforce the rights of the government, taxpayers or public workers for fair treatment and the need of a court appointed receiver for the pension fund, there is one fact that is clear: action needs to be taken now. The choice is not when but which mandatory mechanisms must be utilized now to resolve the pension underfunding as a permanent fix to pay annually the ARC. The resolution must not compromise the ability of the government to provide essential governmental services.
 - **A Few May Be Required to Fail for the Benefit of All.** To the extent there are a few unfortunate meltdowns of pensions with drastic consequences, such sacrifices may well motivate all interested parties, public workers and state and local governments to make those pension obligation adjustments voluntarily to avoid being a victim of such drastic consequences.
 - **Safety Net Can Be Provided.** A “carrot” for voluntarily making the mandated adjustments could be providing a dedicated source of payment for a sustainable and affordable pension payment so that this is truly a permanent fix and not a recurring problem. Also, an insurance plan for a minimum floor benefit at least equivalent to social security benefits funded by public or private insurance programs can be developed for those who take corrective action similar to the PBGC insurance plan for the private sector.

APPENDIX A

CHECKLIST OF ALTERNATIVES AVAILABLE TO STATES AND THEIR MUNICIPALITIES FOR UNDERFUNDED PENSION OBLIGATIONS

**APPENDIX A
CHECKLIST OF ALTERNATIVES
AVAILABLE TO STATES
AND THEIR MUNICIPALITIES FOR
UNDERFUNDED PENSION OBLIGATIONS
(SEE LEGEND FOR ABBREVIATIONS BELOW)**

ALTERNATIVES	STATES	STATE PENSION FUNDS	MUNICIPALITIES	MUNICIPAL PENSION FUNDS
I. Eligibility to File for Bankruptcy – Chapter 9/Chapter 11 (See Appendix B).	N/AV	PFLS	MLS	PFLS
A. Ability to Reject Labor Contracts and Pensions (See Appendix B).	N/AV	PFLS	MLS	PFLS
B. Automatic Stay (See Appendix B-2).	N/AV	PFLS	MLS	PFLS
C. Priority of Post-Filing Wages Pension Benefits (See Appendix B-2).	N/AV	PFLS	MLS	PFLS
D. Priority of Pre-Petition Pension Wages and Other Benefits in BK (See Appendix B-2).	N/AV	PFLS	MLS	PFLS
E. Court Supervision (See Appendix B-2).	N/AV	PFLS	MLS	PFLS
II. Receivership or Emergency Manager (See Appendix A-1).	N/AV	N/PA, but L/E	N/PA, but L/E	N/PA, but L/E
III. Mandamus (See Appendix A-2).	YES, but NCA	YES, but NCA	YES, but NCA	YES, but NCA
IV. Declaratory Judgment by State or Municipality for Adjustments to Pension obligations for an important Public Purpose or Best Interest of the Pension System (See Appendix A-2).	YES, but LDA	YES, but BIS	YES, but LDA	YES, but BIS
V. Repudiation – No Pay or Slow Pay (See Appendix A-2).	YES/Mandamus	YES/Mandamus	YES/Mandamus	YES/Mandamus
VI. Public Pension Funding Authority (See Appendix A-1).	YES/NL	N/AV	YES/NL	N/AV
VII. Voluntary Reduction to Maximize Ultimate Benefit to All (See Appendix A-1).	YES, but PD	YES, but PD	YES, but PD	YES, but PD
VIII. Determine not responsible for underfunding due to paid what legislature required or mismanagement of Pension Fund or not enforceable as <i>ultra vires</i> or unauthorized act (See Appendix A-1).	YES, but PD	N/AV	Yes, but PD	N/AV

LEGEND FOR ABBREVIATIONS

BIS	=	Best Interest of Pension System – The Trustees of a pension fund may seek Court approval to alter payment for the best interest of the system and avoid inequity to workers who have yet to receive payment given the deficiencies in funding.
LDA	=	Least Drastic Action for an Important Public Purpose – Contract clause prohibitions and constitutional restrictions are subject to state or municipalities requiring an impairment or diminishment to prevent a failure to provide essential governmental services or benefits or as an exercise of police powers to modify contract as required for an important public purpose and that the adjustment is the least drastic action to be taken.
L/E	=	Legislation or Equity Jurisdiction Required – Not available unless legislation is passed authorizing it or court exercises equitable powers and determines it does not violate separation of power which is unlikely.
MLS	=	Municipalities’ Legal Status – If the state specifically authorizes the filing of a Chapter 9, it may be available but there is a limited number of states where Chapter 9 is authorized.
N/AUTH	=	Not Authorized by States.
N/AV	=	Not Legally Available.
NCA	=	Not Currently Available – Courts have not forced funding of pensions for lack of full or partial funding of pension obligations and have refused to interfere with legislative powers of state or municipalities unless current payment to Retirees is not able to be made.
N/PA	=	Not Presently Available without Legislation.
PD	=	Practically Difficult – Practically and politically difficult or impossible given attitude of all parties concerned.
PFLS	=	Pension Fund Legal Status – If the pension fund is deemed a municipality, then Chapter 9 may be authorized by the state but there are a limited number of states where Chapter 9 is authorized. If the pension fund is deemed a governmental unit, then Chapter 11 is not available. Otherwise pension fund would have to prove it is not a municipality (agency or instrumentality of state) or governmental unit but the equivalent of corporation or limited liability entity to be able to file a Chapter 11.
See Appendix	=	See Appendix A, A-1, A-2, B, B-1 or B-2 for more detail on specific treatment.
YES/Mandamus	=	YES but subject to beneficiaries or workers suing for payment or mandamus.
YES/NL	=	Needs Legislation – A quasi judicial commission that imposes adjustments to pension, wage and benefit obligations through either voluntary mediation or mandatory determination of what is affordable and sustainable by the state or a municipality given the funding priorities for essential governmental services.

**APPENDIX A-1
ALTERNATIVES TO BANKRUPTCY**

MECHANISM	EFFECT
Determining Obligor of Pension Underfunding	<ul style="list-style-type: none"> • If the state is the obligor of the pension, the state cannot use Chapter 9 as a means for altering pension structures. • Further, neither a state nor a governmental entity, such as a Pension Fund, may file a Chapter 11 petition. • The state or municipality may claim it has paid what the legislature has required so that the Pension Fund bears responsibility for the underfunding. Cook County and the City of Chicago may have success with this argument since they have paid to date what the legislature required and the underfunding was due to mismatch of legislative requirements and pension benefits. • If the state or municipality succeeds in having the Pension Fund held liable for underfunding due to payment of what legislature required or contributory fault due to mismanagement of funds or investments, and the Pension Fund is responsible for some or all of the underfunding.
Public Pension Funding Authority or Voluntary Reduction	<ul style="list-style-type: none"> • Supervised forum to assist states or its municipalities in determining critical pension issues as quasi judicial entity to determine what costs are sustainable and affordable while providing essential governmental services and develop restructuring plan issues, such as (1) if contribution increases are necessary; (2) can taxes be raised to fund pensions; (3) are intercepts of state revenue necessary; (4) can actuary requirements be met; (5) will funding pensions cause the government to be unable to fund the cost of essential governmental services; and (6) other related issues. • Also workers, pension funds or labor unions may agree to voluntary adjustments that preserve the state or municipalities' ability to pay and survive and maximize value. • <i>For more information on Public Pension Funding Authorities or Voluntary Reduction see IMPA Legislative Proposal.</i>
Receivership	<ul style="list-style-type: none"> • State receiverships, commissions and boards of adjustment have been used to address past financial distress. • The federal government may not force a state pension fund into receivership unless authorization by state law. • State law must allow for a receivership in order for a court to appoint a receiver. • Receivership laws could be created to allow a court to supervise a pension fund and it is possible that a state law could be established to allow parties-in-interest – those vested in the pension fund – to supervise. • Beneficiary of the Pension Fund may petition a court in equity to appoint a Receiver for cause but the court must determine this does not interfere with the state's rights.

