

Interview with Senator Daniel Biss

#ISC-A-L-2015-044

Interview Date: September 28th, 2015

Interviewer: Phil Pogue

COPYRIGHT

The following material can be used for educational and other non-commercial purposes without the written permission of the Abraham Lincoln Presidential Library. “Fair use” criteria of Section 107 of the Copyright Act of 1976 must be followed. These materials are not to be deposited in other repositories, nor used for resale or commercial purposes without the authorization from the Audio-Visual Curator at the Abraham Lincoln Presidential Library, 112 N. 6th Street, Springfield, Illinois 62701. Telephone (217) 785-7955

Note to the Reader: Readers of the oral history memoir should bear in mind that this is a transcript of the spoken word, and that the interviewer, interviewee and editor sought to preserve the informal, conversational style that is inherent in such historical sources. The Abraham Lincoln Presidential Library is not responsible for the factual accuracy of the memoir, nor for the views expressed therein. We leave these for the reader to judge.

Pogue: It’s September 28, 2015, and my name is Phil Pogue. We’re in Chicago, Illinois, doing an interview as part of our oral history project for the Abraham Lincoln Presidential Library, the topic is the Illinois State pension system. We’re going to be talking to State Senator Daniel Biss today about his involvement with the state pension. To begin with, Senator Biss, could you give us some of your own background?

Biss: I was born in Akron, Ohio and grew up in Bloomington, Indiana. My parents are both musicians. They taught in the music school at Indiana University. I fell in love with math at a young age and went off to college and graduate school in mathematics and eventually came to Chicago to be on the mathematics faculty at the University of Chicago. During the course of my time there, [I] developed a strong interest in public policy and politics and, therefore, eventually landed in the legislature.

Pogue: What high school and colleges did you attend?

Biss: I went to Bloomington High School North, a public school in Bloomington, Indiana and then went to college at Harvard and got my Ph.D. at the Massachusetts Institute of Technology [MIT].



*Illinois State Senator
Daniel Biss,
9th District, 2013-2019*

Pogue: And what attracted you to Harvard and MIT?

Biss: At the time that I was looking at colleges, Harvard had a tradition of having a group of really intensely interested and passionate mathematics students, had some very challenging classes, and was a strong culture of young people who are fascinated by mathematics. So it seemed like the place for me.

Then, when I was doing my undergraduate degree, I actually got to know a professor at MIT who, in fact, wound up being my advisor for my undergraduate thesis, though I was not, myself, at MIT at the time. I just fell in love with him and his way of looking at the world. So I went to MIT to work with him for my Ph.D.

Pogue: Was there a connection between math and music?

Biss: That's what the neurologists tell us.

Pogue: And what kind of music were you interested in?

Biss: I was the black sheep; it was everyone else who was a musician. My mother is a violinist, and my father is a violinist and plays viola, and he conducts as well. My brother is a pianist. My grandmother was a cellist. My other grandmother was a piano teacher. My uncle is a pianist, a composer and a conductor. So, it's the whole family except for me.

Pogue: Why did you go into politics?

Biss: I went into mathematics because I fell in love with the subject matter. But I didn't really think about the lifestyle or the connection that life would have to the rest of the world. As much as I loved the subject, I began to feel, when I was at the University of Chicago, that I was pretty isolated from the big social problems that our community and state and country and world were experiencing. I felt walled off from them and frustrated about that.

That led me to get involved in political volunteering and policy work, thinking that would be an outlet for my interest in social policy. And the more I did of it, the more I wanted to do and the stronger that I felt that my calling was in elective office. So in 2008 I up and ran for state representative. Didn't win, but that was a crucial step on the path to what I'm doing now.

Pogue: You were elected to the House in...

Biss: So, in that first election in 2008, I was defeated. I ran a second time and won in 2010. I was sworn into the House in January of 2011.

Pogue: You were in the House of Representatives for a couple of years, and then you moved to the Senate?

Biss: That's right. Shortly after I started in the House, actually, my state senator decided he was going to retire. So I, after one term, two years in the House, moved over to the Senate and have been very happy there ever since.

Pogue: What is the difference between the House and the Senate?

Biss: The mathematical difference is the Senate is smaller, so you have more constituents and fewer colleagues. That was the reason for making the change. I thought that I could have a bigger platform on which to advocate for the policies that I was trying to enact. There's also a cultural difference though, which is that the Senate tends to be a bit more free flowing. There's, I think, more room for policy entrepreneurship and innovation and kind of the maintenance and pursuit of an independent policy agenda in the Senate than has traditionally been the case in the House. I've really enjoyed that culture.

Pogue: Could you explain, both geographically and demographically, the district that you serve?

Biss: Yes. I live in Evanston, and my district is a suburban district. It's entirely contained in the northern suburbs of Chicago, inside of Cook County. And it's along the lake front. It starts at the border of Chicago and goes up in spots to the border between Cook and Lake Counties. On its eastern border, of course, there's Lake Michigan, and on its western border, at certain spots, it goes as far west as the [Tri-State] Tollway I-294. It includes parts of eleven different communities.

Those communities, even though they're in many respects similar, they're also, in important ways, different. I've got Kenilworth and Winnetka, which are two of the most affluent and, frankly, ethnically homogenous communities you'll find in the country. Then I have Evanston, which is itself very, very diverse, economically and ethnically [and] culturally diverse. Then I have, as I say, Morton Grove that's somewhat more working class. So, there's a broad diversity.

