

*Title 11: Chapter 3*

The legislature understood that it would need an entity to coordinate the ongoing process of consolidation of the public retirement law and to implement the strategies created for achieving actuarial soundness of the state and statewide public retirement systems. In Chapter 3 of Title 11, designated as La. R.S. 11:121-127, the legislature created the Public Retirement Systems' Actuarial Committee (PRSAC) within the Department of the Treasury, effective July 1, 1988.<sup>41</sup> The legislature articulated the purpose of Chapter 3 in La. R.S. 11:121(B)(1998), as follows:

The legislature recognizes that the fiscal integrity of the state and statewide retirement systems and pension plans or funds is a priority and is necessitated by the current financial condition of the systems, plans, or funds. This actuarial committee is created with the intent that a plan can be developed to insure orderly and consistent strategies for continuing development and growth that will attain and maintain the soundness of the systems, plans, or funds. The purpose of this Subpart is to provide an entity to advise and coordinate this ongoing process and to advise the Joint Legislative Retirement Committee of all findings and recommendations.<sup>42</sup>

The duties of the PRSAC are described in La. R.S. 11:127(A)(1988), as follows:

The committee shall review and study, on a continuing basis, actuarial assumptions, funding methods, and unfunded liability determined by those methods, the amortization methods to reduce such unfunded liability, and such other matters as the committee deems appropriate. It shall make recommendations, subject to the unanimous approval of the committee, to the retirement systems, plans, or funds and to the Joint Legislative Retirement Committee.<sup>43</sup>

In La. R.S. 11:127(B) (1988), the legislature further ordered the PRSAC to

---

<sup>41</sup> Acts 1988, No. 81, § 2, Chapter 3, § 121(A); La. R.S. 11:121(A)(1988). The other provisions of the Act would become effective on July 1, 1989, provided that the PRSAC became effective on July 1, 1988. See Acts 1988, No. 81, Section 5. The effective dates of the provisions were staggered in this way so that the PRSAC could accomplish its statutorily mandated duties for implementation of the formulas set forth in the Act for the next fiscal year.

<sup>42</sup> Acts 1988, No. 81, § 2, Chapter 3, § 121(B).

<sup>43</sup> Acts 1988, No. 81, § 2, Chapter 3, § 127(A). The statutorily-described duties of PRSAC have not been amended.

adopt, each year, an official valuation of each state and statewide public retirement system. This valuation is to be derived and revised only as authorized by the statute setting forth the duties of PRSAC.<sup>44</sup> The mechanism by which the valuations of the state and statewide public retirement systems are to be made is further described in La. R.S. 11:127(C) (1988), as follows:

The actuaries for the public retirement systems, plans or funds and the legislative actuary shall submit annual actuarial valuations to the committee. The committee shall review and analyze all the assumptions and valuations submitted. The committee shall be [sic; by] unanimous consent approve a single valuation for each public retirement system, plan or fund. Once unanimous consent is obtained by the committee the actuarial valuations in the form of the official valuations adopted by the committee, shall be submitted to the Joint Legislative Retirement Committee and the Joint Legislative Committee on the Budget for introduction into the state budget.<sup>45</sup>

#### **Legislative Amendments Effecting the FRS**

There are four categories of amendments to various statutes regarding the FRS which are important to an understanding of the issues presented.

##### *1. FRS Consolidated Into Title 11*

In connection with the on-going process of consolidation of the state and statewide public retirement systems, the legislature by Acts 1991, No. 74, authorized the Louisiana State Law Institute to re-designate all of the existing provisions of law related to and governing the operation of the public retirement systems, plans, and

---

<sup>44</sup> Acts 1988, No. 81, § 2, Chapter 3, § 127(B).

<sup>45</sup> Acts 1988, No. 81, § 2, Chapter 3, § 127(C). The mechanism as originally enacted has survived in substantially the same form, except that the requirement of unanimous consent has been amended to require only a majority of the members present and voting. The present form of La. R.S. 11:127(C) is as follows:

C. The actuaries for the public retirement systems, plans, or funds and the legislative actuary shall submit annual actuarial valuations to the committee. The committee shall review and analyze all the assumptions and valuations submitted. The committee shall, with the consent of a majority of members present and voting, approve a single valuation for each public retirement system, plan, or fund. Once consent of the members is obtained, the actuarial valuations in the form of the official valuations adopted by the committee shall be submitted to the Joint Legislative Retirement Committee and the Joint Legislative Committee on the Budget.

funds.<sup>46</sup> This Act consolidated into Title 11 the four main state retirement systems<sup>47</sup> and the nine statewide retirement systems.<sup>48</sup> In this manner, the statutory provisions relative to the FRS, former La. R.S. 33:2151 through 2165, were re-designated in Title 11 as La. R.S. 11:2251 through 2269.<sup>49</sup> Specifically, the provisions of La. R.S. 33:2160, which set up the method of funding the FRS, were re-designated as La. R.S. 11:2262. Within this Act, the legislature clearly expressed its intent that the re-designation did not alter substantive law: "No action taken by the Louisiana State Law Institute under the provisions of this Act shall in any way alter or repeal any substantive provision of law governing any public retirement system, plan or fund."<sup>50</sup> These changes became effective on June 25, 1991.<sup>51</sup>

---

<sup>46</sup> Acts 1991, No. 74, § 1.