**APPENDIX A-2
ALTERNATIVES TO BANKRUPTCY**

MECHANISM	EFFECT
Mandamus or Litigation	<ul style="list-style-type: none"> • Mandamus is an equitable means that allows an affected person or entity to petition a court to compel a state or local government or official to perform some ministerial action that is required by law to levy taxes or pay past-due debt. • Mandamus may be used to establish rights or force a discretionary right. • Illinois courts have not forced state or municipalities to fund pension payments (missed or inadequate); absent inability to pay current retiree benefits.
Repudiation – Slow Pay or No Pay	<ul style="list-style-type: none"> • In theory, states, as sovereigns, may repudiate indebtedness. • State may be subject to lawsuits, but such lawsuits likely would not be successful as long as the pension fund had enough funds to pay current retirees when due. Courts cannot force the state to pay into a pension fund for more than the obligation to pay retirees currently. • If state fails to take a ministerial action, could be subject to mandamus action. • Would significantly impair the state’s ability to finance future debt and be politically inappropriate.
Declaratory Judgment or Legal Action to Modify Contract for Important Public Purpose	<ul style="list-style-type: none"> • The Supreme Court of the United States has recognized an exception to the prohibition not to impair contracts. • States and local governments may impair a contract or obligation for an important public purpose; as an exercise of police powers for the health, safety and welfare of the government (in order to be able to provide essential governmental services at an acceptable level).

APPENDIX B

ANALYSIS OF CHAPTER 9 FILINGS AND STATE AUTHORIZATION TO FILE

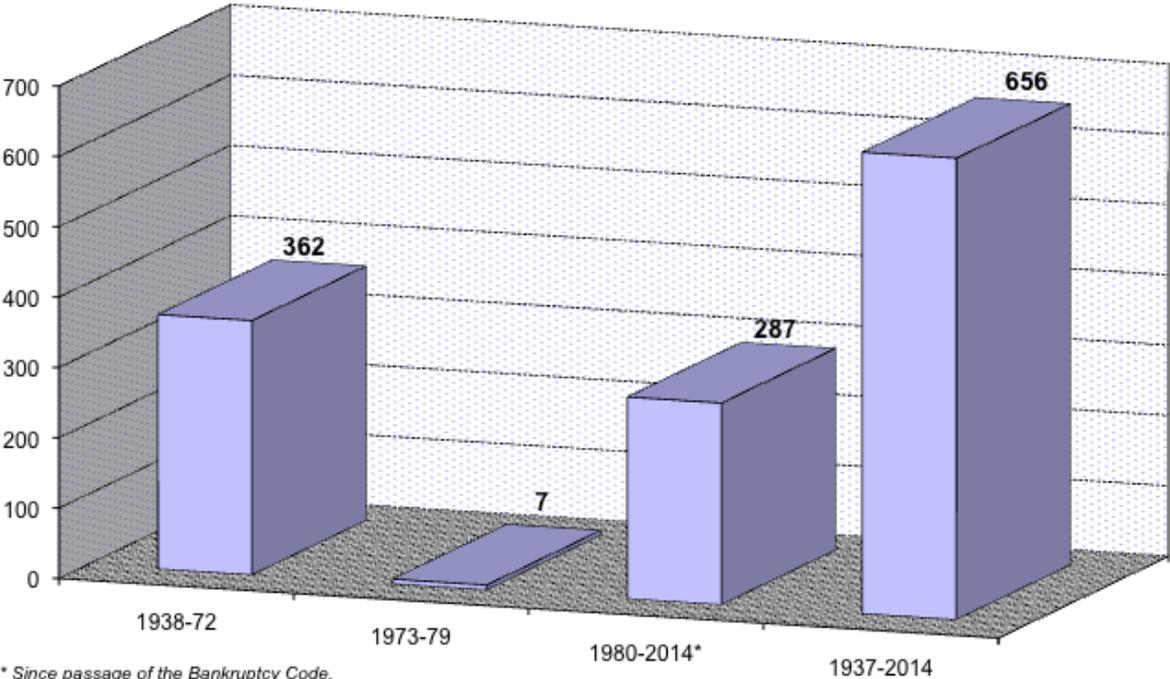
Municipal Bankruptcy Chapter 9 – Filings and Authorization to File

A. Historically the use of bankruptcy by municipalities has been rare:

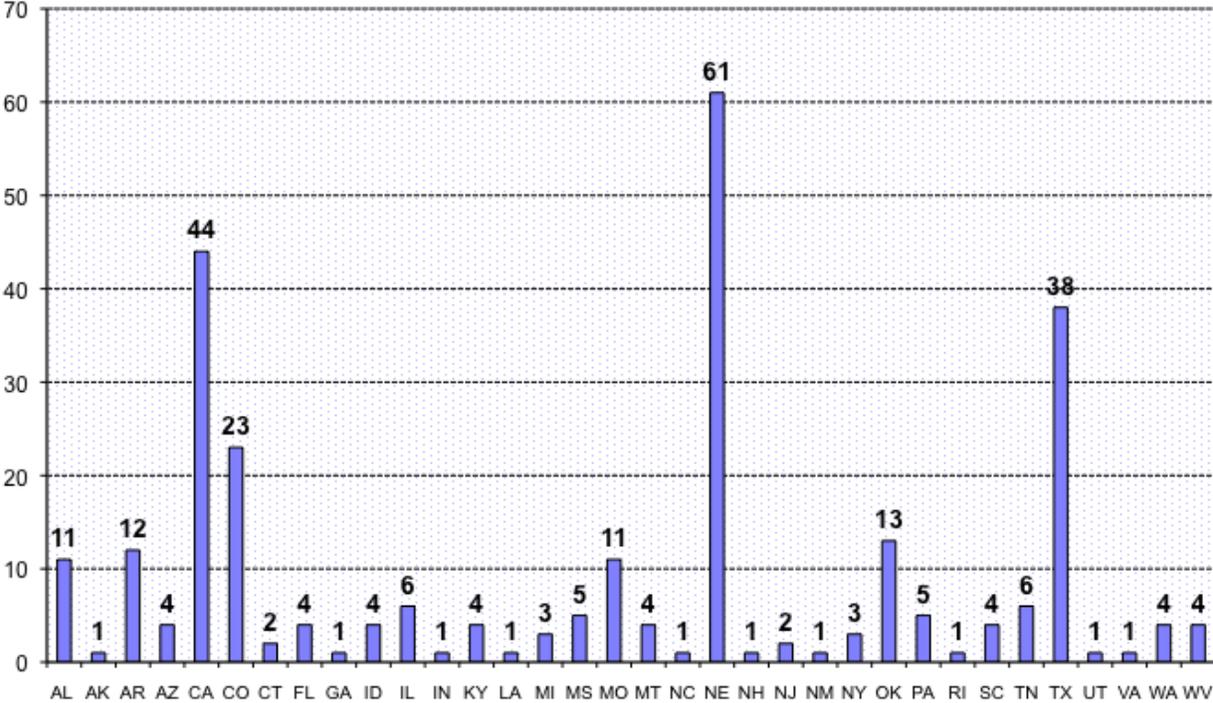
1. Unlike corporations local governments rarely use Bankruptcy, Chapter 9 – generally only special tax districts and small municipalities file. No large issuers of municipal debt (with the exception of Orange County, California in 1994, Bridgeport, Connecticut in 1991, Vallejo, California in 2008, Jefferson County in 2011, Stockton, California in June, 2012, San Bernardino, California in August, 2012 and Detroit, Michigan in July 2013) have filed in the last 60 years. There have been only 656 Chapter 9 filings since 1937. In 2008, 2009, 2010 and 2011 there were 4, 10, 6 and 13 respectively, municipal Chapter 9 filings. In 2012 and 2013 there have been 12 and 8, respectively, Chapter 9 filings of which only 3 and 1, respectively, have been cities, towns or counties (Stockton, Mammoth Lakes and San Bernardino in 2012 and Detroit in 2013). There were 58,721 business (14,745 Chapter 11) filings in the year ending September 30, 2009 and 58,322 business bankruptcy (14,191 Chapter 11) filing in the year ending September 30, 2010.
2. Comparing Chapter 11 corporate reorganization filings to Chapter 9 municipal debt adjustment filings reveals the historical strength, willingness to pay and credit quality of municipal bond debt. In 2009 and 2010, there were over 14,000 Chapter 11 corporate reorganizations filed each year. Since 1937, there have only been 656 Chapter 9 cases filed, most of which have been small special tax district and entities that did not issue municipal bonds.
3. Further, of the 656 Chapter 9 municipal bankruptcy filings since 1937, 180 or 25% have been dismissed or closed without a plan of adjustment filed. Since 1980, there have been 287 Chapter 9 filings by municipalities and, of those, 84 or 30% have been dismissed or closed without a plan and only 53 of the 287 have been traditional local governments (town, cities, villages and counties).
4. Since 1954, there have been 312 Chapter 9 filings but only 63 of them were cities, towns, villages and counties. Of those 63 cases filed since 1954 there were 29 cases (46% of those filed) that were dismissed without a plan of adjustment being confirmed.
5. Since 1954 of the 312 Chapter 9 filings of municipal bankruptcy: Virtually all of those municipalities that filed Chapter 9 were small or not major issuers of Bond Debt except for Bridgeport, CT in 1991, Orange County in 1994, Vallejo CA in 2008, Jefferson County, AL in 2011, Stockton and San Bernardino, CA in 2012 and Detroit, MI in 2013. Both Harrisburg, PA and Boise County, ID. In 2011 were dismissed as was Bridgeport in 1991.
6. The largest cities, towns, villages and counties to have filed Chapter 9 bankruptcy in the last 60 years (prior to Detroit):