In aggregate, I believe it's between 70 and 75 percent White, with significant Asian, African American, and to a lesser extent, Latino populations. On average, it's certainly an affluent district. On the very high end, it's notably affluent. In fact, there's more millionaires in my district than in any other district by far, we learned a couple years ago when the Department of Revenue did a calculation for us on this matter. But it also contains pockets of poverty, and there are important social challenges and so forth to address.

Pogue: How many square miles make up the district?

Biss: That's a great question. I've absolutely no idea. It's a pretty compact district by the standards of the State of Illinois, though some Chicago districts would be quite a bit more compact. But I would guess, now that you pressure me to

give an answer, I'd guess it's probably in the ballpark of twenty-five square miles. That's not a very informed guess, so you may want to... In fact, I'm going to say thirty to thirty-five, now that I think about it. But, that's also not a very informed guess (laughs).

Pogue: What is your background regarding pension history, and why did you get interested in the subject?

Biss: My parents, as I mentioned, were public employees, so I grew up around people who work for the government and rely on the government retirement programs being solvent for their own economic wellbeing. But I also, more broadly speaking, entered the Illinois General Assembly in 2011 when we were experiencing very serious economic problems that resulted in pretty serious fiscal problems. One of the most high profile and numerically significant of those is the pension debt.

So, when I came into the legislature, knowing the importance of this issue and understanding that my background might be perceived as relevant and might give me some skills that could be useful, I signed up to be on the House Pension Committee and was given that appointment, I'm guessing, because nobody else wanted it. [I] worked very, very hard to educate myself and play whatever role I could and hopefully bring us to some resolution of this.

Pogue: You served on the pension committee; what is the responsibility of that committee?

Biss: Well, as you likely know, Illinois legislative committees are fairly weak. Scholars of state legislators would tell you that we are among the weakest. Our legislative institution involves one of the weakest committee structures you'll find in the country. We don't really have working committees. Our committees don't sit down in working groups, with a blackboard, and try to work stuff out. Our committees are reactive. But the House Pension Committee, I will say, did hear and continues to hear—though I'm no longer in the House—most of the significant... In fact, almost all of the significant pension related legislation.

For example, I was sworn into the House in January of 2011 and by May of 2011, a very, very controversial, significant, giant pension reform package was brought to our committee. There I was, someone who'd been a legislator for just a few months, sitting on this committee with Tom Cross, who was then the Republican leader of the House, and Speaker [Michael] Madigan and all the titans of the business community in Chicago. And it was my obligation to ask these guys tough questions and make sure I understood the proposal.

I didn't support that proposal, by the way, even though there was a lot of pressure on me to do so, because I felt that if I was going to add anything useful to this issue it was going to be by thinking for myself and trying as best I could to come up with my own independent analysis and conclusions.

Pogue: Where did that legislation go? Did it just die in committee?

Biss: In that particular instance, it passed out of the committee without my vote and then was never called for a vote on the House floor because there was not adequate support for it in the full House.

Pogue: You also serve on other committees: education, appropriation, human services, revenue oversight and financial institutions. Does the issue of pensions impact these?

Biss: In a tangential way, it certainly does. Of course the Revenue Committee has jurisdiction over the tax code, and the state's need for revenue is in part affected by the very serious amount of funding that the pension system requires. That's one piece of it. Analogously, the Appropriations Committee I serve on is not the committee with jurisdiction over the pension piece of the budget, but every spending decision is impacted by the obligation to fund the pensions properly and responsibility. So, there are certainly some connections.

But I'm not on the Senate Committee on Licensed Activities and Pensions, which is kind of officially the committee that has jurisdiction over pensions. A part of why I don't serve on that committee anymore is that, in practice, most pension legislation of real significance and controversy instead goes through the Executive Committee in the Senate. That's a committee that has, typically, members with a great degree of seniority. I would certainly not expect to be eligible for a seat on that committee at this time.

Pogue: You also list your service on a subcommittee dealing with special issues.

Biss: That's a subcommittee of the Revenue Committee, correct? Yeah. That's for certain special technical issues that come to the Revenue Committee that chair, who is Senator Hutchinson, thinks need sent for special review to a subcommittee. We've only met on a few special occasions, and it's certainly, I would say, unrelated to the pension question.

Pogue: Could you give our listeners a little overview of the five state pension systems?

Biss: Yes. There over 600 public pension systems in Illinois. All but five of them are the responsibility, in one way or another, of a unit of local government. Five of them are what you just referred to as state pensions, which means they are pensions where the state is supposed to be making the employer payment.

One of those, as you might imagine, is the state employees' pension system because the state is, in fact, the employer there. Another, though a much smaller one of course, is the legislators' pension system, because we've got the state as the employer there. And there are three others that surprise some people.

One is the university pension system. For all the public universities and community colleges, their employees are on a single pension system, and the employer payments are not made by the universities but by the state. Same thing with what's called the Teachers' Retirement System, which is for teachers, with the exception of teachers in the Chicago Public School District. All other teachers, whether they're in Springfield or Cairo or Evanston, where I live, are in this other pension system, the teachers' retirement system. The employer payments there are also made, not by the school district, but rather by the state.

