

SUPREME COURT OF LOUISIANA

No. 04-CA-0227

LOUISIANA MUNICIPAL ASSOCIATION,
THE PARISH OF JEFFERSON, LOUISIANA, ET AL.

v.

THE STATE OF LOUISIANA AND
THE FIREFIGHTERS' RETIREMENT SYSTEM

JAN 19 2005

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT,
FOR THE PARISH OF EAST BATON ROUGE
HONORABLE TIMOTHY E. KELLEY, JUDGE

TRAYLOR, Justice*

CAT
COB
JW

The issue in this case is whether the statutory funding structure of the Firefighters' Retirement System ("FRS") violates the requirements of the Louisiana Constitution. Plaintiffs¹ are local government employers whose firefighter employees are members of the FRS. Plaintiffs filed suit against the State of Louisiana ("State") and the FRS seeking: (1) a declaration that the employers' contribution rate to the retirement system was statutorily fixed at 9% and (2) an injunction preventing the State and the FRS from obtaining or demanding from the employers more than 9% as the rate of their contribution to the retirement system.

* Retired Judge Walter I. Lawler, Jr., assigned as Justice ad hoc, sitting in place of Associate Justice Bernette J. Johnson, recused.

¹ The original plaintiffs in this action consist of the following association and political subdivisions: Louisiana Municipal Association; the Parish of Jefferson, Louisiana; and the cities of Abbeville, Alexandria, Bossier City, Crowley, DeRidder, Jonesboro, Kaplan, Kenner, Leesville, Minden, Morgan City, Natchitoches, New Iberia, Pincville, Pouchatoula, Port Allen, Ruston and Sulpher, Louisiana. After the filing of the original petition, various fire districts and other local government employers of firefighters filed petitions to intervene as plaintiffs: St. George Fire Protection District No. 2; the Central Fire Protection District No. 4; Fire Protection District 4-A; the Lafayette City-Parish Consolidated Government; the Terrebonne Parish Consolidated Government; and the cities of Bastrop, Bogalusa, Eunice, Hammond, Harahan, Haughton, Lake Charles, Monroe, Opelousas, St. Gabriel, Shreveport, Westlake, West Monroe, Winnsboro, and Zachary, Louisiana. All but two of these "intervening plaintiffs," along with the original plaintiffs, appear as petitioners in the amended and restated petition. See Vol. 5, p. 1002-1034. St. George Fire Protection District No. 2 and Central Fire Protection District No. 4 maintained separate petitions; however, these plaintiffs adopted the arguments of the Amended and Restated Petition. See Vol. 5, p. 868-871 and Vol. 6, p. 1108-1111. All of these parties will be referred to as "plaintiffs" in this opinion.

Calogero, G. concurs and assigns reasons.
Lanning, J. concurs in part, dissents in part, and assigns reasons per O.K.
Knoll, J., dissents and assigns reasons.
W. ...

This case is before the court as a direct appeal, pursuant to La. Const. art. 5, § 5(D), based on the fact that the district court declared La. R.S. 11:103 and La. R.S. 11:104 unconstitutional as applied to the FRS in its judgment, along with several legislative acts which have effected changes in the statutory funding structure of the FRS.² The district court's judgment also permanently enjoined the FRS from collecting more than a contribution rate of 9% from an employer whose employees are members of the FRS. After a thorough review of the record, and the statutory and constitutional provisions at issue, we affirm in part, reverse in part and order that the permanent injunction issued against the FRS be lifted.

HISTORICAL BACKGROUND

Before the legal analysis of the various acts and constitutional provisions of this complex subject matter is presented, it is necessary to provide a history of the creation of the FRS, the state's response to a subsequent fiscal crisis, and the effect of certain statutory amendments affecting the FRS, in order to understand the legal analysis in context.