	APPROXIMATE POPULATION	APPROXIMATE DEBT IN MILLIONS
Orange County (filed 1994)	3,000,000	\$1,974
Vallejo, California (filed 2008)	115,942	\$175 (2008)
Jefferson County (filed 2011)	658,931 (2011)	\$4,200
Stockton, California (filed 2012)	291,707 (2010)	\$1,032 (2011)
San Bernardino (filed 2012)	213,012 (2011)	\$492.3 (2011)
Detroit, Michigan (filed 2013)	701,475 (2012)	\$19,200 (2013)

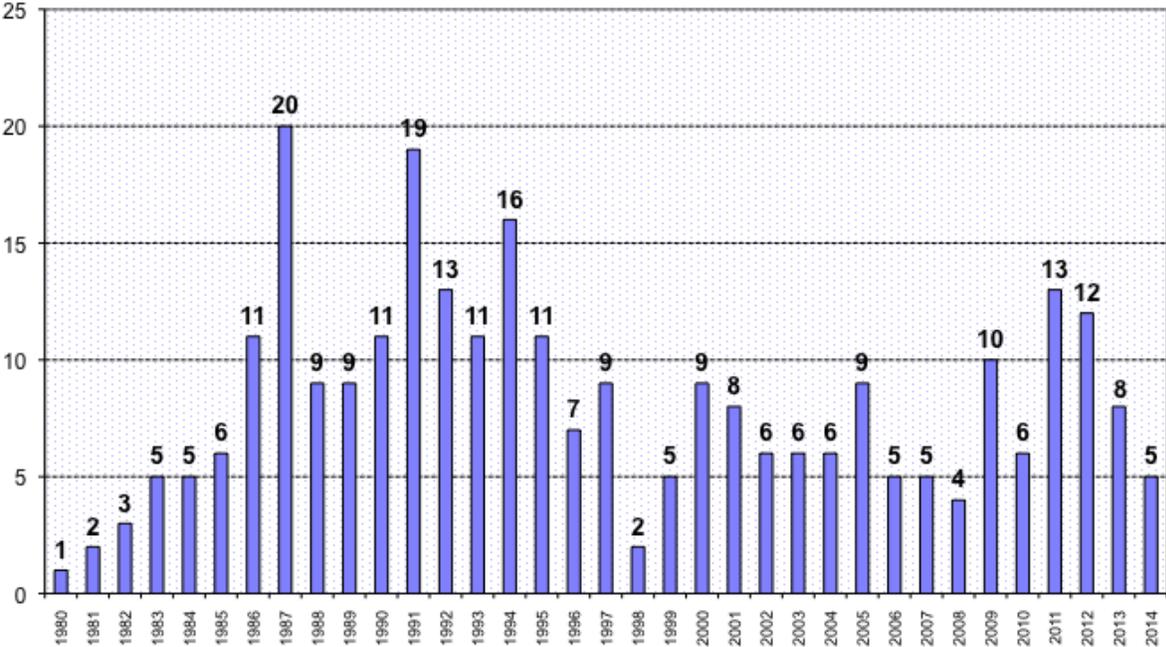
FREQUENCY OF MUNICIPAL BANKRUPTCIES • 1937-2014 (as of 4/7/2014)



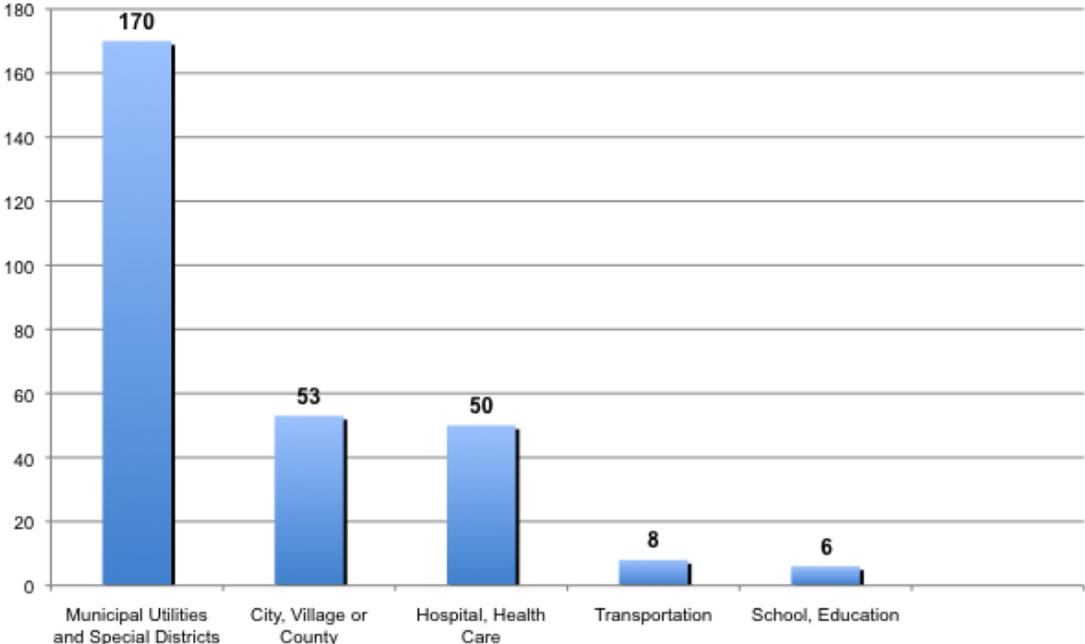
CHAPTER 9 FILINGS BY STATE • 1980-2014
(as of 4/7/2014)



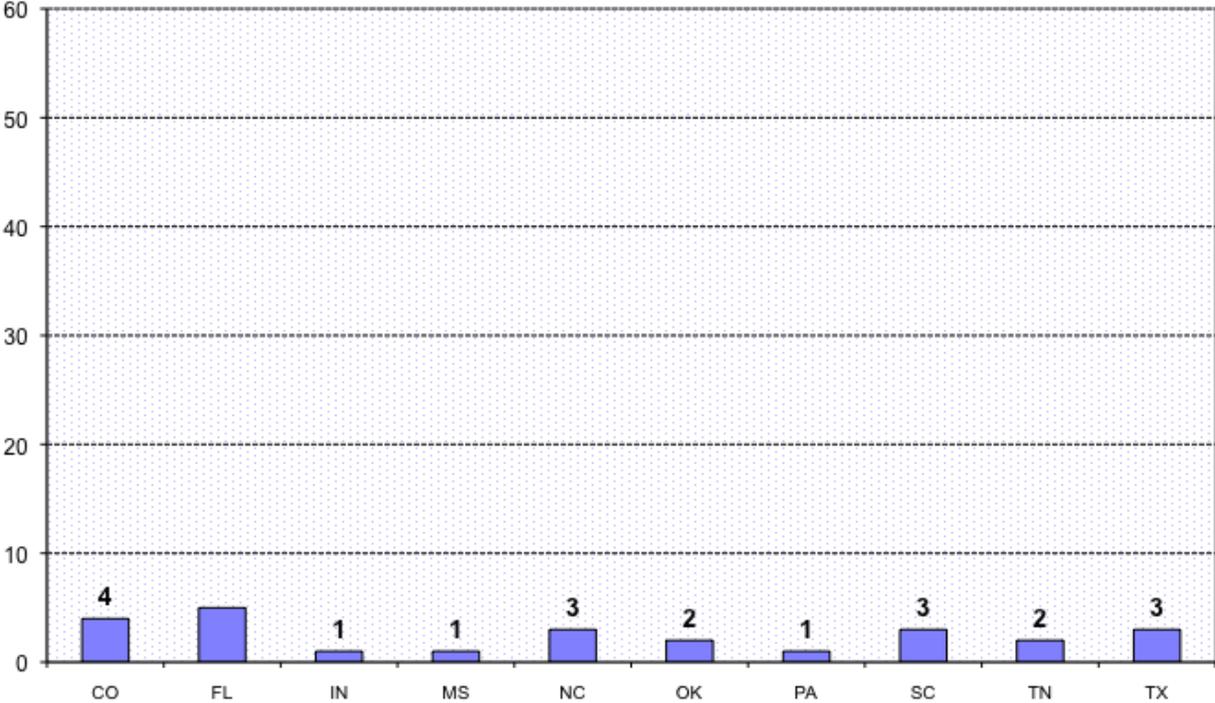
CHAPTER 9 FILINGS BY YEAR • 1980-2014
(as of 4/7/2014)



