Opinion: Pension reform hindered by contract protections

By Daniel Borenstein, San Jose Mercury News

When it comes to public-employee pensions in California, what goes up usually can't come down.

At least that's the prevailing legal theory, severely restricting reform options across the state. As the state pension squeeze intensifies, we soon could see those limits tested.

Pensions typically are based on the number of years an employee works. Each additional year adds to future retirement payments. Starting in 1999, most public agencies in California increased that annual accrual rate.

For example, pensions for some police and firefighters were increased from 2 percent of final salary for each year worked to 3 percent. Thus, the pension for a 30-year employee went from 60 percent of final salary to 90 percent.

But what if pension benefits become too costly? In the private sector, the answer is simple: Reduce the formula. For future years of employment, the multiplier might be cut to 2 percent, or lower.

Note: Benefits already earned for past labor are protected, as they should be. The issue is the future rate of accrual. Smart business people know that when they are in a financial hole, they should stop digging.

The California public-sector rules are different. Once employees start working, they usually are guaranteed that initial multiplier their entire careers, many lawyers say. If,

for example, that 2 percent per year is increased to 3 percent, it cannot be subsequently reduced.

The protection stems from the state and federal constitutions, which say government agencies shall not impair contract obligations. In California, the state Supreme Court ruled that a public employee with a pension holds a “vested contractual right” that is “in effect not only when employment commences, but … thereafter conferred during the employee’s subsequent tenure.”

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