Analysis: Would an Elected Comptroller Solve NJ's Pension Crisis?

Mark J. Magyar

New York State comptroller, Thomas P. DiNapoli.

New York and New Jersey are high-cost states that share a regional economy, high state and local government payrolls and benefit plans, a wealthy tax base, and a scandal-ridden Port Authority.

What the two states don't share is a massive pension crisis and the poor bond ratings that go along with it.

While the price tag for New Jersey's current $37 billion unfunded pension liability comes out to $12,000 per household -- and is likely to top $50 billion within the next five years -- New York has the third-lowest pension liability in the country as a percentage of its annual state revenues.

While New Jersey governors and legislatures have been cutting, skipping, or underfunding pension payments for the past 20 years, New York does not have a similar pension crisis because its elected state comptroller has the power not only to set the actuarially required pension payment each year, but also to require Albany's governor and Legislature to fully fund it, according to a senior Moody's Investors Service analyst.

New York State Comptroller Thomas DiNapoli is required to calculate the state's pension payment by October 15 to give the governor's office and legislative branch sufficient time to include his calculation in the budget for the fiscal year that begins the following June 30. That amount is then required to be paid into the state's pension systems on or before March 1 -- three months before the end of the fiscal year.

"In New York, the state comptroller is responsible for the entire pension system," Robert Kurtter, Moody's Managing Director for U.S. Public Finance, explained at a forum on pension funding at Kean University last week. "The comptroller's power to require full pension funding has been litigated and upheld by New York's highest Court of Appeals.

"The New York Legislature tried to underfund the actuarially required contribution, but couldn't," Kurtter said. "It's a two-edged sword for New York. Their unfunded liability is low, but they don't have a choice, even when revenues are down."

The soundness of New York's pension system is one of the principal reasons that the state enjoys a AA1 bond rating from Moody's -- one of 30 states in the top two rating categories -- while Illinois and New Jersey are the nation's fiscal basket cases, the only two states with lower-tier single-A bond ratings. While New York was upgraded this year, New Jersey's bond rating has been downgraded a record eight times under Gov. Chris Christie.

The contrast is stark, Kurtter said. While New York's unfunded pension liability represents just 16 percent of annual state revenues, New Jersey's liability is 10 times as high -- representing 153 percent of state revenues, the sixth-highest percentage in the nation. Illinois is the worst at 258 percent, followed by Connecticut at 201 percent.

Terry Golway, the director of the Kean University Center for History, Politics and Policy who previously covered New York politics and government for The New York Times, also emphasized how the independence of New York's comptroller from the political concerns of the state's governor and legislators was a critical factor in ensuring stable funding for New York's pension system.

Christie's $2.4 billion cut in pension funding to cover a two-year budget gap caused by an unexpected plunge in state income tax revenues last spring could not have happened in New York, Golway and Kurtter agreed.

How to require future governors and Legislatures to make the annual pension payments needed to ensure the fiscal solvency of New Jersey's pension systems is one of the most difficult policy questions facing the state Pension and Health Benefits Study Commission that Christie appointed. It is a problem of which the commission is fully aware: The panel cited skipped state pension payments as a principal cause of the pension crisis in its interim report last month.

Whether electing an independent comptroller or treasurer -- or vesting the power to set annual required pension payments with some other independent entity, such as the nonpartisan Office of Legislative Services -- is a controversial policy question.

New York's practice of electing a state comptroller independent of the governor is not unusual: Most state constitutions limit the power of their governors over the state budget by electing their top fiscal officials. Thirty-six states elect their state treasurers, and 11 out of 12 states that have comptrollers elect them, with New Jersey being the lone exception.

In fact, New Jersey's governor has more power over state spending than any other governor. New Jersey's governor has unilateral authority to determine the revenue projections that determine the size of the budget -- which Christie has consistently overestimated, as previous governors have when it met their political needs.

New Jersey's governor also has the ability to make midyear budget cuts without seeking legislative approval -- as Christie did when he retroactively changed the pension formula in March and cut $900 million in Fiscal Year 2014 pension payments in May.

Adding an elected state comptroller or state treasurer or establishing an ironclad requirement that the state make its actuarially required contributions to the pension system annually would require a constitutional amendment. The Democratic-controlled Legislature would need the governor's signature to pass a new law, but not to put a constitutional amendment on the ballot -- a strategy it used to bypass Christie on the minimum wage last year and on guaranteed funding for open space this fall.

While Rhode Island's elected state treasurer, Gina Raimondo, a former Wall Street executive, ran on and negotiated one of the nation's most innovative pension reforms with that state's governor and legislature, Ben Dworkin, director of the Rebovich Institute for New Jersey Politics at Rider University, questioned whether an elected treasurer would decrease -- or increase -- the politicization of fiscal policy in a state like New Jersey.

"People would run for this statewide office because they would think they could run for governor the next time," Dworkin said. "When you start giving ambitious politicians a new opportunity to run in a place like New Jersey, lots of people will try to get in and cut a deal to build the support they need to win. That is the downside."

Raimondo, a political neophyte when she ran for treasurer in 2010, indeed went on to win the Democratic primary for governor last month and is favored to win the governorship in November, although relatively few state treasurers and comptrollers go on to become governor.

Henry Coleman, the Rutgers University professor who directed the State and Local Expenditure and Revenue (SLERP) Commission in the mid-1980s, and John Weingart, associate director of Rutgers' Eagleton Institute of Politics, both cautioned against substituting the judgment of other elected or unelected officials for the responsibility of the governor and the Legislature -- even if they have repeatedly failed to meet their responsibility to adequately fund the state's pension system in the past.

Weingart noted that independent responsibility for pension payments or revenue estimates could be vested in an independent body without going through the constitutional amendment process to create another elected official. He noted that former Gov. Jon Corzine and the Legislature created an Office of the State Comptroller nominated by the governor and confirmed by the state Senate, but with a five-year term that would not run concurrent with gubernatorial terms to provide the office with some independence.

Coleman also questioned the wisdom of constitutionally requiring full pension payments, which could then force deep cuts in school aid or other policy priorities during economic downturns.

"Doing away with budget flexibility may be a dangerous thing," Coleman said. "If we had a constitutional amendment mandating actuarially required pension contributions, what would have been the alternative if we had gone into the Great Recession, seen state revenues decline, had unemployment and Medicaid costs increase, and not been able to fund basic services?"

That question is currently before state Superior Court Judge Mary Jacobson in Mercer County, who allowed Christie's $900 million cut in the fiscal budget for Fiscal Year 2014 on the basis of fiscal emergency, but reserved judgment on a lawsuit by the state's public employee unions challenging Christie's right to cut $1.5 billion in pension payments from this year's budget.

The unions contend that the Democratic Legislature passed a budget that included an increase in state income taxes on the wealthy sufficient to fund this year's pension payment, and that Christie's pension cuts violated the 2011 law he signed requiring a seven-year ramp-up for full actuarially required funding of the state's pension system by 2018.