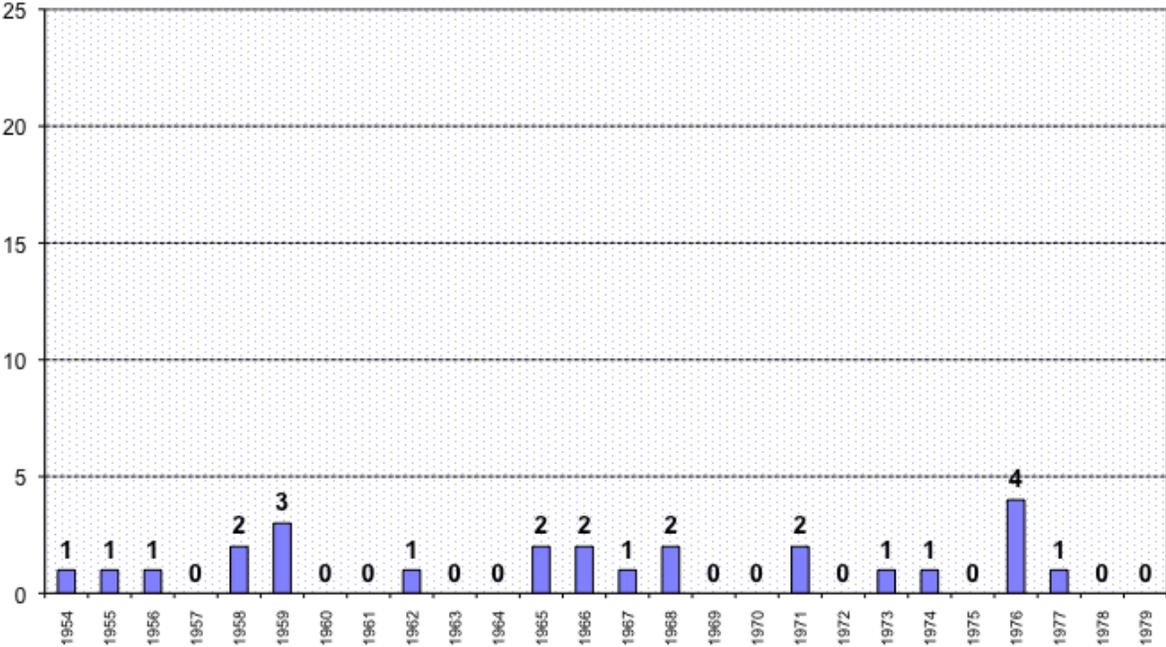
CHAPTER 9 FILINGS BY TYPE • 1980-2014
(as of 4/7/2014)



**MUNICIPAL BANKRUPTCY FILINGS BY STATE
1954-1979**

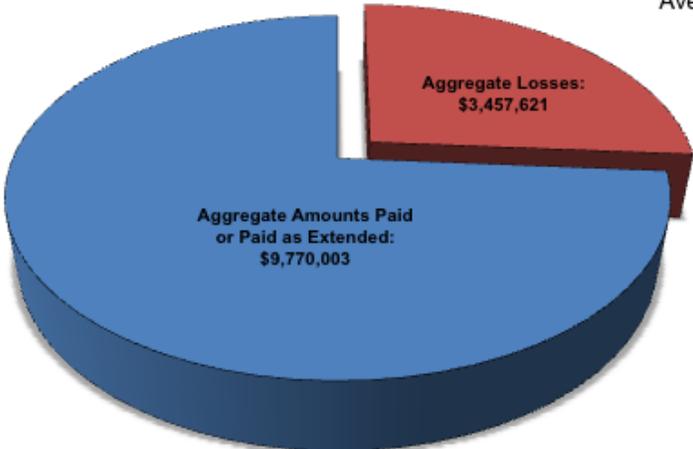


MUNICIPAL BANKRUPTCY FILINGS BY YEAR 1954-1979



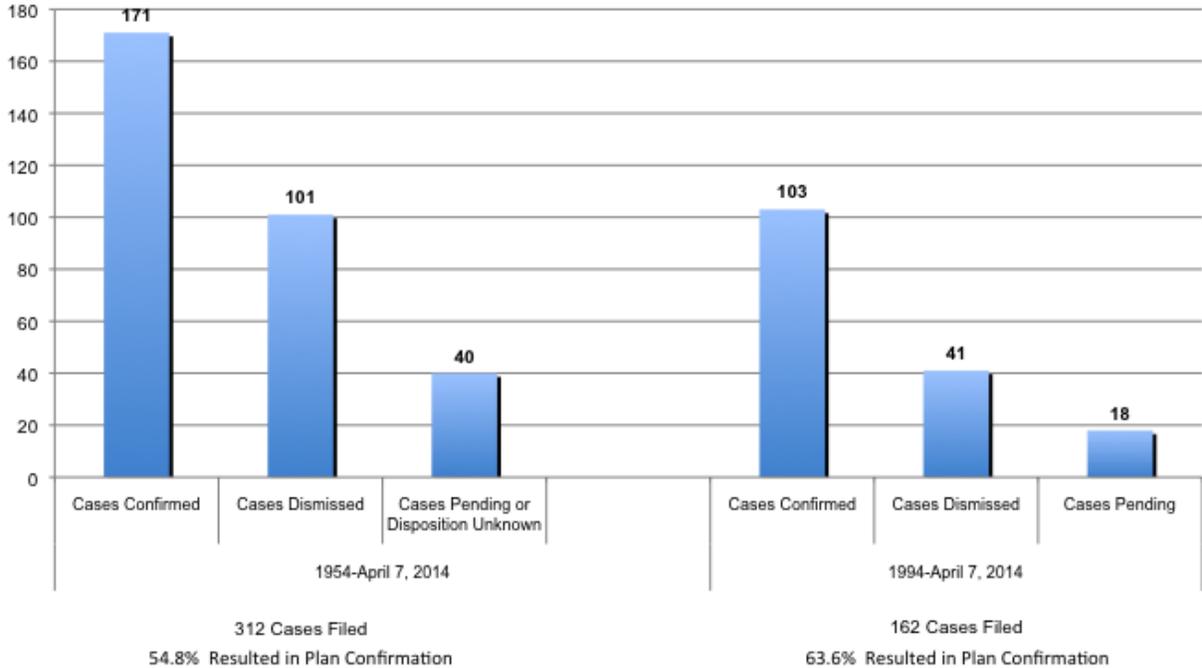
MUNICIPAL BANKRUPTCY RECOVERY 1954-1972*

Total Filings: 18
Aggregate Admitted Debts \$13,227,624
Average Debt Per Filing: \$734,868
Average Percentage Recovery: 73.9%



* See Table 5-1, *City Financial Emergencies: The Intergovernmental Dimension*, Advisory Commission on Intergovernmental Relations, July 1973.