<sup>47</sup> The four main state retirement systems are: (1) the Louisiana State Employees' Retirement System, La. R.S. 11:401 *et seq.*; (2) the Teachers' Retirement System of Louisiana, La. R.S. 11:701 *et seq.*; (3) the Louisiana School Employees' Retirement System, La. R.S. 11:1001 *et seq.*; and (4) the State Police Pension and Retirement System, La. R.S. 11:1301 *et seq.* There are two other state retirement systems which have limited participation, if any. The Judges' Non-Contributory Plan, La. R.S. 11:1351 *et seq.*, is applicable with respect to judges and certain enumerated court officers who were in office on October 1, 1976 and who did not timely exercise the option to become a member of the Louisiana State Employees' Retirement System. In addition, the system of pensions for Confederate veterans and the widows of Confederate veterans was merged and consolidated with the system of financial assistance to aged and needy persons. *See* La. R.S. 11:1391 *et seq.*, *see also* Vol. 3, p. 471, Vol. 4, p. 786-787.

<sup>48</sup> The nine statewide retirement systems are: (1) the Assessors' Retirement Fund, La. R.S. 11:1401 *et seq.*; (2) the Clerks' of Court Retirement and Relief Fund, La. R.S. 11:1501 *et seq.*; (3) the District Attorneys' Retirement System, La. R.S. 11:1581 *et seq.*; (4) the Municipal Employees' Retirement System of Louisiana, La. R.S. 11:1731 *et seq.*; (5) the Parochial Employees' Retirement System of Louisiana, La. R.S. 11:1901 *et seq.*; (6) the Registrars of Voters Employees' Retirement System, La. R.S. 11:2031 *et seq.*; (7) the Sheriffs' Pension and Relief Fund, La. R.S. 11:2171 *et seq.*; (8) the Municipal Police Employees' Retirement System, La. R.S. 11:2211 *et seq.*; and (9) the Firefighters' Retirement System, La. R.S. 11:2251 *et seq.* *See also* Vol. 3, p. 471, Vol. 4, p. 786-787.

<sup>49</sup> Acts 1991, No. 74, § 3, Title 11, Subtitle III, Chapter 9.

<sup>50</sup> Acts 1991, No. 74, § 4.

<sup>51</sup> Acts 1991, No. 74, § 6 provided: "This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana." The Act was approved by the Governor on June 25, 1991.

## *2. State Guarantee Repealed*

The legislature repealed former La. R.S. 33:2165 in its entirety pursuant to Acts 1991, No. 645, effective July 1, 1991. This Act repealed the state guarantee of benefits to FRS members and their beneficiaries.<sup>52</sup> After the effective date of this act, the formula described in La. R.S. 11:103, applicable to public retirement systems whose benefits were not guaranteed by the state, and not the formula in La. R.S. 11:102, applicable to state guaranteed systems, was used for the calculation of the employer contributions to the retirement system. The Act also repealed former La. R.S. 36:769(D)(8), which had transferred the FRS to the Department of the Treasury.

## *3. Calculation of Employer Contribution*

### *A. Acts 1991, No. 397*

Pursuant to Acts 1991, No. 397, § 3, effective July 1, 1991, the legislature enacted La. R.S. 11:103(C).<sup>53</sup> In Paragraph (C), the legislature provided a formula

---

<sup>52</sup> As will be discussed, *infra*, prospectively from the repeal of former La. R.S. 33:2165, any shortfall in the annual determination of the actuarially required employer contribution and the employer contribution actually received must be met by a funding method other than direct payment from the state general fund, as determined by the legislature.

<sup>53</sup> La. R.S. 11:103(C), as enacted in Acts 1991, No. 397, provides:

**§ 103. Employer contributions; determination; payment not guaranteed**

\* \* \*

C. The net direct actuarially required employer contribution for each fiscal year, commencing with fiscal year ending 1990, shall be that dollar amount equal to the contribution rate specified in Subsection (C)(2)(b), if any, increased by the cost itemized in Subsection (C)(1), reduced by the contributions itemized in Subsection (C)(2):

(1) Elements of cost contained in the gross required employer contribution include 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, including interest thereon, such employer's normal cost projected to the middle of the fiscal year at the assumed actuarial interest rate.

(2) Elements of the gross employer contributions:

(a) Dedicated ad valorem taxes and revenue sharing funds.