Finally, the judges' retirement system, the judges in Illinois. Though most of them serve in county level circuit courts, they're really not formally county employees in that sense. Their pensions are in a state pension system called the Judges' Retirement System wherein then the state makes the employer payment.

Pogue: How does Illinois compare with other states on pension protection and likewise on the unfunded liabilities?

Biss: You asked two questions, protection and liability. With regard to protection, we have very, very strong constitutional protection. There are other states that have this; I believe New York and Arizona do. But most other states, while they have a protection in many, many cases, have a less strong protection than the contractual protection Illinois provides. Regarding unfunded liability, unfortunately Illinois is the head of the class there as well. By most metrics, we have the largest pension debt problem of any state.

Pogue: You mentioned that in 2011, when you came into the legislature, you were faced with legislation tied to pension. Prior to getting into the legislature, were you aware of the status of the pension crisis?

Biss: I would say I was aware, like a very informed consumer of the news, but not much more than that. You read headlines that talked about the huge pension debt and said it was a real problem, but I was, at that point I would say, not a student of the Illinois pension situation.

Pogue: As you entered the legislature, what were the hot button issues, other than pensions?

Biss: I entered the legislature less than twelve hours after an income tax increase of very significant proportions was passed. The tax rate until then was 3 percent, and that raised the tax rate from 3 to 5 percent. That was a big point of

contention and controversy, and to be honest, there was a huge amount of discussion inside the legislature of what can we do to resolve the rest of the state's budget challenges without further tax increases?

I didn't experience this, but my colleagues who had been involved in that vote, felt that they had kind of done as much as they could on the revenue side and now needed to take, yet, further steps on the expenditure side to fully balance the state's books.

Pogue: Where do you, as a member of the General Assembly, get all your information regarding the status of the pensions?

Biss: I try to read as broadly as I can. One place that I look to for technical information is the Commission on Government Forecasting and Accountability or COGFA as it's sometimes called. They provide important information. They do pretty high-quality analyses of both a snapshot in time, as well as historical analyses, and those can be very, very helpful.

Pogue: When that pension bill, of which you didn't approve, came under consideration, what kind of information did you get regarding it to make a decision?

Biss: That's a really, really interesting question because, in fact, one of the most decisive factors, as I was making up my mind, was the information that I **didn't** get. I was, at the time, enormously frustrated at the lack of detail I was able to get, around what exactly the long term consequences of that pension bill would have been, both on the side of what would be the fiscal impact on the state and on the side of what would be the impact on the workers in the pension system themselves.

That particular bill was pretty complicated. It set up a series of different choices for each employee. So, evaluating what would happen required a prediction about which employees would pick which option. I felt that there wasn't a lot of clarity on the part of the proponents regarding who would likely do what and why. As a result, I just wasn't comfortable with it. But, I tried, again, to read fiscal data. I tried to look at [the] history of the pension systems. I tried to, in some cases, read transcripts of legislative debates when previous changes had been made. You can never know enough, and you can never do enough research, but I do my best to inform myself, to the extent that I can.

Pogue: Do the pension systems themselves provide any input?

Biss: Yeah, they do. I think if you were to interview them, they would tell you that the spotlight that has been placed on both, generally speaking, their condition, but more specifically speaking, the potential interest in legislative change, has forced them to run so many different scenarios and numbers that they've spent much more money than they would have like to on actuarial consultants,

instead of paying pension benefits. But they have been helpful in a number of ways. They do have actuarial consultants who can run scenarios for us, which is really essential. And they just have experts who know the systems inside out and who can informally be a source of information, historical context as well as reasonable projections about what the future might bring.

Pogue: There's another state agency under the state insurance; do they provide information?

Biss: Not a lot. You're absolutely right, the Department of Insurance does have responsibility of overseeing pension systems. We have, I would say, unfortunately, defunded that department to the extent that they are short-staffed. They do good and important work, but they don't do it with the kind of regularity and thoroughness that they ought to because they simply don't have the resources to do it.

Pogue: When you come up with a pension bill, do all the members get all the information, or is it kind of parceled out to the committee members and then general information is given to each legislator?

Biss: If there's a really significant bill, with a level of controversy, then if it's going to be called for a vote of the full legislature, then I would say there's a lot of information made available. I've been really impressed. You can easily quibble with the decisions members have made—myself certainly included—but I have been very impressed with the level of seriousness and interest that members have taken in this issue. I've seen, not one or five, but dozens of members **really** wrestle with this question and wrestle with the fiscal ramifications and the ethical meaning and the tensions and the contradictions. So yeah, I think that there's been...

As this discussion has moved forward slowly, an interest has gradually built. There's been a lot of desire from rank and file members, who may not be on any relevant committee, to get as much information as possible.

Pogue: You came into the legislature in 2011, prior to the 1995 effort to try to stabilize the pensions. Then you had the pension holidays under Governor [Rod] Blagojevich and some taskforces in 2009. Did you get involved in reviewing any of that history or...

Biss: Oh yeah, I read all that stuff. It's so interesting, right, the 1995 so-called pension ramp, which was viewed at the time as such a panacea by so many people.¹ Many, many, many different people thought that was a great idea. Of

¹ In 1994, to address a \$20 million shortfall in pension funding, the Illinois legislature passed and then-Governor Edgar signed Public Act 88-593, which set payments by the State of Illinois into the pension funds at only 90 percent of liabilities, stretching this funding level over 50 years until 2045, and back-loading payments with a 15-year ramp. (https://en.wikipedia.org/wiki/Jim_Edgar)

course, it turns out to be probably the single biggest mistake we've ever made as a state, around pensions.