DISPOSITION OF CASES



- B. Who is eligible to file Chapter 9 – only those municipalities that are specifically authorized by their state law can file. No major changes in the last year:
- To be a Debtor in a Chapter 9, an entity must be:
 - An entity that is a municipality (political subdivision, public agency or instrumentality of state – states are a co-sovereign with the federal government and cannot file for Chapter 9); and
 - Specifically authorized under state law to be a Debtor. Twelve states have Statutory Provisions in which the state specifically authorizes filing (AL, AZ, AR, ID, MN, MO, MT, NE, OK, SC, TX, WA), another twelve states authorize a filing conditioned on a further act of the state, an Elected Official or state entity or neutral evaluator (CA, CT, FL, KY, LA, MI, NJ, NC, NY, OH, PA, RI). Three states (CO, OR and IL) grant limited authorization, two states prohibit filing (GA) but one of them (IA) has an exception to the prohibition. The remaining 21 are either unclear or do not have specific authorization (California, one of the 12 states that conditionally authorized Chapter 9 by municipalities, has new legislation enacted on October 9, 2011, adding the requirement that, before being able to file Chapter 9, a municipality must first either (i) use a neutral evaluator or (ii) declare a fiscal emergency finding there is jeopardy to the health, safety or well being of its residents and it is unable to pay its obligations within the next 60 days).
 - Insolvent:
 - Proving insolvency can be challenging. As municipality has to prove it is not paying its debts or is unable to pay its debts when they come due.
 - Willing to effectuate a plan.
 - Either have obtained the agreement of creditors holding majority amount of the claim of each class that the municipality intends to impair or have attempted to negotiate in good faith, but was unable to do so or it was impractical to negotiate with creditors or a creditor is attempting to obtain a preference.

The following are statutory provisions in which states have authorized Chapter 9 filings for certain governmental entities.

12 States that specifically authorize municipal bankruptcies:

Ala. Code 1975 § 11-81-3
Ariz. Rev. Stat. Ann. § 35-603
Ark. Code Ann. § 14-74-103
Idaho Code Ann. § 67-3903
Minn. Stat. Ann. § 471.831
Mo. Ann. Stat. § 427.100
Mont. Code Ann. § 7-7-132
Neb. Rev. St. § 13-402
Okla. Stat. Ann. tit. 62 §§ 281, 283
S.C. Code Ann. § 6-1-10
Tex. Loc. Gov't Code § 140.001
Wash. Rev. Code § 39.64.040

The 21 Remaining States are either unclear or do not have specific authorization. AK, DE, HI, IN, KS, ME, MD, MA, MS, NE, NH, NM, ND, SD, TN, UT, VA, VT, WV, WI, WY.

12 States that conditionally authorize municipal bankruptcies:

Cal. Gov't Code § 53760
Conn. Gen. Stat. Ann. § 7-566
Fla. Stat. Ann. § 218.01 and §218.503
Ky. Rev. Stat Ann. § 66.400
La. Rev. Stat. Ann. § 39-619
Mich. Comp. Laws § 141.1222
N.J. Stat. Ann. § 52:27-40
N.C. Gen. Stat. Ann. § 23-48
N.Y. Local Finance Law § 85.80
Ohio Rev. Code Ann. § 133.36
53 Pa. Cons. Stat. Ann. § 11701.261
R.I. Gen. Laws §45-9-7

3 States with Limited Authorization

§Colorado has enacted legislation specifically authorizing its beleaguered special taxing districts to file a petition under Chapter 9. Section 32-1-1403 of the Colorado revised statutes states that “any insolvent taxing district is hereby authorized to file a petition authorized by federal bankruptcy law and to take any and all action necessary or proper to carry out the plan filed with said petition...” (CRS § 37-32-102 (Drainage & Irrigation District)).

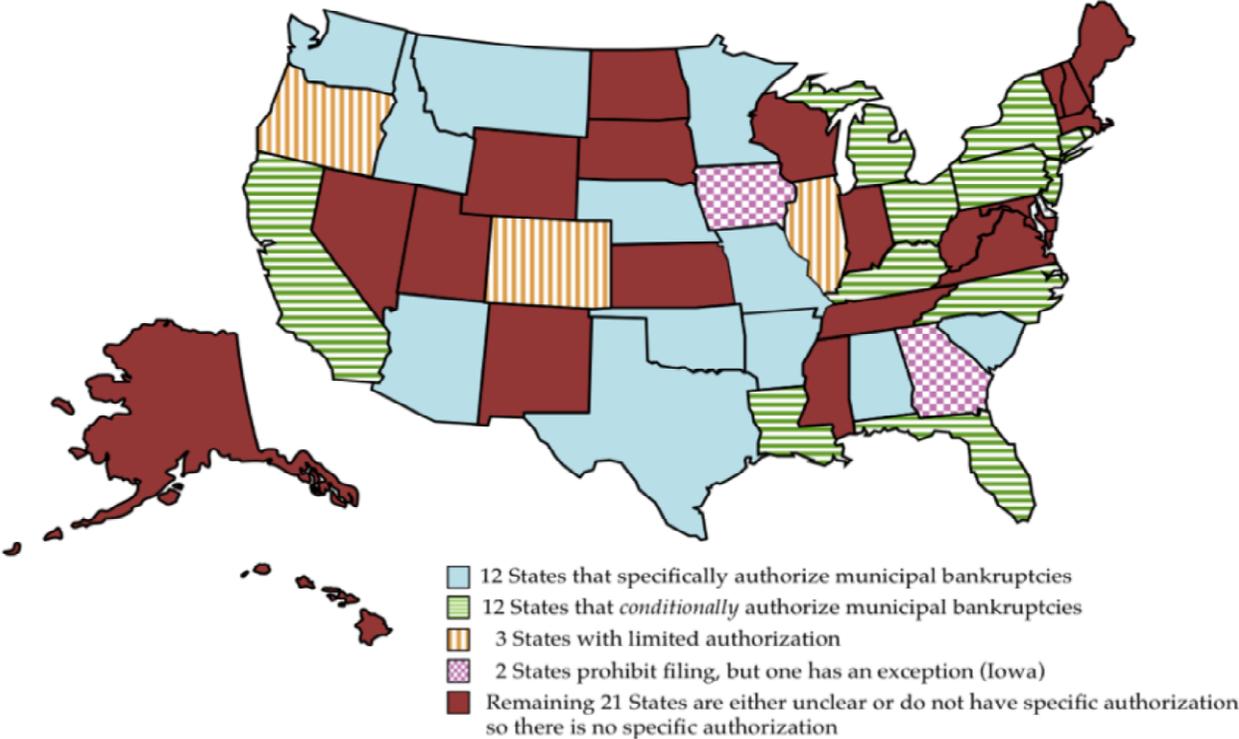
§Oregon permits Irrigation and Drainage Districts to file (Or. Rev. Stat. § 548.705).

§Illinois – specific authorization solely for the Illinois Power Agency (20 Ill Comp. Stat. Ann. 3855/1-20(b)(15)). The Local Government Financing and Supervision Act permits that commission to recommend that the Legislature authorize a filing but it is not specific authorization (20 Ill. Comp. Stat. Ann. 320/9(b)(4)).

2 States Prohibit Filing But One Has an Exception

§Iowa generally prohibits filing Chapter 9 (Ia. Code Ann. § 76.16) but allows filing for insolvency caused by debt involuntarily incurred not covered by insurance proceeds (Ia. Code Ann. § 76.16A).

§Georgia prohibits the filing of Chapter 9 Bankruptcy (Ga. Code Ann. § 36-80-5)



**APPENDIX B-1
APPLICATION OF BANKRUPTCY PROVISIONS ON PENSION OBLIGATIONS**

	ELIGIBILITY TO FILE	REJECTION OF PENSION OBLIGATIONS	ABILITY TO REJECT CONTRACTS, GENERALLY
CHAPTER 9	<ul style="list-style-type: none"> ▪ States may not file. ▪ Local governments may file if specifically authorized under state law, and in Illinois only the Illinois Power Agency has this authority. ▪ Questions exist as to whether pension funds could file – if a pension fund is a creature of the state, it may not file; if it is an instrumentality of the state, it must have specific state authority to file. ▪ Only a municipality may file a Chapter 9 petition. 	<ul style="list-style-type: none"> ▪ Burdensome labor contracts may be rejected for cause and federal law preempts state labor law requirements. ▪ Debtor only need show (1) agreement burdens the bankruptcy estate, (2) equities favor rejection and (3) debtor made reasonable negotiation efforts. ▪ But, labor will argue that pension obligations may not be altered pursuant to Illinois constitutional amendment, however federal preemption with state authorization to file for an important public purpose so that funding essential governmental services would not be impaired. 	Yes.
CHAPTER 11	<ul style="list-style-type: none"> ▪ In general, a railroad, partnership, corporation, individual or limited liability entity may be a Chapter 11 debtor. ▪ A governmental unit <i>may not</i> be a Chapter 11 debtor. ▪ Creditors may place a Chapter 11 debtor into bankruptcy by filing an involuntary petition. 	<ul style="list-style-type: none"> ▪ Includes higher procedural and substantive standards before rejecting a collective bargaining agreement. ▪ Debtor must (1) propose modification to employee representatives, (2) the employee representatives must refuse without good cause, and (3) the equities must favor rejection. 	Yes.