(b) Fixed portion of the net direct employer's contributions:

(continued...)

for the calculation of the net direct actuarially required employer contribution rate. The formula provided in La. R.S. 11:103 is a multi-level formula. The formula calculates, *inter alia*: (1) the employer contribution rate; (2) the actuarially required employer contribution rate; and (3) the net direct actuarially required employer contribution.<sup>54</sup>

With this amendment, the legislature established that the net direct actuarially required employer contribution rate would be determined by taking the fixed portion of the net direct employer's contribution, 9% in the case of the FRS; adding the elements of cost in the gross required employer contribution for that fiscal year (using the retirement's system's statutorily-specified actuarial funding method and taking into account such factors as the value of employee contributions and interest); and subtracting the elements of the gross employer contributions, which, in the case of the FRS, includes the fixed 9% and the dedicated IPTF funds.<sup>55</sup> This formula reveals that the net direct actuarially required employer contribution consists of both the fixed portion of the employer's contribution, if any, along with any amount determined

---

<sup>53</sup>(...continued)

(i) Firefighters' Retirement System -9%

(ii) Municipal Police Employees' Retirement System -9%

(iii) Sheriffs' Pension and Relief Fund -5%

(c) Dedicated assessments against insurers. Such amounts, excluding amounts paid for funding of mergers, to be the lesser of available funds or cost stated in (C)(1) reduced by contributions stated in (C)(2)(a) and (C)(2)(b) but in no event shall be less than zero.

<sup>54</sup> It is important to this discussion to remember that the gross employer contribution, the contributions which are placed into the Pension accumulation sub-fund of the FRS, are derived from both the direct employer contributions and the dedicated IPTF tax revenues. Thus, there is a difference between the "gross employer contribution," which refers to both the employer contribution and the IPTF funds, and the "net direct employer contribution," which refers only to the contribution obtained directly from the employers.

<sup>55</sup> Other public retirement systems whose benefits are not guaranteed by the state have different funding structures. Some do not receive IPTF funds; others rely on *ad valorem* taxes. This formula is applicable to all the public retirement systems whose benefits are not guaranteed by the state to determine the amount of the net direct actuarially required employer contribution rate.

after application of the calculation.

B. Acts 1991, No. 1038

Pursuant to Acts 1991, No. 1038, effective September 6, 1991, the legislature, *inter alia*, enacted La. R.S. 11:104 to provide with respect to the determination and reporting of employer contribution rates.<sup>56</sup> According to La. R.S. 11:104, the PRSAC shall determine the employer contribution rate by a certain date. Within ten business days thereafter, the chairman of the PRSAC must notify each employer or retirement system that the employer contribution rate so determined will be either recommended to the legislature for approval, or that the given rate must be used by the employer or retirement system, whichever is appropriate under La. R.S. 11:102 or La. R.S. 11:103. La. R.S. 11:103 is applicable to the FRS as a statewide public retirement system whose benefits are not guaranteed by the state. Thus, the employer contribution rate reached after computation of the formula by the PRSAC is the rate which must be paid by the employer to the retirement system.

C. Acts 1997, No. 792

Pursuant to Acts 1997, No. 792, the legislature amended La. R.S. 11:103(B)(1) and (3)(a) and (C)(1).<sup>57</sup> These three changes made adjustments to the formula used

---

<sup>56</sup> The provisions of La. R.S. 11:104, as enacted by Acts 1991, No. 1038, are:

**§ 104. Employer contributions; determination date; notification**

A. The employer contribution rate as referred to in this Subpart shall be determined by the Public Retirement Systems' Actuarial Committee by the fifteenth day of January of each year, except for those systems that have a fiscal year ending on the thirtieth day of June.

B. Within ten business days thereafter, the chairman of the Public Retirement Systems' Actuarial Committee shall notify each employer or retirement system that the referenced rate will be recommended to the legislature for approval, or that the given rate shall be used by the employer or retirement system, whichever is appropriate under the provisions contained in R.S. 11:102 and 103.

<sup>57</sup> The amendments to La. R.S. 11:103(B)(1) and (3)(a) and (C)(1), pursuant to Acts 1997, No. 792, are as follows:

(continued...)

to determine the employer contribution rate for statewide public retirement systems whose benefits are not guaranteed by the state by amending some provisions and by moving some factors in the multi-level formula.

The amending language of La. R.S. 11:103(B)(1) includes the participants in the Deferred Retirement Option Plan as part of the projected payroll of all active members. This factor is used to divide the actuarially required employer contribution determined under (B)(3) to determine the employer contribution rate. The amendment also removed the instruction to round the resulting rate to the nearest one-quarter of one percent. This instruction was moved to the determination of the net actuarially required employer contribution in Paragraph (C).

The amending language of La. R.S. 11:103(B)(3)(a) removed the consideration

<sup>57</sup>(...continued)

**§ 103. Employer contributions; determination; payment not guaranteed**

\* \* \*

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 [those not guaranteed by the state], 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. Active member payroll shall include participants in the Deferred Retirement Option Plan, but only if direct employer contributions are made based on salaries for such participants.

\* \* \*

(3) The actuarially required employer contribution for each fiscal year, commencing with fiscal year ending 1997, 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, including interest thereon, such employer's normal cost projected to the middle of the fiscal year at the assumed actuarial interest rate.