Creation of the FRS

The FRS was created by the legislature pursuant to Acts 1979, No. 434, § 1, consisting of La. R.S. 33:2151 through La. R.S. 33:2165, effective January 1, 1980. The FRS was established to provide retirement allowances and other benefits to firefighters employed by any municipality, parish or fire protection district in the state.³

The FRS is administered through a board of trustees whose members are

² As will be discussed in greater detail in this opinion, the district judge specifically found the following: Act 645 of 1991, Act 397 of 1991 and Section 2 of Act 1160 of 2001 violate La. Const. art. 10, § 29(E)(5); Acts 792 and 1293 of 1997 violate La. Const. art. 10, § 29(E)(3) and (4).

³ La. R.S. 33:2151(A)(1980); currently La. R.S. 11:2251. As will be discussed, *infra*, the statutory provisions of the FRS were later re-designated in Title 11. Where appropriate, both the statute as enacted, and as currently found, will be cited.

designated by the legislature.⁴ The board members are authorized by the legislature to designate an actuary who serves as the technical advisor to the board of trustees regarding the operation of the FRS.⁵ The legislature placed the FRS and its board of trustees in the Department of the Treasury.⁶

The FRS is a defined benefit plan.⁷ In other words, the benefits to which an employee is entitled upon retirement are defined, in this case by statute, and the participant can depend upon that value upon retirement.⁸ The FRS is not a defined contribution plan. In a defined contribution plan, the contributing parties, typically the employer and employee, contribute fixed amounts to the plan, and at the time of retirement, the participant in the plan receives the accumulated balance in the account.⁹

The FRS has three main sources of funding: (1) employee contributions, (2) employer contributions and (3) dedicated tax revenues from the state.¹⁰ These FRS assets are credited to one of five sub-funds which comprise the retirement system.¹¹

⁴ La. R.S. 33:2158(A) (1980); currently La. R.S. 11:2260.

⁵ La. R.S. 33:2158(C) (1980); currently La. R.S. 11:2260(C).

⁶ Acts 1979, No. 434, § 3; La. R.S. 36:769(D)(8)(1980).

⁷ See Vol. I, p. 81, Legislative Auditor Report, November 2002; Vol. 8, p. 1608, Independent Auditor's Report, 1994; and Vol. 13, p. 2233. The record in this case consists of thirteen (13) volumes. Citations to the record will designate the volume and page number. In addition, there is a problem with the Bates-numbering in Volume 13. The Bates-numbering follows sequentially from Vol. 12 until page number 2269. The page numbering then jumps to page numbers 2198 and 2199. Thereafter, the page numbering starts over at page number 2200-2208, when it jumps again to page number 2270-2274. The page numbering then begins again sequentially from page number 2209. In order to ensure understanding of the record citations, the volume number, page number and speaker will be identified where appropriate.

⁸ La. R.S. 33:2155(1980); currently La. R.S. 11:2256; see also Vol. 13, p. 2233.

⁹ See Vol. 13, p. 2233.

¹⁰ See La. R.S. 33:2160(B)(1), (D)(1) and (D)(6) (1980); currently La. R.S. 11:2262. Another source of funds for the FRS, although not a main source of funding, is the interest which accrues on investment of FRS assets.

¹¹ La. R.S. 33:2160(A) (1980); currently La. R.S. 11:2262.

Only two of the five sub-funds are important to this analysis.¹²

Employee Contributions

The legislature provided that the employees' contributions are to be accumulated in the Annuity savings fund.¹³ For all but a brief period since its inception, the FRS rate of contribution for employees has been statutorily set at 8% of salary excluding overtime.¹⁴ These contributions are accumulated by the firefighters' employers through payroll deductions and provided to the FRS.¹⁵

Employer Contributions

The legislature provided that the firefighters' employers' contributions are to be accumulated in the Pension accumulation fund.¹⁶ As originally conceived, employers were to pay into this sub-fund the amount of 9% of payroll, excluding overtime but including state supplemental pay, and to remit this amount monthly to the FRS. In addition, employers were also responsible for contributing to the FRS an amount known as the "normal contribution rate," which was to be determined by the actuary after calculation of the liabilities of the system, mortality rates, interest and other variables.¹⁷

¹² The Annuity savings fund and the Pension accumulation fund are discussed in the body of the opinion. The three other sub-funds are: (1) the Annuity reserve fund, which is comprised of the amounts accumulated in the Annuity savings fund and Pension accumulation fund when a FRS member retires; (2) the Expense fund, which is funded by the Pension accumulation fund and/or interest on investments; and (3) the Deferred Retirement Option Plan account, in which is accumulated all payments made pursuant to the FRS deferred retirement option plan. La. R.S. 33:2160(C), (D)(4), (E) (1980), currently La. R.S. 11:2262(C), (E) and (G); Acts 1980, No. 178, § 1; Acts 1984, No. 450; La. R.S. 33:2155.1 (1984).