I think there's a couple of lessons to be drawn from that; one is the concrete lesson of don't do that again; don't delay payments for fifteen years, don't, don't. Suck it up, and put the money in today. The other point is, have humility. Have humility about your understanding of these issues and their ramifications. Know and remind yourself that these are long term issues with long term consequences, and always be honest with yourself about what you don't know, and try to be respectful of that volatility as you make the best decision you know how.

Pogue: Governor Quinn started talking about pension reform and the need to change. In general, what was the legislators' response to that?

Biss: I think it's fair to say that Governor Quinn talked about this kind of thing from the beginning. When he became governor in January of 2009, he shortly thereafter laid out his comprehensive policy proposals, which included a recommendation that a new tier of pension benefits be put in place for new employees. That took some time to happen, but it happened a little over a year later, in the springtime of 2010.

This issue was in the air. There was a lot of public concern. There was media attention. The numbers were just objectively very big. Different people came to their positions over different time horizons, but basically, nobody was surprised when a political leader explained that this was a key priority.

Pogue: That led eventually to a Tier 2 system.² You were not involved in the legislation regarding that, but did you hear from your colleagues who were either for or against Tier 2, the ramifications of that?

Biss: Well, it was a funny situation because it happened incredibly fast. In a flash, it was enacted. I wasn't there, so I can't promise you the exact time of it. It was a matter of a tiny amount of time, days or something or less. There is no question, I think, everybody, certainly including labor leaders, agreed that some kind of change had to happen for new employees; that's just reality. Over time you have to make some adjustments to a pension system, as economic conditions and life expectancies vary. However, you should do it delicately.

This was done so quickly, with so little time for reflection, that I think most people now agree that they overshot their mark. They've enacted a

² Tier 2 benefits are based on the final average salary of the 96 highest consecutive months of service out of the last 10 years, using each calendar year's annual salary maximum (as determined by the Department of Insurance) and your total credited service. This benefit is payable for your lifetime. (<https://www2.illinois.gov/sites/SRS/JRS/Tier%20%20Retirement/Pages/Retirement-Benefits.aspx#:~:text=Tier%20%20benefits%20are%20based,is%20payable%20for%20your%20lifetime.>)

pension plan, which is among the very stingiest of any public body in the country, which may not even be in compliance with federal law. Again, it's a good cautionary tale about the importance of reflection and...humility about one's certainty.

Pogue: Did the Democratic leadership in the House and Senate have a unified position on dealing with the pension crisis that would eventually lead up to Senate Bill 1 [Senate Bill 1]?

Biss: No.

Pogue: And how about your own residents and taxpayers, did you get feedback on this discussion?

Biss: Did I get feedback? Yeah, I got tons of feedback. It's varied all over the map. There were plenty of people who would be arguing on a given side, if you will, lots and lots of public employees who felt that it was absolutely unethical to make changes of any kind. And then there were people who just like having lower taxes, who thought there should be big pension cuts, so as to keep taxes low.

But, there were also a lot of people who had a concern about the issue but wanted to learn more about it or were—as I have always been—themselves conflicted about what the best way forward was, but wanted to make sure that we were taking aggressive and quick action to seek resolution. Yeah, I've heard volumes of discussion about it, and I really appreciate that. I think... (sighs) There are some issues...

When the United States goes to war, the public is going to find that deeply important and fascinating and is going to want to learn about it. That's an inevitability. When your public pension systems are in a state of debt, it's less obvious that the public will automatically gravitate toward that issue and seek to learn about it. It's less gripping, technical; at least it feels technical at first.

To see the public as curious about this as they have become, I found very heartening and encouraging. I had a lot of public meetings in my district, where we would talk this through, and I would try to be fair minded and open. People who came into the room, feeling themselves to be on opposite sides of one another, would find themselves in a conversation where they realized that there aren't really sides. This is an awful situation, and we need to try to be collaborative and respectful of the legitimacy of one another's points of view, if we're going to reach a good resolution.

Pogue: One of the earlier projects we completed for the oral history program was on school reorganization, where they had hearings, and people got very emotional, and some became very chaotic. Did you find that in the public discourse in your area?

Biss: Yeah, I found it ranged all over the map. There were very, very aggressive, difficult, painful public meetings, where people just kind of yelled at one another. Then there were meetings which I found to be enormously constructive and heartening.

I don't know what the difference was. It could be my doing it. It could be that... Is certainly is the case that a discussion needs to be led in the proper way, with the right tone. Maybe I did a bad job of that sometimes and a better job other times. But yes, I found that every type of different conversation under the sun happened during the course of this process.

Pogue: Before we talk about the process that led to Senate Bill 1, what do you feel are the causes of the pension underfunding or the pension crisis?

Biss: I would say neither the pension underfunding nor the pension crisis; I would say the pension debt. There's not as much money as there should be in the pension funds. This is well documented. The largest cause is the state's historical failure to make adequate payments, and the second largest cause is investment performance, particularly in the aftermath of the global financial meltdown.