\* \* \*

C. The net direct actuarially required employer contribution for each fiscal year, commencing with fiscal year ending 1997, shall be that dollar amount equal to the contribution rate specified in Subparagraph (2)(b) of Subsection C, if any, increased by the cost itemized in Paragraph C(1), reduced by the contributions itemized in Paragraph C(2), rounded to the nearest one-quarter percent:

(1) The gross required employer contribution as provided in Paragraph B(1) of this Section.

\* \* \*

of dedicated funds from the calculation of the employer's normal cost, a factor in determining the actuarially required employer contribution. The result of this determination is then plugged into the formula under La. R.S. 11:103(B)(1).

The amending language of La. R.S. 11:103(C)(1) accomplished two things: (1) rounded to the nearest one-quarter percent after calculation of the formula for the determination of the net direct actuarially required employer contribution, and (2) amended the cost element to be that of the gross required employer contribution as now provided in (B)(1). This cost element, minus the consideration of dedicated funds, is considered in La. R.S. 11:103(B)(3)(a) in the determination of the actuarially required employer contribution.

D. Acts 1997, No. 1293

Pursuant to Acts 1997, No. 1293, effective July 15, 1997, the legislature amended La. R.S. 11:103(C)(2)(b) to change the word "fixed" in the "Fixed portion" of the net direct employer's contribution to "Targeted portion." The legislature also enacted La. R.S. 11:103(C)(2)(b)(iv) to provide that each rate set forth as the targeted portion of the net direct employer's contribution, including the rate of 9% for the FRS,<sup>58</sup> is to be treated as a fixed rate unless a higher or lower rate results from application of the provisions of this Section in its entirety.<sup>59</sup>

<sup>58</sup> Also including the 9% rate for the Municipal Police Employees' Retirement System and the 5% rate for the Sheriffs' Pension and Relief Fund.

<sup>59</sup> The provisions of La. R.S. 11:103(C)(2)(b) and 11:103(C)(2)(b)(iv), as amended and enacted, respectively, pursuant to Acts 1997, No. 1293, are:

**§ 103. Employer contributions; determination; payment not guaranteed**

C.

(2)

(b) Targeted portion of the net direct employer's contributions:

\* \* \*

\* \* \*

\* \* \*

\* \* \*

(continued...)



#### 4. Changes to IPTF Dedication

##### A. Acts 1991, No. 397

In addition to enacting La. R.S. 11:103(C), Acts 1991, No. 397 also amended La. R.S. 22:1419(A), which provided dedicated taxes in the IPTF as a funding source of the FRS and of two other statewide retirement systems. Prior to the amendment, the FRS received a dedicated two-tenths of one percent of the IPTF. The amendment provided that the FRS, the Municipal Police Employees' Retirement System and the Sheriffs' Pension and Relief Fund, which had formerly received dedicated tax assessments of two-tenths of one percent, four-tenths of one percent,<sup>60</sup> and one-tenth of one percent,<sup>61</sup> respectively, would now share a combined seven-tenths of one percent of the IPTF.<sup>62</sup>

---

<sup>59</sup>(...continued)

(iv) Each rate set forth in this Subparagraph is to be treated as a fixed rate unless a higher or lower rate results from application of the provisions of this Section in its entirety.

\* \* \*

<sup>60</sup> Prior to the 1991 amendment, the Municipal Police Employees' Retirement System received a dedicated four-tenths of one percent of the IPTF. See Acts 1979, No. 434, § 2.

<sup>61</sup> Prior to the 1991 amendment, the Sheriffs' Pension and Relief Fund received a dedicated one-tenth of one percent of the IPTF. See Acts 1979, No. 434, § 2.

<sup>62</sup> La. R.S. 22:1419, as amended by Acts 1991, No. 397, provided as follows:

##### **§ 1419. 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 the 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. Sufficient funds 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. No such assessment shall exceed one percent of such premiums. Regardless of the percentage assessed by the commission, an amount equal to seven-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,

(continued...)

The 1991 amendment further directed how the retirement systems were to apply the IPTF funds. First, IPTF funds were to be used to meet the actuarially required contributions, i.e. the "gross employer contributions," after consideration of the statutory rates of employee contributions and the employer contributions as established in newly enacted La. R.S. 11:103(C). Second, IPTF funds were to be used for the funding of mergers of local retirement systems or funds, the aggregate of all mergers being funded in any one year not to exceed 25% of the total assessment in any one year. Any remaining funds were to be remitted to the state general fund.

*B. Acts 2001, No. 1160, § 2*

Pursuant to Acts 2001, No. 1160, § 2, the legislature amended La. R.S. 22:1419(A)(3) and (4), effective July 1, 2001, which affected the way in which the seven-tenths of one percent of the IPTF fund dedicated to the use of the FRS, the Municipal Police Employees' Retirement System and the Sheriffs' Pension and Relief Fund were to be distributed.<sup>63</sup>