¹³ La. R.S. 33:2160(B)(1)(a) (1980); currently La. R.S. 11:2262(B).

¹⁴ Acts 1991, No. 397, § 1 reduced the rate of the employee contribution to the FRS from 8% to 7%. However, the rate of the employee contribution was raised again to 8% in the following year in Acts 1992, No. 253, § 1. See La. R.S. 11:2262(B)(1).

¹⁵ La. R.S. 33:2160(B)(1)(a) (1980); currently La. R.S. 11:2262(B)(2).

¹⁶ La. R.S. 33:2160(D) (1980); currently La. R.S. 11:2262(D).

¹⁷ La. R.S. 33:2160(D)(1) and (3) (1980) provided:

(continued...)

Dedicated Tax Revenues

The legislature provided the third main source of funding for the FRS by dedicating to the FRS tax revenues collected through assessments against insurers conducting business in the state. Prior to the creation of the FRS, the legislature created the Louisiana Insurance Rating Commission ("Commission") in La. R.S. 22:1401 *et seq.* Section 2 of Acts 1979, No. 434 amended La. R.S. 22:1419 to provide for a specific dedication of tax revenue for the benefit of the FRS derived from assessments against insurers conducting business in the state which were collected in the Insurance Premium Tax Fund ("IPTF").¹⁸ The legislature dedicated to the FRS

¹⁷(...continued)

(1) In addition to the assessment collected above [*i.e.* the employee contributions to the Annuity savings fund], each municipality, parish or fire protection district which has employees on its fire protection force who become members in the Firefighters' Retirement system shall contribute an amount equal to nine percent of the earnable compensation of each firefighter eligible for membership in the Firefighters' Retirement System and shall remit this amount monthly to the Firefighters' Retirement System.

(3) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this Subpart during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the compensation of the average new entrant, which if contributed on the basis of compensation of such new entrant throughout the entire period of active service would be sufficient to provide for the payment of any pension payable on his account. The rate percentum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate percentum of the earned salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of funds on hand to credit of that fund and dividing the remainder by one percentum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contributions shall be determined by the actuary after each valuation.

Currently, these provisions are in La. R.S. 11:2262(D)(1) and (3).

¹⁸ Acts 1979, No. 434, § 2 provided:

§ 1419. Commission expense fund; assessments against insurers; dedications

A. It shall be the duty of the commission to determine an amount sufficient to enable it to pay the expenses of its organization and operation, and the salaries and

(continued...)

funds from the IPTF calculated as "an amount equal to two-tenths of one percent of the gross direct premiums received in this state, in the preceding year, by insurers doing business in this state and subject to this Part, less returned premiums ..."¹⁹ In the same legislation, the legislature dedicated four-tenths of one percent of the IPTF to the Municipal Police Employees' Retirement System and one-tenth of one percent of the IPTF to the Sheriffs' Pension and Relief Fund.²⁰

IPTF funds are placed into the Pension accumulation sub-fund of the FRS.²¹ Thus, the gross or total "employers' contribution" in the Pension accumulation sub-fund is made up of the contribution directly obtained from the employers and the dedicated tax revenue from the IPTF.