**APPENDIX B-2
APPLICATION OF BANKRUPTCY PROVISIONS ON PENSION OBLIGATIONS**

	APPLICATION OF AUTOMATIC STAY	PAYMENT PRIORITIES	ADMINISTRATIVE PRIORITY FOR POST-PETITION CLAIM	COURT SUPERVISION AND PARTICIPATION
CHAPTER 9	<ul style="list-style-type: none"> ▪ Applies, except to “special revenue” obligations and likely to obligations secured by statutory lien. 	<ul style="list-style-type: none"> ▪ Unfunded pension liabilities are unsecured obligations. ▪ No priority of payment for wages, vacation, pension and healthcare. ▪ Pension and OPEB obligations rank behind secured creditors, such as certain bondholders and priority claims. 	<ul style="list-style-type: none"> ▪ Priorities subject to application of state law and municipalities power over revenues and governmental affairs. ▪ To file a plan of adjustment and receive approval, must pay post-petition obligations; but nothing in the Bankruptcy Code requires post-petition payments of pension obligations if plan is not approved. This is significant because of the 656 municipal bankruptcies filed since 1937, at least 170 were dismissed or closed without a plan being confirmed. 	<ul style="list-style-type: none"> ▪ Court may not interfere with any political or governmental powers of the debtor; any property or revenues of the debtor; or debtor’s use and enjoyment of any income-producing property. ▪ Plan approval based on best interest of creditors and feasibility tests.
CHAPTER 11	Applies.	<ul style="list-style-type: none"> ▪ Employees are entitled to priority payment up to \$12,475 for wages. ▪ Corporate pension obligations are governed by ERISA and subject to the requirements of the PBGC. 	Yes.	<ul style="list-style-type: none"> ▪ Debtor may take no action without court authority outside of the normal course of business.

APPENDIX C

**COMPARISON OF CHAPTER 9 (MUNICIPAL
BANKRUPTCY)**

WITH

CHAPTER 11 (CORPORATE REORGANIZATION)

CHAPTER 9 – (MUNICIPAL DEBT ADJUSTMENT) IS UNLIKE CHAPTER 11 (CORPORATE REORGANIZATION)

IN A CHAPTER 9	IN A CHAPTER 11
<ul style="list-style-type: none"> • Only the municipality can initiate a Chapter 9 if authorized by state law. 	<ul style="list-style-type: none"> • The corporation (voluntary) or its creditors (involuntary) can initiate a Chapter 11 case if the corporation is a moneyed entity (not a non-for-profit) and insolvent.
<ul style="list-style-type: none"> • Only the municipality can file a Plan of Debt Adjustment. 	<ul style="list-style-type: none"> • The corporate debtor (during the exclusive period) or any creditor (after the exclusive period) may file a Plan of Reorganization or Liquidation.
<ul style="list-style-type: none"> • The Plan of Debt Adjustment can only adjust debt. It cannot liquidate the municipality. 	<ul style="list-style-type: none"> • A corporate plan can be for reorganization or liquidation.
<ul style="list-style-type: none"> • A Labor Agreement can be rejected in a Chapter 9 if the Labor Agreement burdens the municipality and the equities balance in favor of rejection. This is a lower standard than a Chapter 11. 	<ul style="list-style-type: none"> • Section 1113 of the Bankruptcy Code sets forth the requirements for sharing information with employee representatives and workers and the process of information sharing, and the proposal by the debtor prior to the rejection of the Labor Agreement. It is a higher standard than Chapter 9.
<ul style="list-style-type: none"> • There is no limitation on damages on real estate leases held by a Trustee or Municipal Building Authority for a lease financing and the lease financing will be treated as a secured debt financing. 	<ul style="list-style-type: none"> • There is a limitation of the greater of one year's rent or 15% of the remaining terms of the lease not to exceed three years for lease damages in a corporate Chapter 11. It is not treated as secured debt of the corporate debtor if it is a true lease.
<ul style="list-style-type: none"> • Payments to defease or pay current interest or principal on bonds or notes within the 90 day preference period before a Chapter 9 filing are not capable of being voided or deemed a preference. 	<ul style="list-style-type: none"> • Payment of principal or interest not secured by collateral could be voided or deemed a preference during the 90 day period prior to filing a Chapter 11 if the holder would receive more than what it would be entitled to in a Chapter 7 liquidation.
<ul style="list-style-type: none"> • There are no priorities ahead of unsecured claims for prepetition claims due to employee wages, pensions, accrued vacations, healthcare and other employment benefits. 	<ul style="list-style-type: none"> • There is a priority ahead of unsecured claims of up to \$12,475 per employee for pre-petition wages, benefits, accrued vacation and healthcare benefits.
<ul style="list-style-type: none"> • "Special Revenues" and "Statutory Liens" are not limited or terminated by a Chapter 9 filing and are intended to continue to be paid to secured creditor and are unimpaired by the Chapter 9 filing (there is no Chapter 11 provisions comparable). 	<ul style="list-style-type: none"> • Accounts receivable and inventory created post petition are not covered by the pre-petition lien of a secured lender and the pre-petition lien is terminated except for "proceeds" of the pre-petition lien.
<ul style="list-style-type: none"> • A Bankruptcy Court cannot interfere with any restrictions or requirements of state law regarding a municipality's exercise of its governmental powers (including payment of statutory liens). The Bankruptcy Court cannot interfere with the property, revenue and affairs of the municipality. 	<ul style="list-style-type: none"> • The corporate debtor cannot take any action outside the ordinary course of business without Bankruptcy Court approval.

IN A CHAPTER 9	IN A CHAPTER 11
<ul style="list-style-type: none">• The municipality can sell its assets, incur debt, borrow money and engage in governmental affairs without the necessity of having to obtain the approval of the Bankruptcy Court.	<ul style="list-style-type: none">• The corporate debtor cannot borrow money, sell assets or expand or contract its business without Bankruptcy Court approval.

APPENDIX D

THE CIVIC FEDERATION'S PROPOSAL FOR THE ILLINOIS MUNICIPAL PROTECTION AUTHORITY



The Civic Federation

Research * Information * Action * Est. 1894

ILLINOIS MUNICIPAL PROTECTION AUTHORITY:

*A Proposal Prepared by
the Civic Federation Pension Committee*

February 2013

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The Civic Federation is an independent, non-partisan government research organization working to maximize the quality and cost-effectiveness of government services in the Chicago region and State of Illinois.

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EXECUTIVE SUMMARY

The Illinois Municipal Protection Authority (IMPA) is a proposed quasi-judicial structure that provides local governments and their employees with a venue, encouragement and supervision to aid in finding creative, voluntary solutions to financially challenged local governments. IMPA will make recommendations and findings on what costs are affordable and sustainable and do not interfere with providing essential governmental services to its residents.

IMPA's mission is to provide a supervised forum to assist with the determination of the following issues resulting from underfunded essential government services for local governments:

- What essential government services and post-employment benefits are affordable and sustainable;
- What cost-cutting measures are necessary to achieve affordable services and benefits;
- What recommendation, if any, for a tax increase is necessary to provide additional funding;
- What contribution increases are necessary by both public employers and employees;
- What intercept of State revenues is necessary to pay required services, indebtedness and benefits so that essential governmental services can be provided and the municipality can maintain access to the municipal debt market at relatively low cost;
- Whether arbitration (voluntary or mandatory) should be engaged in for contractual or labor disputes;
- Whether services or costs of the municipality should be transferred to other governmental bodies;
- Whether certain services should be consolidated with other governmental bodies or transferred to a regional authority;
- Whether the municipality should be authorized to file for Chapter 9 proceedings under the Federal Bankruptcy Code; and
- Whether, given the findings of IMPA, the municipality's plan of a debt adjustment can be prepackaged or prenegotiated.

Under Chapter 9 of the Federal Bankruptcy Code, a State may authorize local governments to use federal bankruptcy procedures to adjust their debts, burdensome contractual obligations, unaffordable judgments or asserted liabilities including labor contracts and post-employment obligations. By creating IMPA, the State is able to offer an alternative to bankruptcy which will allow local governments an opportunity to solve their critical problems related to providing essential government services without subjecting all of their operations to the jeopardy of a bankruptcy proceeding. Such problems could include unaffordable costs or liabilities that imperil municipal services including unbearable obligations and liabilities, judgments, labor and post-retirement benefits.