<sup>62</sup>(...continued)

the Sheriffs' Pension and Relief Fund, and the Firefighters' Retirement System for the exclusive use of these retirement systems or funds, first, in meeting the remaining portion of the actuarially required contributions after receipt of the employee contributions at the rate established in R.S. 11:62(3), (6), and (9), after receipt of the employer contributions at the rate established in R.S. 11:103(C), and after receipt of all dedicated funds and taxes referred to in R.S. 11:103(C)(2)(a), in the amounts determined by the Public Retirement Systems' Actuarial Committee. Second, the assessment shall be used for funding of mergers of local retirement systems or funds with these statewide systems or funds, such mergers to be funded over a period of thirty years, unless the Public Retirement Systems' Actuarial Committee deems a shorter period appropriate. Such shorter period shall not use more than five percent of the total assessment in any one year, nor shall the aggregate of all mergers being funded in any one year use more than twenty-five percent of the total assessment in any one year. After payment of the amounts established by the Public Retirement Systems' Actuarial Committee to the retirement systems, all remaining funds shall be remitted to the state general fund. 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.

<sup>63</sup> La. R.S. 22:1419(A)(3) and (4), as amended by Acts 2001, No. 1160, § 2, provides:

(continued...)

<sup>63</sup>(...continued)

§ 1419. Assessments against insurers; dedications

A.

\* \* \*

(3) Regardless of the percentage assessed by the commission, an amount equal to seven-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 on behalf of the Municipal Police Employees' Retirement System, the Sheriffs' Pension and Relief Fund, and the Firefighters' Retirement System for the exclusive use of these retirement systems and allocated as follows:

(a)(i) First, the assessment shall be used for funding the mergers of local retirement systems with these statewide retirement systems, such mergers to be funded over a period of thirty years, unless the Public Retirement Systems' Actuarial Committee deems a shorter period appropriate. Such shorter period shall not use more than five percent of the total assessment in any one year, nor shall the aggregate of all mergers being funded in any one year use more than twenty-five percent of the total assessment in any one year.

(ii) One million five hundred thousand dollars of the twenty-five percent of the total assessment which is allocated for the purpose of mergers shall be expended first to fund the annual actuarial cost incurred by the State Police Pension and Retirement System with regard to implementation of the Act which originated as House Bill No. 495 of the 2001 Regular Session of the Legislature, and this one million five hundred thousand dollars shall be expended prior to the funding of any mergers.

(b)(i) Second, any funds that remain after the allocations provided for in Subparagraph (a) of this Paragraph shall be used as provided for in Item (ii) of this Subparagraph, in meeting the remaining portion of the actuarially required contributions after receipt of the employee contributions at the rate established in R.S. 11:62(3), (6), and (9), after receipt of the employer contributions at the rate established in R.S. 11:103(C), and after receipt of all dedicated funds and taxes referred to in R.S. 11:103(C)(2)(a), in the amounts determined by the Public Retirement systems' Actuarial Committee.

(ii)(aa) Any funds that remain after the allocations provided for in Subparagraph (3)(a) of this Paragraph shall be divided into three thirds and, then, a one-third portion shall be allocated separately to each of the three systems. Except as otherwise provided in this Item, each such system shall not receive a greater portion than one-third.

(bb) It is hereby acknowledged that any one system may not need the entire one-third portion that it receives each year to meet the remaining portion of its actuarially required contributions. In that event, any unused allocated funds shall be reallocated to such other system or systems of the three systems that have a need for additional funds to meet the remaining portion of the actuarially required contributions.

(cc) If one system does not need its total annual allocated portion, but two other systems do use their total annual allocated portions to meet the remaining portion of the actuarially required contributions and need additional funds for that purpose, then the unused allocated portion of the system that did not use its total annual allocated portion shall be divided equally between the two systems that need

(continued...)

Under this amendment, the seven-tenths of one percent of the IPTF funds dedicated to the use of the FRS, Municipal Police Employees' Retirement System and the Sheriffs' Pension and Relief Fund are to be divided into quarters. The first 25% is set aside to fund mergers over thirty years. Should the PRSAC deem a shorter period appropriate, the cost of such mergers cannot exceed 5% of the total assessment for that year and the aggregate of all mergers cannot exceed 25% of the total assessments in any single year. Of this initial 25%, the first \$1.5 million is dedicated to the State Police Pension and Retirement System and must be paid before any of the mergers.

Each of the remaining quarters are dedicated to either the FRS, the Municipal Police Employees' Retirement System or the Sheriffs' Pension and Relief Fund to use to meet the remaining portion of the actuarially required employer contribution as determined by PRSAC. The legislature further instructed that, should any of these three retirement systems not use the entire 25% dedicated to them, then the unused allocated portion of the system that did not use its total annual allocated portion will

---

<sup>63</sup>(...continued)

additional funds to meet the remaining portion of their actuarially required contributions, except that any funds not needed by either such system shall be reallocated to the other such system to meet the remaining portion of the actuarially required contributions.

(dd) Funds that are reallocated to a system pursuant to Subitem (bb) or (cc) of this Item shall be limited to the amount that is necessary to meet the remaining portion of the actuarially required contributions of the receiving system.

(c) The phrase "retirement system" or "system" as used in Paragraphs (3), (4), and (5) of this Subsection shall include the Sheriffs' Pension and Retirement Fund, as applicable, notwithstanding that it is technically a retirement fund and not a retirement system.