Pogue: Other issues dealt with the benefit increases and the longevity of the employees. Are there any other reasons that, in your study and as you worked on legislation, you found to be contributing factors?

Biss: There used to be a lot more loopholes that would result in individuals getting big pension boosts that hadn't really been paid for. There still is, unfortunately, some of that, but it's now mostly been curtailed enough that it's not a significant, numerical portion of the problem. I think, in the old days, it used to be more significant.

Pogue: You mentioned the temporary tax that was passed just prior to your coming into the legislature. Did that help resolve the pension problem?

Biss: Of course. It brought a huge amount of new money into the state, which made it possible to make pension payments.

Pogue: And did that help deal with the unfunded liability, or did it just keep the pension debt from increasing?

Biss: It allowed the state to make its statutory payments, without borrowing to do it. That's what you have to do. You have to be on a plan to eventually get your system fully funded, and you have to make the payments on a consistent basis as you march down that path, and you have to do it without continually borrowing to make the payments, because then you're just trading one form of debt for another.

- Pogue: Also during that time prior to your coming in, there were bond sales to deal with pensions. How was that looked at later on, as you were doing your research?
- Biss: (sighs) I don't know that other people spend as much time thinking about it as they ought to, but in some extreme circumstances, that kind of behavior can be okay; it might be occasionally necessary. But for a state to habitually rely on that kind of practice is very, very dangerous. It suggests that the state is running an irresolvable, structural deficit. That is obviously not a state of affairs that a state government can absorb. I have to make myself a note; I'm sorry (long pause.). Sorry about that.
- Pogue: Before we get to Senate Bill 1, what were all the precursors of legislation that took place, and how did you get involved in it?
- Biss: You mean the precursors of legislation that did or didn't pass on the way to enacting Senate Bill 1?
- Pogue: Right.
- Biss: I mentioned earlier that the history I know well is the history from 2011 on. Certainly, as you said, the second tier of benefits was enacted in spring of 2010, except for public safety employees and then for public safety workers and then late fall of 2010. But then in 2011, the discussion turned to current participants in the system.

In the spring of 2011, there was a bill that eventually got called Senate Bill 512 that was advanced by minority leader Tom Cross and supported by Speaker Madigan and the Civic Committee of the Commercial Club of Chicago. That bill sought to give every participant three choices: they could either pay a lot more and keep their same benefit package; they could keep paying the same amount but get a Tier 2 benefit, or they could move into a 401k style plan.³ That idea and variants of it were advanced throughout 2011. A couple different versions of that got out of the House Pensions Committee that I served on—never with my support—but nothing was ever called for a vote in the full House.

The spring of 2012, a different approach was taken. The governor set up a working group on pensions, with representatives of each of the four legislative caucuses. They were operating under constitutional theory advanced by [Senate] President [John] Cullerton, which is that, because of the pension clause of the Illinois Constitution, you can't make unilateral changes. However, he believed that, since the protection's a contractual protection, you can make changes that would be consistent with contract law—In other words, as long as the change fits the rubric of offer, an offer's made; the offer's

³ A 401(k) plan is a retirement savings account that allows an employee to divert a portion of their salary into long-term investments. (<https://www.investopedia.com/articles/retirement/08/401k-info.asp>)

considered, and the offer's accepted on a voluntary basis without duress—then you can make changes.

So, a package was negotiated along this philosophy that essentially took away peoples' rights to retiree healthcare and to have any of their future raises count toward their pensions, but then offered these things back if people made a voluntary change to their pension systems. This process essentially led to most of an agreement. But there was one crucial sticking point, namely the question of who would make the employer payments to the teachers' retirement system. Because of an inability to agree on that, the negotiation fell apart, and no bill was called for a vote in 2012 either.

At the end of 2012, Representative [Elaine] Nekritz and I and a group of, I think, nineteen other House members from both parties unveiled a new proposal, which was at the time called, I think, House Bill 6258. We sought to build support for that approach. The time ran out before the new General Assembly was sworn in, in January of 2013. But that approach was then modified by Speaker Madigan and became Senate Bill 1.

At the same time, President Cullerton was involved in a negotiation with leaders from the public employee unions, in what's called the We Are One Coalition. They settled on a bill that was Senate Bill 2404 that was again premised on the offer consideration and acceptance model, utilizing this retiree healthcare concept. The Senate passed Senate Bill 2404; the House passed Senate Bill 1. The House did not take up Senate Bill 2404; the Senate voted down Senate Bill 1, and the legislative session ended. That brought us to the summer of 2013, when the conference committee on Senate Bill 1 was created, leading eventually to the passage in December of Senate Bill 1.

Pogue: How helpful was the Governor's Office in trying to resolve the differences between the House and the Senate?

Biss: The Governor's Office was very, very interested in making sure we got resolution. There was constant dispute about what would be the most helpful thing they could do, and there was fighting between the legislative and executive branches periodically, as there so often is, but basically the governor was really, really interested in seeing some kind of resolution.

Pogue: We also remember, during that time, there was a "squeeze cartoon" that came out.⁴ Did that create more interest in the local districts from taxpayers and residents?