Implicit in its mission is that IMPA will develop criteria for measuring the financial health of local governments and publicly comment on whether costs of operation including services, labor

and pension and Other Post Employment Benefits (OPEB) obligations can be paid from reasonably available sources without impairing a local government's primary mission of providing essential services. The goal of IMPA is to have all participating municipalities fully fund essential government services and make sustainable contributions to pensions and OPEB by a specified date in order to maintain the credibility of Illinois municipalities in capital markets.

UNDERLYING ASSUMPTIONS

The Illinois Municipal Protection Authority (IMPA) will provide a forum in which taxpayers, elected officials, public employers and employees can address issues relating to essential government services, financial difficulties relating to costs, judgments, liabilities and post-employment benefit rates and payment structures and provide transparency to the public as to the affordability and sustainability of these services and benefits. The need for this Authority is evidenced by reductions in some government services and growing financial distress of municipalities. Reductions have in many cases been spurred by the escalating costs of promised services, salaries, retirement annuities and healthcare benefits. Furthermore, certain goods, services, pension and retiree health care costs are expected to grow at a faster rate than inflation in the coming years.

In order to provide essential government services and reduce a local government's unfunded liabilities for the promised services, labor costs and post-employment benefits, either taxes and/or contributions must be increased, services and benefit costs must be reduced, or some combination of the alternatives must be achieved. When assessing these alternatives, it should be noted that Illinois taxpayers have supported tax caps in the past, compelling local government to manage within existing tax and revenue limitations.

To the extent that sufficient amounts of money are not raised to pay for services and costs or in the case of pensions irrevocably set aside and prudently invested, local governments' unfunded liabilities including pension and Other Post Employment Benefit (OPEB) obligations will continue to grow at a staggering rate. The ultimate fear is that these municipal services and future obligations to retirees that have not been funded today will impair the ability of local governments to provide essential governmental services.

As a matter of law, demands from retirees for both pension and OPEB payments may have the same priority for payment as those of ordinary suppliers of goods and services, employees necessary for normal operations, and perhaps many bondholders. This may result in a situation where the current claims of all creditors for a local government will exceed the available revenues. When a local government is unable to pay both creditors and employees it may be forced to decide whether to pay salaries to the policemen, firemen and other government workers or the pension benefits to the retired policemen, firemen and other government workers. No local government official wants to be put into a position to pick and choose between constituent creditor bodies. However, inaction now may require such unwanted decisions in the future.

By creating IMPA, the State is able to offer an alternative to bankruptcy which will allow local governments and their elected officials, taxpayers and workers an opportunity to solve their problems related to providing services and pay the costs including retirement benefits without subjecting all of their operations to the jeopardy of a bankruptcy proceeding. There are financial relationships that are beneficial to the municipality that should not be disturbed for the benefit of all which would automatically be affected by filing a Chapter 9 proceeding and generally there

are actually only a few creditor relationships that may need attention and resolution. As a last resort IMPA can recommend that the State provide the most desperate cases with specific authorization to file Chapter 9. Further, IMPA can make a determination based on the presentations of interested parties as to what cost and services are affordable and at what level.

Since local governments are creations of a State as means of providing essential government services on behalf of the State, ultimately it is the State that has the responsibility to find a solution for problems facing municipal governments. The best resolution is a cooperative effort between the State and the financially challenged municipality where local elected officials and local governmental bodies along with taxpayers, workers and business entities develop a plan of financial recovery that is a permanent fix and not a transient band aid. IMPA is dedicated to voluntary resolution and finding of what is affordable so that basic municipal services can be provided on a long term basis.

ILLINOIS MUNICIPAL PROTECTION AUTHORITY

The Illinois Municipal Protection Authority (IMPA) is a proposed quasi-judicial structure that provides local governments, their employees and the public with a venue, encouragement and supervision to aid in finding creative, voluntary solutions to underfunding situations.

IMPA's mission is to provide a supervised forum to assist with the determination of the following issues resulting from underfunded government services and unaffordable costs and liabilities for local governments:

- What essential government services including level of service, labor costs and post-employment benefits are affordable;
- What cost-cutting measures are necessary to achieve affordable services and payment of costs, labor and benefits;
- What recommendation, if any, for a tax increase is necessary to provide additional funding;
- What contribution increases are necessary by taxpayers, public employers and employees;
- What intercept of State revenues is necessary to pay for required services and benefits;
- Whether arbitration (voluntary or mandatory) should be engaged in for contractual or labor disputes;
- Whether certain services or costs should be transferred to other governmental bodies;
- Whether certain services should be consolidated with other governmental bodies or transferred to a regional authority;
- Whether certain assets or provision of services should be sold, leased or privatized;
- Whether the municipality should be authorized to file for Chapter 9 proceedings under the Federal Bankruptcy Code; and
- Whether, given the findings of IMPA, the municipality's plan of a debt adjustment can be prepackaged or pre-negotiated.

Implicit in its mission is that IMPA will publicly comment on whether contractual obligations, debts, pension or OPEB obligations can be paid from reasonably available sources without impairing a local government's primary mission of providing essential services. The goal of IMPA is to have all participating municipalities restore fiscal stability by restructuring obligations and providing a balance between what is owed and what is reasonably affordable. In cases where employee retirement obligations are the primary cause of the current or future expected fiscal imbalance, IMPA will act to ensure pension funds and other post employment benefits are funded in an actuarially sound and sustainable manner by a certain date.

Popular solutions from the corporate world to solve post-employment benefit funding problems may have some applicability to situations facing local governments. These solutions include:

- Change retirement promises for new hires from defined benefit plans to reduced defined benefit plans, cash balance plans or defined contribution plans and variations thereto whereby the public employer's contribution is fixed and the employee's contribution can vary based on the benefit desired by the employee subject to State and federal law;
- Transfer OPEB obligations from employers to trusts administered by employees, funded with a one-time employer contribution and ongoing employee contributions or transfer retirees to an exchange created under the Affordable Care Act; and
- Have representatives of public employees and employers negotiate affordable cost reductions to existing plans.

IMPA provides an opportunity for public employers and employees to explore these and other options.

Other costs that are unaffordable or unsustainable could be solved by consolidation with other governmental bodies, by public-private partnerships or by leasing, sale of assets or granting the rights to provide such services within defined parameters of costs and services.

Many of these changes are complex and will take time to implement. They may result in tax increases and/or reduced expenditures for current operations. They may also result in initial increased costs for the municipality as service provider or employer.

Given existing constraints, it would be helpful if solutions to government services and burdensome costs such as unaffordable contract obligations, judgments, labor and post-employment benefits were individually tailored rather than imposed uniformly on all local governments. Whether each aforementioned solution can realistically be adopted by municipalities and their taxpayers will require a case-by-case analysis. The Illinois Municipal Protection Authority provides a mechanism by which individually tailored solutions can be reached for participating municipalities as they attempt to resolve the complex issues associated with growing pension and other costs.

Membership and Funding

IMPA will consist of nine members: Four appointed by the Illinois Municipal League and one appointed each by the Governor, and the Speaker of the Illinois House of Representatives, President of the Illinois Senate, Minority Leader of the Illinois House of Representatives and Minority Leader of the Illinois Senate. The members shall serve staggered 6 year terms.

IMPA will be funded by the State of Illinois as part of its annual budget. IMPA shall consider whether it should establish a fee schedule for those who participate. The State Comptroller's Office shall collect local government reports required by IMPA and provide administrative and operational support for IMPA and its functions.

Jurisdiction

Participating local governments are all local governmental entities with funding responsibilities for operating costs such as contract costs for goods and services, labor and the pensions and other benefits for their employees. IMPA would address those costs that have been identified as unaffordable or unsustainable.

With regard to pension and post-employment benefits, IMPA will not be involved with the five State-supported pension plans and they are left out of IMPA's jurisdiction.

The following parties may petition IMPA: (1) the Illinois Comptroller, (2) a local government, (3) a creditor that has not been paid on a liquidated debt obligation (unpaid for 6 months) of \$5,000,000 or 10% of the annual revenues of the municipality whichever is greater ("Significant Past Due Creditor") or (4) a pension fund (individually, a "Party in Interest") and may request that IMPA make a determination of what under the specific circumstances would be an appropriate resolution of the (specified) financial distress that a local government was suffering. A city or county which is a home rule government with a population of over 500,000 may elect to voluntarily participate in IMPA.