State Guarantee

In addition to providing for the structure and funding of the FRS, Acts 1979,

¹⁸(...continued)

expenses of its members and employees, and to pay any other expenses which may be necessary in the conduct of its business and for the enforcement of the provisions of this part. The commissioner of insurance shall be paid sixty thousand dollars annually from the fund for the operating fund of his office, payments to be made monthly. An expense fund in the amount so determined by the commission shall be provided by all insurers doing business in this state and subject to this part, by the payment of an assessment to be levied against them by the commission in proportion to their gross direct premiums received in this state in the preceding year, less returned premiums, provided, that no such assessment shall exceed one percent of such premiums, and further provided that, regardless of the percentage assessed by the commission, an amount equal to four-tenths of one percent of the gross direct premiums received in this state, in the preceding year, by insurers doing business in this state and subject to this Part, less returned premiums shall be deposited by the commission with the state treasurer to the account of the Municipal Police Employees' Retirement system, and an amount equal to one-tenth of one percent of the gross direct premiums received in this state, in the preceding year, by insurers doing business in this state and subject to this Part, less returned premiums shall be deposited by the commission with the state treasurer to be paid to the account of the Firefighters' Retirement System. Any insurer which has not had one full year of experience immediately preceding said assessment, shall pay a sum to be fixed by the commission, and the following years its proportion shall be based upon its estimated premiums for the current year, subject to revision at the end of the year in accordance with the gross premiums received by said insurer, as hereinabove provided.

¹⁹ *Id.*

²⁰ *Id.*

²¹ La. R.S. 33:2160(D)(4) (1980); currently La. R.S. 11:2262(D)(6).

No. 434 provided that the state would guarantee the payment of retirement benefits to members of the FRS. La. R.S. 33:2165 (1980) provided: “[t]he state of Louisiana hereby guarantees benefits payable to a member of this system or a retiree or to his lawful beneficiary upon his death.”

The State Fiscal Crisis

Constitutional Changes

In the late 1980's, Louisiana faced a cash flow crisis brought on, in part, by the worldwide collapse of oil prices and an inability of the state to borrow funds. *See Strickland v. State Through Off. Of Gov.*, 534 So.2d 956 (La. 1988). In order to ensure the financial soundness of the state and statewide public retirement systems, the legislature proposed amending the state's constitution regarding retirement and retirement benefits.

Pursuant to Acts 1987, No. 947, § 2, the proposal to add paragraph (E) to La. Const. art. 10, § 29 was submitted to the electors of the State of Louisiana and was ratified by them on November 21, 1987. *See* La. Const. art. 10, § 29, “Historical Notes.” This section of the state constitution became effective on December 24, 1987. *Id.*

La. Const. art. 10, § 29(B)(1) requires that the state and statewide retirement systems²² attain and maintain actuarial soundness and that the legislature establish the particular method of actuarial valuation to be employed by each state and statewide retirement system for doing so. Subsection (E)(2) provides constitutional requirements for public retirement systems whose benefits are guaranteed by the

²² At trial, the legislative auditor, Mr. Soudergaard, explained that the benefits of a “state” retirement system are guaranteed by the state, while the benefits of a “statewide” retirement system are not guaranteed by the state. *See* Vol. 13, p. 2274. The primary responsibility for funding a guaranteed system lies with the state. A system not guaranteed by the state may use a variety of funding mechanisms, such as direct contributions from employers and employees, *ad valorem* taxes, dedicated taxes and revenue sharing. *See* Vol. 4, p. 793.

state.²³ Subsection (E)(3) requires that, for all statewide public retirement systems whose benefits are not guaranteed by the state, the legislature must determine all required contributions to be made by members, employers and dedicated taxes for the sound actuarial maintenance of the systems. In addition, this subpart requires the elimination of unfunded accrued liability in these retirement systems by the year 2029, commencing with Fiscal Year 1989-1990. Subsection (E)(4) prohibits the state and the governing authorities of the state and statewide public retirement systems from taking any action that would cause the actuarial present value of expected future expenditures of the retirement system to exceed or further exceed the sum of the current actuarial value of assets and the actuarial present value of expected future contributions to the retirement system, except with respect to normal business operating expenses, capital outlay expenditures, management of investments, and cost of living increases as provided by law. Subsection (E)(5) mandates that all funds of the state and statewide public retirement systems are used for the purposes of the retirement systems and cannot be encumbered or diverted to any other purpose. This subpart prohibits the diminishment or impairment of the accrued benefits of the members of the state and statewide public retirement systems and provides that future benefit provisions shall only be altered by legislative enactment.²⁴

²³ Due to the fact that the legislature repealed the state guarantee of benefits to the FRS, discussed *infra*, these requirements are not at issue here.