⁴ In an attempt to get discussion going about Illinois's strangling pension debt in 2012, Governor Pat Quinn's office introduced an attention-grabbing cartoon snake, "Squeezy," wrapping itself about the state capitol dome. (https://www.stltoday.com/news/local/govt-and-politics/20-000-have-viewed-illinois-cartoon-snake-pension-crisis-mascot/article_6514df27-9717-57a8-b839-f8c148ac6c18.html)

Biss: It did not.

Pogue: It sounds like the significant differences between the House and Senate were the use of contract language and... What were the major sticking points between the two, or how were they different?

Biss: They were just different views about what the constitution could even allow. President Cullerton—and of course he turns out to have been completely right—said that you can't make unilateral changes. You have to make changes under the rubric of contract law. Speaker Madigan disagreed. Eventually the Senate Bill 1 that was enacted was a test of Speaker Madigan's theory, and the courts, proved him wrong.

Pogue: You've also talked about the conference committee; how many members were there, and were they equal between the two parties or...?

Biss: No, there are ten members on a conference committee, three from each majority caucus and 2 from each minority caucus. Since Democrats controlled both the House and the Senate, that meant that there were six Democrats and four Republicans.

Pogue: Did the members of the conference committee work in uniformity to try to come up with a...?

Biss: There was an anomaly to the work, which was that an opinion of, I believe, Attorney General Roland Burris, indicated that the conference committee was subject to certain provisions of the Open Meetings Act, and consequently, of the ten members, you couldn't ever have more than five meeting in private at once.⁵

So, we divided up into groups of five in different ways. Very frequently I'd be in one meeting in this room, here on the seventh floor of the Bilandic Building in Chicago, with four other members of the conference committee, and the other five members would be meeting on the sixth floor of the Bilandic Building. But we took seriously the rules. We didn't play games, like have someone run and back forth and send notes. We really made a point of following the rules seriously. That meant that conversations sometimes developed on parallel tracks. Basically we worked very closely together and learned a lot from each other and did our best.

⁵ The Illinois Open Meetings Act (OMA) provides the people of the State of Illinois with the right to be informed as to the conduct of public business. It is the intent of the Act that public bodies take action (vote) in open meetings, and that public bodies deliberate openly. According to the OMA, citizens are to be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon. (http://www.co.champaign.il.us/FOIA/OMA_Reference_Guide.pdf) The General Assembly amended the statute to allow 2 members of a 5 person board to discuss issues without having to notice the discussion as a public meeting. (https://www.citizenadvocacycenter.org/uploads/8/8/4/0/8840743/oma_guide_revised_2012.pdf)

Pogue: What outside resources did the committee use?

Biss: All kinds. We had public hearings where all sorts of experts from all different spots in the political and ideological spectrum presented to us, and we relied on a lot of information both in public and in private from the pension systems and from actuaries and from attorneys and from policy experts and so forth. We learned a lot, and we did what we could.

Pogue: How did Senate Bill 1 finally get passed?

Biss: The conference committee did the best it could for months and months, and then eventually the legislative leaders began meeting as well, and based on all those different conversations, a compromise was produced. The rules of the process dictate that when that happens the output of the conference committee is subject to an up or down vote, and it had passed.

In Illinois legislative battles, when the four legislative leaders and the governor are all truly trying hard to pass the same bill, it typically will pass. That's what happened here. But when you finally got everybody on the same page, even though they were on that page for different reasons, the votes finally were achievable to pass the bill.

Pogue: Could you explain to our listeners what was in Senate Bill 1?

Biss: Yes, Senate Bill 1 made a series of changes to the pension benefits of participants in four of the state pension systems, that's legislators, state employees, university employees and teachers outside of Chicago public school district. It also included language to guarantee the state would make its payments going forward, and it included a shift to a more responsible, actuarially sound funding formula for the pension systems. Additionally it included a sort of pilot program to transition a limited number of workers, on a voluntary basis, into a 401k style plan.

The benefit changes were designed to save an awful lot of money but to do it in way that worked hard to protect people with smaller pensions and people closer to retirement. The cuts were tilted at such a way that the more money you make, the more harm you would feel, and the younger you are, the more changes you'd experience.

Pogue: And did the members of the committee have to go out to speak to groups on what Senate Bill 1 was all about?

Biss: Yeah, there was a lot of interest in this and a lot of discussion. We did our best to educate anybody who was interested.

Pogue: After the passage of that, then litigation would start taking place.

Biss: Yep.

- Pogue: It hat was as probably assumed that that would be going...
- Biss: That's right.
- Pogue: ...because of the groups that were opposed to it and worried about it. What was your position regarding Senate Bill 1, and then on the litigation side?
- Biss: I signed the conference committee report. I voted for the bill. I spoke in support of the bill on the floor. Obviously, it was imperfect, and certainly in retrospect, it was a pretty serious mistake since the courts have shown that we were just wrong. But I thought at the time, based on what I knew, that it was a compromise worth supporting. I certainly did not make any effort to interfere with the courts. I respect the independence of the judicial branch of government, but I was of the view that it would be beneficial if the law were upheld.
- Pogue: When you spoke on the Senate floor, how was the debate, or was everybody pretty much saying this is one we've got to pass?
- Biss: No, there was a lot of debate and a lot of... It was a very tense situation, and many people were extremely unhappy or uncomfortable with the outcome. It was a tense debate. There were fiery speeches against the bill. There were sort of, I would say, reluctant speeches in support. But at the end of the day, the votes were there to pass it.
- Pogue: Did both parties provide votes?
- Biss: Yes, it was... I don't remember the exact details anymore, but my recollection is that in the Senate it was something like nine or ten Republicans and twenty or twenty-one Democrats, and in the House it was, I want to say, fifteen Republicans and forty-seven Democrats.
- Pogue: So, the whole length of time to get Senate Bill 1 from when you first started was roughly how many years?
- Biss: Three years from when I first began working on the pension issue and when I joined the House.
- Pogue: The Supreme Court made a ruling prior to dealing with Senate Bill 1, which dealt with insurance.
- Biss: Correct.
- Pogue: Did that stun many legislators?
- Biss: Yes, it did. It stunned me, certainly. There was the Kanerva case that overturned changes to the retiree healthcare system that had been enacted in

