

# State Universities Annuitants Association



217 East Monroe Street, Suite 100  
Springfield, Illinois 62701  
voice: 217.523.4040 fax: 217.523.4044

Email: [suaa@suaa.org](mailto:suaa@suaa.org) Website: [www.suaa.org](http://www.suaa.org)

## SUAA PRESS RELEASE

SUAA is **opposed** to House Amendment # 2 to SB 512.

In our opinion, this legislation violates long-standing principles of contract law and the Illinois Constitution, specifically Article XIII, Section 5 of the Illinois Constitution of 1970 as it relates to the rule of consideration in contract formation.

Section 5 is self evident and easily understood:

“Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”

At least four Illinois Supreme Court Cases have found a contractual relationship exists between the State of Illinois and its employees regarding pension benefits (*See Felt v. Bd. of Trustees of the Judges Retirement Sys.*, 107 Ill. 2d 158, 481 N.E. 2d 698 (1985); *Buddell v. Bd. of Trustees of the State University Retirement Sys.*, 118 Ill. 2d 99, 514 N.E.2d 184 (1987); *McNamee v. State*, 173 Ill. 2d 433, 672 N.E.2d 1159 (1996); *People ex rel. Sklodowski v. State of Illinois*, 182 Ill. 2d 220, 695 N.E.2d 374 (1998).

In a valid contract or situation that changes an existing contract, consideration must be part of the relationship between both parties. According to *Corbin on Contracts*, consideration is defined as “reasons deemed sufficient to render a promise enforceable,” or a “bargained for exchange.” *Corbin on Contracts, Revised Edition, Vol 2 §§ 5.1-7.21 Formation of Contracts*, 2-3. In other words, consideration is generally something that has value.

SB 512 as amended changes the terms of this contractual relationship between the State of Illinois and SURS-eligible current employees by requiring them to substantially increase their pension contributions to 15.31% of gross wages (up from 8%) for fiscal years 2014-2016, without giving the employee any consideration in return for his or her acceptance of these changes to Illinois pension law. In fiscal year 2017 and beyond, an employee would then contribute an “actuarially determined” amount that ranges from 6-17.31% of employee earnings. In our opinion, because this amendment does not give employees any consideration for their increased contributions, it therefore violates the Illinois Constitution.

SUAA has heard a number of what we consider inadequate defenses of this amendment suggesting that affected employees do get consideration in return for their increased contributions. One example exists in the plain language of this amendment that guarantees for fiscal years 2017 through 2045 that “revenue provided by the individual income tax, sales tax, and corporate income tax” would fund the minimum contribution to the system (*See page 222*). Similarly last May, members of this chamber have

said existing state employees get “stability” and “longevity” in the state pension system as examples of consideration. Additionally, the Civic Committee of the Commercial Club of Chicago in its May 3, 2010 memorandum by Sidley and Austin argues erroneously that “continued employment is valid consideration for a contract modification.” In our opinion, these vague promises of consideration are illusory, are stacked against State employees, and simply not enforceable. House Amendment #2 to SB 512 is not a “bargained for” exchange required in a contract and is therefore prohibited under Article XIII, Section 5 of the Illinois Constitution of 1970.

For these reasons SUAA respectfully requests you to vote **“No”** on this legislation.

Leo Welch, President

Linda L. Brookhart, Executive Director

Richard Lockhart, Contractual Lobbyist

John Carr, Contractual Attorney