²⁴ La. Const. art. 10, § 29(E) states as follows:

(E) Actuarial Soundness. (1) The actuarial soundness of state and statewide retirement systems shall be attained and maintained and the legislature shall establish, by law, for each state or statewide retirement system, the particular method of actuarial valuation to be employed for purposes of this Section.

[Due to the fact that the legislature repealed the state guarantee of benefits, discussed *infra*, the provisions of Subsection (2), applicable to state-guaranteed public retirement systems, are not applicable here.]

(3) For statewide public retirement systems not covered by Paragraphs (A) and (B)
(continued...)

At the time that Section (E) became effective, the FRS was a state guaranteed retirement system pursuant to La. R.S. 33:2165 (1980).

Statutory Changes: Acts 1988, No. 81

Title 11: Chapter 1

In the year following the adoption of La. Const. art. 10, § 29(E), the legislature enacted Title 11, to be comprised of La. R.S. 11:1 through La. R.S. 11:127, and known as the "Louisiana Public Retirement Law."²⁵ In Title 11, the legislature began the process of consolidating the law regarding public retirement systems in order to

²⁴(...continued)

of this Section, the legislature shall determine all required contributions to be made by members, contributions to be made by employers, and dedicated taxes required for the sound actuarial maintenance of the systems, including the elimination of the unfunded accrued liability as of the end of the 1988-1989 Fiscal Year, under the method of valuation selected under (1) above, by the year 2029, commencing with Fiscal Year 1989-1990.

(4) For all state and statewide public retirement systems, neither the state nor the governing authority of such system shall take any action that shall cause the actuarial present value of expected future expenditures of the retirement system to exceed or further exceed the sum of the current actuarial value of assets and the actuarial present value of expected future receipts of the retirement system, except with respect to the following:

- (a) Normal business operating expenses of the retirement system.
- (b) Capital outlay expenditures of the retirement system.
- (c) Management of investments of the retirement system.
- (d) Cost-of-living increases to retirees, as provided by law, provided the retirement system is approaching actuarial soundness as provided by law, and the granting of such increase does not cause an increase in the actuarially required contribution rate.

(5) All assets, proceeds, or income of the state and statewide public retirement systems, and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested as authorized by law, or disbursed as in trust for the exclusive purpose of providing such benefits, refunds, and administrative expenses under the management of the boards of trustees and shall not be encumbered for or diverted to any other purpose. The accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired. Future benefit provisions for members of the state and statewide public retirement systems shall only be altered by legislative enactment.

²⁵ Acts 1988, No. 81, § 2; Title 11, Chapter 1, § 1; La. R.S. 11:1.

comply with the constitutional mandate provided in La. Const. art. 10, § 29(E) that public retirement systems be maintained on a sound actuarial basis.²⁶

The legislature recognized that such a consolidation could not be accomplished in a single act, but that such a process would proceed over a period of time.²⁷ Consequently, the legislature was aware of the need for the new provisions of Title 11 to be understood in conjunction with existing public retirement legislation. The legislature provided a mechanism for the harmonization of the new and existing public retirement law in Chapter 1 of the legislation enacting Title 11, to be designated as La. R.S. 11:3, as follows:

Except as is specifically otherwise provided, the provisions of this Title do not repeal comparable provisions contained within separate laws governing state and statewide public retirement systems. However, the provisions of this Title shall be controlling in case of conflict with the separate laws. The separate laws shall continue to be operable to the extent they are not in conflict with the provisions of this Title.²⁸

Thus, existing law was to be followed except where it conflicted with the provisions of Title 11.

Title 11: Chapter 2

The legislature understood that the consolidation of public retirement systems would be an on-going process. Chapter 2 of Title 11, entitled "Required Contributions," was designated by the legislature "as a depository for legislation involved in a continuing process of consolidation of law relative to required contributions to public retirement systems to achieve and maintain those systems on a sound actuarial basis."²⁹

²⁶ La. R.S. 11:2.