(4) After payment of the amounts established by the Public Retirement Systems' Actuarial Committee to the retirement systems as provided for in Paragraph (3) of this Subsection, all remaining funds shall be remitted to the state general fund.

\* \* \*

be divided equally between the two remaining systems if they need additional funds to meet their actuarially required contribution. Funds that are reallocated to other systems are limited to only the amount which is necessary to meet the remaining portion of the actuarially required contributions. After payment of the amounts established by the PRSAC to the retirement systems as required by the legislature, any remaining funds shall be remitted to the state general fund.

### FACTS AND PROCEDURAL BACKGROUND

Prior to 2002, the employers of members of the FRS paid the rate of 9% as their contribution to the FRS. The facts which led to the plaintiffs filing suit in this case are aptly summarized by the district court:

In February of 2002, Gary S. Curran, the Firefighters' Retirement System's ("FRS") actuary, informed the Board of Trustees of the FRS, by letter, that he would recommend that the Employer Contribution for Fiscal Year 2002-2003 be set at 18.25 percent.<sup>[64]</sup> On May 15, 2002, Mr. Curran informed the FRS Board of Trustees that he estimated the Employer's Contribution for Fiscal Year 2004 would be between 22.3 percent and 24.3 percent of payroll.<sup>[65]</sup> On January 29, 2003, Mr. Curran provided a revised projection for the Employer Contribution for Fiscal Year 2004 of 25 percent to 25.25 percent of payroll.<sup>[66]</sup>

Consequently, on February 13, 2003, plaintiffs filed suit, seeking "the issuance of a preliminary injunction during the pendency of the lawsuit and thereafter a permanent injunction in the same form and substance restraining, prohibiting, and enjoining the state of Louisiana and/or the FRS from requesting, demanding, or taking any other action in an attempt to collect payment from any of the Petitioners of funds allegedly owed by the Petitioners in excess of an amount equal to nine percent of the earnable compensation excluding overtime but including state supplemental pay for each firefighter eligible for membership in the FRS who is employed by plaintiff political subdivisions." See Petition, ¶ 113. Further, the plaintiffs sought a declaratory judgment declaring that the plaintiffs are not liable for the payment of contributions in excess of an amount equal to nine percent based on a statutory construction argument and, in the alternative, that several legislative acts and/or statutes, which would require employer

---

<sup>64</sup> Vol. 4, p. 731.

<sup>65</sup> Vol. 4, p. 776.

<sup>66</sup> Vol. 4, p. 778.

contributions in excess of nine percent, are unconstitutional.<sup>67</sup>

As previously stated,<sup>68</sup> other governmental bodies who were employers of members of the FRS intervened as plaintiffs in the suit. An amended and restated petition was filed, presenting several arguments to support the plaintiffs' request for declaratory and injunctive relief.

Specifically, the plaintiffs sought declaratory relief both on statutory and, in the alternative, on constitutional grounds. Initially, the plaintiffs presented a statutory argument, asserting that the provisions of La. R.S. 11:2262(D)(1), which they claim sets a fixed employer contribution rate of 9%, is controlling and that the rate set forth therein cannot exceed 9%. The plaintiffs claimed that the provisions of La. R.S. 11:103 fail to state specifically that the employers of FRS members must pay any contribution other than the contribution rate of 9% set in La. R.S. 11:2262(D)(1).<sup>69</sup> Therefore, the plaintiffs contended that the provisions of La. R.S. 11:103 were not applicable to the FRS. Pursuant to La. R.S. 11:3, because there was no conflict between La. R.S. 11:2262(D)(1) and La. R.S. 11:103, La. R.S. 11:2262(D)(1) was the controlling statute for determining the employers' contribution rate to the FRS.

In the event that a statutory basis was found requiring more than a 9% employer contribution rate, the plaintiffs presented an alternative argument raising constitutional challenges to several statutes and legislative acts. The first constitutional challenge was that the legislature's delegation of authority to the PRSAC as found in La. R.S. 11:103 and 11:104 constituted an improper delegation of legislative authority in violation of La. Const. art. 3, § 1. The plaintiffs claimed there are not adequate procedural safeguards to protect against an abuse of

---

<sup>67</sup> Written Reasons For Judgment, Vol. 10, p. 1939-1940.

<sup>68</sup> See footnote 1.