the spring of 2012.⁶ That was a controversial bill that was passed in 2012. It wasn't straightforward. There was a lot of debate about it. A lot of people thought it was an awful idea. A lot of people thought it was the wrong thing to do. But as we were debating it, there was very little, if any, talk about it being unconstitutional. People were really, I think, for the most part flabbergasted by that decision.

Pogue: And when that decision was made by the Supreme Court, did that spell the end of Senate Bill 1 as it rode through the courts?

Biss: It felt that way to me. Different people had different views on this, but it felt that way to me.

Pogue: Were there any other court rulings that dealt with pensions that also indicated that the Illinois system is pretty hard to get rid of?

Biss: Historically for sure, there's a lot of case law on this, and certainly if you haven't read Eric Madiar's research, I would recommend doing that, and speaking with Eric... It's very readable, and it's written as like a legal brief, but I don't have a law degree, and I found it readable and very edifying. The courts have been clear.

Those of us who were supporting Senate Bill 1, I think... Well, I'll speak for myself; I supported Senate Bill 1 feeling like the state was in such a condition of emergency that that emergency would justify some flexibility but understanding that was an unconventional argument.

Pogue: As the pension law went through the district court in Springfield and then to the Illinois Supreme Court, there was a hope that the courts would provide some guidance if they were going to strike down the law. Did they?

Biss: I would say they provided guidance in the sense that they issued a very strong ruling. It's not as though the ruling was narrow; it wasn't vague; it was very broad and clear and strong. So it was very useful guidance from the point of view of telling us what we could or couldn't do. But it was really telling us not what we could or couldn't do; it was telling us what we couldn't do. It took a lot of things off the table and left us with fewer tools in our arsenal, but that's important information, really important information.

Pogue: So where are we now with the issue of the pensions? As a legislator, where do you think things will go from here?

⁶ On July 3, 2014, the Illinois Supreme court issued a very clear declaration in the State Retirees' Healthcare case (*Kanerva v. Weems*), that all benefits which a participant enjoys from his or her membership in an Illinois government pension or retirement system are protected benefits, not just pension annuity payments. (<https://www.krislovlaw.com/illinois-supreme-court-opinion-in-kanerva-v-weems/#:~:text=On%20July%202014%20the,not%20just%20pension%20annuity%20payments>)

Biss: There's more litigation happening because the... We passed a law that was an outcome of a negotiation between Mayor Rahm Emanuel and several of the public employee unions representing workers in the municipal and labor systems of the City of Chicago. But not all the unions agreed to that bill. So when it was enacted, some of the other unions sued, and they're now in court. I'll be blunt with you, frankly, I expect the unions will be successful, and the law will be overturned.

I think that the best thing we can do is take these court rulings seriously and not pretend that they're not there, not try to somehow get around them by sleight of hand but be direct and responsible in finding other ways to deal with the issue. Part of that, of course, is just continuing to fund the pension systems. Put the money in there, and no matter what, make sure you're on a path to increasing funding. Part of it is finding **clearly** constitutional, not maybe constitutional, not hopefully constitutional, but **clearly** constitutional ways to save money.

You shouldn't make people make choices under duress, but you can ask people to make truly voluntary choices, where anybody who wants to keep the status quo, gets to keep the status quo, so there's no effort to trick people. But you also give people a variety of options, some of which might save some money.

You can also find, in some of the pension systems, administrative savings. For instance, if you look at some of the smaller fire and police pension systems in various municipalities, they're run in very expensive ways that I think could be improved upon. There are plenty of things that could be done, but I think that we'll make the most progress if we seek to do those things with full knowledge and understanding and, frankly, acceptance of the court's ruling.

Pogue: The courts have ruled that once the legislature creates new benefits, they're almost impossible to get rid of. Has that changed the thinking of the legislators, on pension laws that come in and provide enhancements or increased benefits? Do we need a different kind of review, because once you pass it, it's not like a surtax that might go off the books?

Biss: Yeah, I think there's a much greater degree of attention paid to these issues now than there ever used to be. I think that's, really, really important. We need to be positive and thoughtful and careful about them because the consequences are felt not for a day or a month or a year, but over the course of several decades.

Pogue: Are there any pension bills currently floating around?

Biss: Sort of, but not really. The governor had an idea that was obviously unconstitutional. He's still sort of talking about it, but I don't really know

why. Representative [Mark] Batinick from the south suburbs had some ideas recently. People are still talking, but there's such...

[In] the moment that you and I are speaking, which is late September of 2015, there is such a toxic and static culture in Springfield that it's really hard to see any progress right now. As a result, people who are otherwise likely to be innovative actors on public policy are right now kind of not sure of how to act.