²⁷ Acts 1988, No. 81, § 1.

²⁸ Acts 1988, No. 81, § 2, Title 11, Chapter 1, § 3; La. R.S. 11:3.

²⁹ Acts 1988, No. 81, § 2, Chapter 2, Part 1, § 11; La. R.S. 11:11.

In Chapter 2 of Title 11, the legislature enacted statutes responding to the constitutional requirements in La. Const. art. 10, § 29(E). The legislature established in La. R.S. 11:22 the distinct method of actuarial valuation which each state and statewide retirement system must use to comply with the constitutional mandate in La. Const. art. 10, § 29(E)(1).³⁰ The legislature established in La. R.S. 11:42 the method for amortization of unfunded accrued liabilities for each of the state and statewide retirement systems in compliance with the constitutional mandate in La. Const. art. 10, § 29(E)(2)(c) and (3).³¹ To comply with the constitutional mandate of La. Const. art. 10, § 29(E)(2)(a) and (3), that the legislature determine and set all required contributions to be made by members of state and statewide public retirement systems, the legislature in La. R.S. 11:62 established employee contribution rates.³² To comply with La. Const. art. 10, § 29(E)(3), the legislature established *ad valorem* tax contributions in La. R.S. 11:82 for those public retirement systems, not including the FRS, which have that type of tax as a funding source.

In compliance with La. Const. art. 10, § 29(E)(2)(b), (c) and (3), the legislature provided a multi-level formula to determine the rate of employer contributions in La. R.S. 11:102, applicable to public retirement systems in which the benefits are guaranteed by the state, and in La. R.S. 11:103, applicable to public retirement systems in which the benefits are not guaranteed by the state.³³ Each statute provides a general formula whereby the systems' actuaries calculate annually the amount of

³⁰ Acts 1988, No. 81, § 2, Chapter 2, Part 2, Subpart A, § 22; La. R.S. 11:22(B)(4) established that the actuarial valuation method for the FRS is "entry age normal."

³¹ Acts 1988, No. 81, § 2, Chapter 2, Part 2, Subpart B, § 42; La. R.S. 11:42(B)(3) provides that the unfunded accrued liability of the FRS as of June 30, 1989, shall be amortized over a thirty year period, commencing with fiscal year ending 1990, with level dollar payments annually.

³² Acts 1988, No. 81, § 2, Chapter 2, Part 2, Subpart C; La. R.S. 11:62(3) provided the employee contribution rate for the FRS was 8%. This coordinates with the percentage as was reflected in R.S. 33:2160(E)(1)(a) (1980).

³³ Acts 1988, No. 81, § 2, Chapter 2, Part 2, Subpart E, § 101; La. R.S. 11:101.

the employers' contribution after taking into account the normal costs of the retirement system, the known amount of the employees' contributions, the assets within the system, the expected return on investments, and the projected liabilities of the system, including payment of unfunded accrued liabilities over time. This calculation must be performed annually by the actuaries so that changes in any of the variables of the system may be addressed promptly. In this formula, the "known" variables are calculated with the projected or actuarially determined variables to stabilize the formula and, thus, achieve actuarial soundness.

In La. R.S. 11:102,³⁴ in state guaranteed systems, the actuarially required

³⁴ La. R.S. 11:102, as enacted in Acts 1977, No. 81, provides as follows:

§ 102. Employer contributions; determination; payment; state and statewide public retirement systems whose benefits are guaranteed by Article X, Section 29(A) and (B) of the Louisiana Constitution

A. The provisions of this Section are applicable with respect to state and statewide public retirement systems whose benefits are guaranteed by Article X, Section 29(A) and (B) of the Louisiana Constitution.

B. (1) For each fiscal year, commencing with fiscal year 1989-1990, for each of the public retirement systems referenced in Subsection A of this Section, the legislature shall set the required employer contribution rate equal to the actuarially required employer contribution, as determined under Paragraph (3) of this Subsection, divided by the total projected payroll of all active members of each particular system for the fiscal year. Each entity funding a portion of a members salary shall also fund the employer's contribution on that portion of the member's salary at the employer contribution rate specified in this Subsection.