Denial of a petition to participate in IMPA is not an appealable decision. IMPA may seek declaratory and injunctive relief regarding the exercise of its powers and implementation of its findings and recommendations.

Trigger Criteria

IMPA will determine if a local government should participate by granting a petition filed by a Party in Interest. Determinations may be based on the following guideline criteria for the local government or its individual pension plan ("Trigger Criteria"):

- 1) Past due debt obligations or judgments of more than a specified percentage of the annual revenues of the municipality that have been unpaid for more than 6 months without an agreement by the creditors to forbear or standstill as to prosecution of the claims;
- 2) Failure to make statutory or Annual Required Contributions (or a suitable similar substitute concept) to pension funds from existing operating revenues for two consecutive years;
- 3) Funded ratio for an individual pension plan falls below a threshold set by IMPA;
- 4) Failure to pass a budget by a date established by IMPA after the start of the fiscal year;
- 5) Bills of a specified percentage of annual current revenues are left unpaid for a period greater than 180 days as defined by a payment period;
- 6) Failure to achieve at least 30 days cash on hand in the General Fund at end of the fiscal year for two consecutive years;

- 7) Debts or judgments that are past due for more than 6 months or pension liabilities exceed a given percent (e.g., 2%) of the fair market value of taxable real property in the taxing district;
- 8) Financial statements are not published within six months of the close of the fiscal year;
- 9) Municipality has defaulted on debt securities;
- 10) The sum of the ARC plus the annual debt service on any outstanding pension obligation bonds has exceeded a thresholds set by IMPA for the last three consecutive years; and
- 11) Any other criteria that IMPA determines is necessary to accomplish its mission.

IMPA will develop standards for interpreting these criteria and how it will grant participation to a municipality.

IMPA's Powers

IMPA will have the following powers:

- 1) Recommend a tax increase by means of requiring a vote by the local government on the tax increase. Home rule local governments will have their representative body (council, board, etc.) vote on the recommended tax increase. In the case of non-home rule local governments, IMPA can require a referendum on the tax increase. This process is necessary in order to determine whether there is an unwillingness to pay or an inability to pay for current post-retirement benefits. If both the local government and the referendum fail to increase taxes, this demonstrates an inability to pay;
- 2) Recommend a diversion of State revenues in order to fund specified costs of operation, labor and post-retirement benefits; and
- 3) Recommend voluntary mediation.

IMPA will act in a quasi-judicial capacity to provide appropriate relief consistent with the purposes of funding and enforcing reasonable and affordable government services and costs of operation, labor and post-employment benefits for employees of a local government.

IMPA will have the authority to obtain information from all participating local governments. All participating local governments must require their respective financial officer or equivalent to provide information regarding its budget, revenue sources and liabilities including pension funds. Participating governments must also annually file information with IMPA demonstrating their budgets, revenues, costs, liabilities and funding level for their actuarially determined pension and OPEB liabilities. IMPA shall have access to the records of the pension funds for each participating local government for the purpose of confirming this information.

IMPA will be authorized to set acceptable level of essential governmental services and increasing percentage targets for an appropriate levels of annual funding for pension funds so that by a specified date full or appropriate funding is realized by the participating funds. For local governments that fail to meet IMPA's annual funding targets, IMPA will also be given the authority to encourage cost reduction negotiations between public employers and their employees. IMPA shall provide assistance with these cost reduction efforts including employer-employee benefit adjustment discussions. IMPA will mediate discussions regarding appropriate

levels of municipal services, costs, taxes and pension funding and benefits to ensure that they are within an acceptable range of the funding target. IMPA may make findings as to affordable levels of services and costs, including labor costs and employee benefits, which allow adequate funding for essential governmental services. IMPA may also approve settlements. Voluntary mediation will be offered and supervised by IMPA.

IMPA may also require annual work plans, along with quarterly progress reports, from local governments that have not met the cost reductions or pension funding target. Additionally, IMPA may require participating municipalities that have individual budgets that are not affordable or specific pension plans with funded ratios below a level determined by IMPA and have not met the funding target for two consecutive years to submit an explanation to their electors. The affordability of the budget and acceptable levels for essential governmental services will be determined by standards established by State legislature based on recommendations by IMPA. The funding ratio for pension plans will be determined based on uniform actuarial methodology including assumptions based on comparable returns on investment, i.e. discount rate, from information annually required to be provided to IMPA (“Uniform Calculation Method” or “UCM”). The required explanation to the electors would include a Statement of the impact of the underfunding of obligations and pensions on providing essential governmental services which is to be published in a newspaper of general circulation. IMPA shall establish rules and guidelines for such reporting and publication by local governments.

Safety Net

IMPA may consider and recommend to the State legislature the enactment of legislation for an economic safety net whereby the State will be required to provide a set of fallback post-employment benefits for employees in the event that a public employer has resolved the underfunding of its pension plan and thereafter is unable to pay its retirees. The program will use the federal Pension Benefit Guaranty Corporation (PBGC) as its model. Contractual benefits would have to meet affordability tests prior to being approved for safety net funding. The outcomes of the affordability tests may result in smaller benefit payments than were initially promised to the employees by the defaulted employer.

APPENDIX E

FOURTEEN STEPS STATES AND MUNICIPALITIES CAN TAKE TO ADDRESS PENSION UNDERFUNDING

I. The beginnings of movement toward a Public Pension Authority Model:

There are fourteen steps that state or local governments can take to attempt to solve pension problem as part of or prior to use of a public pension funding authority and outside of a Chapter 9 or court proceeding (states such as Arizona, California, Illinois, New York, Oregon, Rhode Island, West Virginia and others have considered or taken some of these actions):

1. Review actuarial assumptions to make sure they are realistic and work. Too conservative assumptions can indicate problems that don't really exist and too liberal assumptions may miss a real problem.
2. Review investment policy and returns so that poor investment policies are identified and changed before it is too late. Arbitrary rules of valuation or investment can contribute to underfunding. Market volatility can provide false comfort as compared to realistic valuation of assets with adjustment for market cycle. Be careful to avoid if possible losses not reflected in valuations and report accurately any deferral of gains.
3. Increase sponsor and/or employee contribution to the plan – easier said than done.
4. Prohibit an increase in benefits without an identified revenue or funding source:
 - Ban special legislation to benefit special employee groups.
 - Require legislature to pass budgets that fully fund current pension obligations and pay a fair portion to cover the unfunded pension obligations.
 - Eliminate automatic increases in pension benefits and end-of-career mega increases in salary.
 - Create new and more independent advisors and retirement boards.
5. Move from a DB Plan to DC Plan or provide for Adjustable DC Plan benefits if market volatility or investment result will not actuarially justify the higher payout provided employee increased contributions to maintain higher benefit level with fixed employer contribution based on affordability.

Start immediately with new hires and work on developing plan transition to defined contribution for current employees.

Transition can be accomplished as part of Big Fix – phase out of defined benefit plans and phase in defined contribution plans:

- Issue POB for cash to cure underfunding and transition cost (transition costs from DB to DC plus underfunding dealt with by savings created, by increased contributions, cap on benefits, change from DB to DC, possible arbitrage on taxable bond proceeds and pension obligations as well as additional funding through bond proceeds).
 - Use “cure” as motivation for voluntary agreed termination of DB Plan and creation of DC Plan.
 - If no agreed termination of DB plan, then phase out with new employees.
6. Eliminate any automatic increases tied to indexes that cause costs or benefits to rise higher and faster than investment return (either a cap on increases in benefits or elimination of any automatic increase not specifically passed with recognized funding source).

7. No new pension benefits without specific dedicated funding.
8. Refrain from POB or “Savings Plan” which provides temporary budget solutions but is not a long term fix. Any voluntary rollback of benefits or increase in employee contributions should not equate to effective lowering of contributions by the state or local government.
9. Cap specific pension benefits for each employee category for state and local governments so that legislative or executive branches cannot grant end of career or politically motivated and selective increases which are unfair and costly.
10. Beware of cash out programs or eliminate early retirement programs or money purchase options which may have untested assumptions and most likely cost more than anticipated.
11. Change retirement age and years in service to reduce costs.
12. Restrict alternative pension benefit to actual “high risk” jobs – public safety (police and fire) with lower age and service requirements.
13. Consolidation of Pension Programs and duplication of function.
14. Provide “Supervising Adult” designated state official for audit, review, reporting, transparency and accountability – such as the Public Pension Funding Authority (IMPA).

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