Pogue: Some issues that still may be on the horizon may affect pension costs. You talked about maybe scuttling one of the ideas, based on the fact that people are living longer, and when the pension clause was created in the '70s, people were not living as long as they are now. There is also the issue of deteriorating state and municipal bond ratings. What things do you see happening with some of these?

Biss: Well, the bond ratings have to improve. We have to take necessary steps in state government to improve them because they have a very important spillover consequence on our economic well-being. I think there will always be discussion of a cost shift, and there always will be a discussion about the education funding mechanism. You can envision, under the right circumstances. With adequate funding being in place to do it properly and fairly, you can imagine not being a part of the resolution. Unfortunately, in an era of declining resources, it's tricky to do that in a way that isn't very, very harmful to schools.

I think, there's going to always be a discussion on these issues, and I think we're making a huge mistake if we view the Supreme Court decision as closing the door. I think we should view the Supreme Court decision as telling us where the door is and telling us we were trying to walk through the wrong door. Some people might like that fact; some people may not like that fact, but that's almost irrelevant. What's relevant is that the court is, by definition, right, and solutions will be arrived at, not by ignoring the court or wishing the court said something different than what it said but instead taking the court seriously and moving forward.

Pogue: Tied to the pension cost shifting, you indicated you're in a more affluent senate district. What were the feelings of the school districts about pension cost shifting?

Biss: Not good, not good. There was an understanding, I think by all people, that if you did it correctly, in principle, it could really make a lot of sense. But the challenge is that a school district in my area might say, "We were already getting almost no money from the state. That which we get, we got late, and now you want to put a giant new obligation on our back without telling us how we're going to pay for it." It really is very difficult to reasonably ask

these schools to absorb this, unless you're able to do it in the context of a bigger set of reforms that give them the tools needed to move forward.

Pogue: Let's address the issue of loopholes. You've said that you feel that the legislature has been working to try to reduce those loopholes. It certainly hurt lawmakers, as well as pension systems, when the headlines were: "Somebody worked one day..."

Biss: Sure, sure.

Pogue: ...and got a massive pension." So, when pension legislation comes in, do the pension systems themselves provide insight on how these problems could be avoided?

Biss: Yeah, there's a lot of discussion about that, and the pension systems are a great source of information. You said it really well. It's bad for them, as well as for the state bottom line, when these scandals happen. So it's in their interest to help us understand the ramifications of policies that were enacted.

Pogue: You mentioned the members on the committee that had this task work. Was there a good balance of newer folks like yourself and experienced people or...because this seemed to be a place where a person could be criticized?

Biss: Yeah. Let's see. The House, the Senate Democrats were me, and that was my first term; Kwame Raoul was the chair. He's been in since 2004, so he's been for almost a decade. Linda Holmes came in in 2006, so she'd been in for seven eight years. The Senate Republicans were Bill Brady, who's been there forever, and Matt Murphy who's been there for about a decade, close to it at least.

Then on the House side, you had Elaine Nekritz, who's been there since 2002. Mike Zalewski's been there since 2008. Art Turner, who's newer, like me, came in in 2010. And the House Republicans you had Jill Tracy and Darlene Sanger who are both kind of reasonably new.

Anyway, it was a good mix of people. I found it to be entirely people of good faith, who were really interested in working through the issues.

Pogue: Has there been any other pension legislation since you've been in the General Assembly that you had to vote on, beside the five systems?

Biss: There's been the Chicago bill that I mentioned. There was a metropolitan water reclamation district bill that we voted on in 2011, maybe 2012. There was a Cook County bill that the House never took up but that passed the Senate. And then there were tons and tons of less consequential pension legislation. But those were kind of the most high profile ones.

Pogue: Concerning municipal units, like the fire, the police, my local mayor in Aurora has sent information the residents about pension system concerns and some of the requirements set up by the General Assembly. Were you also seeing that in your territory?

Biss: Oh, sure. Yeah, mayors are very concerned about it and are a very active voice, advocating for changes.

Pogue: You had a quote that made the newspaper: “The road to pension hell is paved with rash accidents.” Is that an accurate quote?

Biss: Yes. I did say that.

Pogue: Could you explain that a little bit?

Biss: I think that sums up a lot of what I’ve tried to say this morning. I think that it is easy or tempting to act quickly and to act before fully turning over in one’s head the long-term consequences of an action. You alluded to it when you talked about how you can make a benefit change that then gets locked in forever that has long term fiscal consequences. I alluded to it when I talked about the Tier 2 creation happening so quickly (snaps fingers) that there were important shortcomings to it. And the same thing happened in 1995, when they created that ramp.

I think, in general, people who are making policy on pensions need to be absolutely imbued with humility about what they can and cannot predict, do their best to predict as much as possible, and to put in place and to put in place as many contingencies as possible, because the time horizon of these decisions is longer than that of most decisions that we make in the General Assembly.

Pogue: Senator Biss, I want to thank you very much for sharing your involvement with the pension legislation and your insights from the research that you’ve had to do to equip yourself to deal with many votes on this. Are there any other points you’d like to discuss?

Biss: You’ve done it all.

Pogue: Well, thank you again.

Biss: Thank you. I really enjoyed it.

(end of transcript)