<sup>69</sup> Amended and Restated Petition, Vol. 5, p. 1027, ¶ 90B.

discretion.<sup>70</sup>

The second constitutional challenge was that Act 645 of 1991, which repealed the state guarantee of benefits in favor of members of the FRS, was a direct violation of La. Const. art. 10, § 29(E)(5). The plaintiffs contended that the act impaired the accrued benefits of members of the FRS.<sup>71</sup>

The third constitutional challenge was that the legislature's passage of Act 397 of 1991, which repealed the FRS's allocation of two-tenths of one percent of funds in the IPTF, was unconstitutional as a direct violation of La. Const. art. 10, § 29(E)(5). Plaintiffs claimed this amendment impaired the benefits of members of the FRS. In this same vein, the plaintiffs also contended that § 2 of Act 1160 of 2001, which allocates the first \$1.5 million of the first 25% of the IPTF funds, and then divides the remaining portion between the FRS and two other statewide public retirement systems, was unconstitutional in direct violation of La. Const. art. 10, § 29(E)(5).<sup>72</sup> The fourth constitutional challenge was that the formula established in La. R.S. 11:103, as amended by Acts 792 and 1293 of 1997, which determines the net direct actuarially required employer's contribution as a floating rate above the fixed 9% level, was unconstitutional as a direct violation of La. Const. art. 10, § 29(E)(3) and (4).<sup>73</sup>

The fifth constitutional challenge was that, to the extent Acts 1293 and 792 of 1997 require an employer contribution rate above the fixed 9%, the Acts were unconstitutional for the reasons previously stated. As a consequence, the plaintiffs claimed that the requested employer contribution in excess of the 9% fixed rate did

---

<sup>70</sup> Amended and Restated Petition, Vol. 5, p. 1027, ¶¶ 92A-92B, 103(A).

<sup>71</sup> Amended and Restated Petition, Vol. 5, p. 1027, ¶¶ 93A-93C, 103(B).

<sup>72</sup> Amended and Restated Petition, Vol. 5, p. 1028-1029, ¶¶ 94A-95D, 103(C), 103(D).

<sup>73</sup> Amended and Restated Petition, Vol. 5, p. 1029-1030, ¶¶ 96A-96D, 103(E).

not constitute amounts demanded by the state and/or the FRS as a result of a law providing for benefits for employees in pension or retirement systems; thus, the requests constituted a violation of La. Const. art. 6, § 14(A) and La. Const. art. 7, § 14(A).<sup>74</sup>

The plaintiffs' request for injunctive relief was based on the allegations of unconstitutionality of the statutes and legislative acts placed at issue.<sup>75</sup> In other words, the plaintiffs claimed they were entitled to injunctive relief because the state and the FRS were relying upon unconstitutional statutes and legislative acts in attempting to collect an employers' contribution rate to the FRS in excess of 9%. To the extent that a showing of irreparable harm was necessary, plaintiffs alleged that irreparable harm would be sustained by them in that the payment of employer contributions in excess of the rate of 9% would impair the delivery of essential services by local political subdivisions and would, in certain instances, have an adverse impact on certain categories of citizens through increased property insurance premiums.<sup>76</sup>

The state and the FRS filed an exception of non-joinder of parties, claiming that, since plaintiffs sought to have Acts 2001, No. 1160 § 2 declared unconstitutional, then both the State Police Pension and Retirement System, which obtained funding pursuant to that amendment, and the Sheriffs' Pension and Relief Fund, which was affected by the amendment in the same way as the FRS, should be joined as necessary parties under La. Code Civ. Proc. arts. 641 and 642.<sup>77</sup> In connection with the exception of non-joinder of party, the defendants intended to call

---

<sup>74</sup> Amended and Restated Petition, Vol. 5, p. 1030, ¶ 97, 103(F).

<sup>75</sup> Amended and Restated Petition, Vol. 5, p. 1030-1031, ¶ 100.

<sup>76</sup> Amended and Restated Petition, Vol. 5, p. 1031, ¶ 101.

<sup>77</sup> Vol. 5, p. 1042-1044.



Mr. Curran, the FRS actuary, ~~to testify as to the financial impact these other~~ retirement systems would sustain if the acts were declared unconstitutional. The plaintiffs filed a motion in limine, seeking to exclude Mr. Curran's testimony at the hearing, and at trial insofar as he would testify as to his inferences about and application of FRS laws and his opinions on actuarial funding.<sup>78</sup> After a hearing, the district court overruled the defendant's exception of nonjoinder of parties and granted the plaintiffs' motion in limine, excluding Mr. Curran's hearing testimony in support of the exception of non-joinder of parties and excluding testimony at trial as to Mr. Curran's inferences regarding the FRS laws and actuarial funding.<sup>79</sup>

The state answered the plaintiffs' Amended and Restated Petition, generally denying its allegations.<sup>80</sup> In its answer to the plaintiffs' petition, the FRS filed an answer, a cross-claim against its co-defendant, the state, and a reconventional demand against certain municipalities.<sup>81</sup> Prior to trial, the FRS filed a motion to sever its cross-claim, which was not opposed, and was granted by the district court.<sup>82</sup>

Pursuant to a status conference held on July 25, 2003, an Order, signed July 28, 2003, ordered that the FRS take no action to demand or collect employer contribution rates in excess of 9% and that trial on the merits would be continued to a new date.<sup>83</sup> Ultimately, the trial on the merits went forward on November 12 through 13, 2003, and the matter was taken under advisement by the district judge.

The district judge issued written reasons and a judgment on November 20,

---

<sup>78</sup> Vol. 6, p. 1112.

<sup>79</sup> Vol. 6, p. 1199-1200.

<sup>80</sup> Vol. 6, p. 1185-1187. The state also answered the separate petitions of the two other plaintiffs not joining in the Amended and Restated Petition.