(2) At the end of each fiscal year, the difference between the actuarially required employer contribution for the fiscal year, as determined under Paragraph (3) of this Subsection, and the amount of employer contributions actually received for the fiscal year, excluding any amounts received for the extraordinary purchase of additional benefits or service, shall be determined.

(a) If the amount of employer contributions received for the fiscal year is less than the actuarially required employer contribution for the fiscal year, due to the failure of the legislature to appropriate funds at the required employer contribution rate, the difference shall be paid by the state treasurer from the state general fund upon warrant from the governing authority of the retirement system.

(b) Differences occurring for any other reason, together with interest computed thereon at the actuarially assumed rate to the middle of the next fiscal year, shall be added to the following fiscal year's actuarially required employer contribution if the difference was an underpayment and shall be subtracted from the following fiscal year's actuarially required employer contribution if the difference was an

(continued...)

employer contribution rate, as determined by the formula in Paragraph (B)(3), is annually compared with the employer contributions actually received.³⁵ If the

³⁴(...continued)
overpayment.

(3) With respect to each public retirement system referenced in Subsection A of this Section, the actuarially required employer contribution for each fiscal year, commencing with fiscal year 1989-1990, shall be that dollar amount equal to the sum of:

(a) The employer's normal cost for that fiscal year, computed as of the first of the fiscal year using the system's actuarial funding method as specified in R.S. 11:22 and taking into account the value of future accumulated employee contributions and interest thereon, such employer's normal cost projected to the middle of that fiscal year at the actuarially assumed interest rate.

(b) That fiscal year's payment, computed as of the first of that fiscal year and projected to the middle of that fiscal year at the actuarially assumed interest rate, using the system's amortization method specified in R.S. 11:42, necessary to amortize the unfunded accrued liability as of June 30, 1988, such unfunded accrued liability computed using the system's actuarial funding method as specified in R.S. 11:22.

(c) In the case of an underpayment in the previous fiscal year that has not been paid by the treasurer, such previous year's underpayment. In the case of an overpayment in the previous fiscal year, a negative amount equal in absolute value to the previous fiscal year's overpayment.

(d) That fiscal year's payment, computed as of the first of that fiscal year and projected to the middle of that fiscal year at the actuarially assumed interest rate, necessary to amortize changes in actuarial liability due to:

(i) Actuarial gains and losses, if appropriate for the funding method used by the system as specified in R.S. 11:22, for each fiscal year commencing after June 30, 1988, such payments to be computed as level dollar amounts over a period of fifteen years from the year of occurrence of each such actuarial gain or loss, such gains and losses to include any increases in actuarial liability due to governing authority granted cost-of-living increases.

(ii) Changes in actuarial assumptions or the method of valuing of assets, such payments to be computed as level dollar amounts over a period of fifteen years from the year of occurrence of the change.

(iii) Changes in actuarial funding methods, excluding changes in methods of valuing of assets, such payments to be computed as level dollar amounts over a period of thirty years from the year of occurrence of the change.

(iv) Changes in actuarial accrued liability, computed using the actuarial funding method as specified in R.S. 11:22, due to legislation changing plan provisions, such payments to be computed in the manner and over the time period specified in the legislation creating the change or, if not specified in such legislation, as level dollar amounts over a period of fifteen years from the year of occurrence of the change.

³⁵ See La. R.S. 11:102(B)(2).

employer contributions actually received are less than those required by the actuary, then the governing authority of the retirement system is authorized to present to the state treasurer a warrant for the amount needed to make up the difference, and the amount is paid by the state treasurer from the state general fund.³⁶ The fact that any shortfalls in the actuarial computation are the direct responsibility of the state itself is a defining feature of a state-guaranteed public retirement system.³⁷

The legislature enacted a similar formula in La. R.S. 11:103 to annually determine the rate of employer contributions for the public retirement systems whose benefits are not guaranteed by the state.³⁸ In R.S. 11:103, however, the difference

³⁶ See La. R.S. 11:102(B)(2)(a).

³⁷ See Vol. 13, p. 2274 (testimony of Mr. Sondergaard, legislative auditor).

³⁸ La. R.S. 11:103, as enacted in Acts 1988, No. 81, provided as follows:

§ 103. Employer contributions; determination; payment; state and statewide public retirement systems whose benefits are not guaranteed by Article X, Section 29(a) and (B) of the Louisiana Constitution

A. The provisions of this Section are applicable with respect to those state and statewide public retirement systems whose benefits are not guaranteed by Article X, Section 29(A) and (B) of the Louisiana Constitution.

B. (1) For each fiscal year commencing with the fiscal year ending 1990, for each public retirement system referenced in Subsection A of this Section, the employer contribution rate shall equal the actuarially required employer contribution as determined under paragraph (3) of this subsection, divided by the total projected payroll of all active members of the particular system for the fiscal year, such rate to be rounded to the nearest one-quarter of one percent.

(2) At the end of each fiscal year, the difference between the actuarially required employer contribution for the fiscal year, as determined under Paragraph (3) of this Subsection by the most recent actuarial valuation, and the amount of the employer contributions actually received for the fiscal year, excluding any amounts received for the extraordinary purchase of additional benefits or service, shall be determined to be that fiscal year's short fall amount.

(3) The actuarially required employer contribution for each fiscal year, commencing with fiscal year ending 1990, shall be that dollar amount equal to the sum of:

(a) The employer's normal cost for that fiscal year, computed as of the first of the fiscal year using the system's actuarial funding method as specified in R.S. 11:22 and taking into account the value of employee contributions and dedicated funds, including interest thereon, such employer's normal cost projected to the middle of the fiscal year at the assumed actuarial interest rate.

(continued...)

between the actuarially required employer contributions and the employer contributions actually received are determined to be that fiscal year's short fall amount.³⁹ That short fall amount is then included in the succeeding fiscal year's calculation as an amount to be amortized over a period of five years.⁴⁰

³⁸(...continued)

(b) The projected noninvestment related administrative expenses for the fiscal year.

(c) That fiscal year's payment, computed at the first of that fiscal year and projected to the middle of that fiscal year, at the actuarially assumed interest rate necessary to amortize previous years' shortfall amounts, if any, as a level dollar amount over a period of five years from the date of occurrence.

(d) That fiscal year's payment, computed as of the first of that fiscal year using that system's amortization method specified in R.S. 11:42, necessary to amortize the unfunded accrued liability as of the end of the fiscal year ending 1989, such unfunded accrued liability computed using the system's actuarial funding method as specified in R.S. 11:22, such payment projected to the middle of that fiscal year at the actuarially assumed interest rate.

(e) That fiscal year's payment, computed as of the first of that fiscal year and projected to the middle of that fiscal year at the actuarially assumed interest rate, necessary to amortize changes in actuarial liability due to:

(i) Actuarial gains and losses, if appropriate for the funding method used by the system as specified in R.S. 11:22, for each fiscal year commencing with the fiscal year ending 1990, such payments to be computed as level dollar amounts over a period of fifteen years from the year of occurrence of each such actuarial gain or loss, such gains and losses to include any increases in actuarial liability due to governing authority granted cost-of-living increases.

(ii) Changes in actuarial assumptions of the method of valuing of assets, such payments to be computed as level dollar amounts over a period of fifteen years from the year of occurrence of the change.

(iii) Changes in actuarial funding methods, excluding changes in methods of valuing of assets, such payments to be computed as level dollar amounts over a period of thirty years from the year of occurrence of the change.

(iv) Changes in actuarial accrued liability, computed using the actuarial funding method as specified in R.S. 11:22, due to legislation changing plan provisions, such payments to be computed in the manner and over the time period specified in the legislation creating the change or, if not specified in such legislation, as level dollar amounts over a period of fifteen years from the year of occurrence of the change.

³⁹ See La. R.S. 11:103(B)(2).

⁴⁰ See La. R.S. 11:103(B)(3)(c).