<sup>81</sup> Vol. 6, p. 1126-1139.

<sup>82</sup> See Vol. 11, p. 1983.

<sup>83</sup> Vol. 6, p. 1184.

2003, making the following findings: (1) La. R.S. 11:2262(D) and 11:103 must be read together as setting a 9% target rate of employer contributions that may fluctuate higher or lower; (2) the legislature may delegate their power to set the employer contribution rate for statewide retirement systems; however, the legislature did not do so properly with regard to the FRS because it did not provide the required checks and balances; (3) Act 645 of 1991, Act 397 of 1991 and § 2 of Act 1160 of 2001 violate Article 10, § 29(E)(5) of the Louisiana Constitution of 1974; (4) Acts 792 and 1293 of 1997 violate Article 10, Section 29(E)(3) and (4) of the Louisiana Constitution of 1974; thus, La. R.S. 11:103 and 104 are unconstitutional as applied to the FRS; and (5) Acts 792 and 1293 of 1997 do not violate Article 6, § 14(A) or Article 7, § 14(A) of the Louisiana Constitution of 1974.<sup>84</sup> Based upon these findings, the district court ordered that the FRS be permanently enjoined from collecting an employer contribution at a rate in excess of 9% from any employer whose employees are members of the FRS.<sup>85</sup>

The defendants suspensively appealed to this court pursuant to La. R.S. 13:4431.<sup>86</sup> In its appeal, the state challenges the district court's denial of the exception of non-joinder, asserting the district court erred in failing to join the State

---

<sup>84</sup> This last finding of the district court was not appealed by any party and is not before us. The district court properly found that Acts 792 and 1293 of 1997 did not violate La. Const. art. 6, § 14(A) or La. Const. art. 7, § 14(A). The district court correctly rejected the plaintiffs' claim that increases in the employer contribution rate demanded from local government employers are not for retirement benefits. As the increases in the employer contribution rate are clearly for retirement benefits, the provisions of La. Const. art. 6, § 14(B)(5) makes the cited constitutional provisions inapplicable. *See* Vol. 10, p. 1961-1962, 1965.

<sup>85</sup> Vol. 10, p. 1039-1965.

<sup>86</sup> *See* Vol. 10, p. 1966-1971. La. R.S. 13:4431 provides:

In any case where any district court has granted any restraining order, preliminary injunction, permanent injunction, or other process which may restrain the execution or enforcement of any provision of the constitution or of any act, law or resolution of the legislature of Louisiana, the defendant or defendants or any person or persons affected thereby, may suspensively appeal the order or judgment to the court of competent appellate jurisdiction.

Police Pension and Retirement System and the Sheriffs' Pension and Relief Fund as parties. In addition, the state challenges the district court's granting of the plaintiffs' motion in limine excluding the testimony of Mr. Curran from the joinder hearing. Both the state and the FRS challenge the district court's declarations of unconstitutionality of the statutes and legislative acts at issue.<sup>87</sup>

#### LAW AND ANALYSIS

The plaintiffs' primary argument is one of statutory construction. The plaintiffs claim that the provisions of La. R.S. 11:2262(D)(1) set a flat, fixed employer contribution rate of 9% which cannot be increased or decreased. They assert that there is nothing in the language of La. R.S. 11:103 which mandates payment of any rate of employer contribution over 9%. Therefore, the plaintiffs argue there is no conflict between the two statutes and, under La. R.S. 11:3,<sup>88</sup> the specific language of La. R.S. 11:2262(D)(1) is controlling.

Although the plaintiffs alternatively present arguments regarding the unconstitutionality of the statutory scheme of FRS funding, it is proper for this court to first determine whether the issues may be disposed of on non-constitutional grounds. *Ring v. State, DOTD*, 2002-1367 p. 4 (La. 1/14/03), 835 So.2d 423, 426 ("Courts should avoid constitutional rulings when the case can be disposed of on non-constitutional grounds."). Constitutional issues should be determined only when necessary to resolve a conflict. *Id.*, ("... [C]ourts should refrain from reaching or determining the constitutionality of legislation unless, in the context of a particular case, the resolution of the constitutional issue is essential to the decision of the case

---

<sup>87</sup> The consolidated plaintiffs filed a brief in opposition and a post-hearing brief. St. George Fire Protection District No. 2 and Central Fire Protection District No. 4 filed separate briefs in opposition, primarily adopting the brief of the consolidated plaintiffs.

<sup>88</sup> Under La. R.S. 11:3, in the absence of a conflict between a statute in Title 11 and separate laws governing state and statewide public retirement systems, the separate laws continue to be operable.

or controversy.”); *Louisiana Associated General Contractors, Inc. v. New Orleans Aviation Board*, 97-0752 p. 4 (La. 10/31/97), 701 So.2d 130, 132 (“A court should not reach or determine constitutional issues unless, in the context of a particular case, the resolution of such issues is necessary to decide the case.”). Thus, the court will first address the plaintiffs’ primary argument which requires an analysis of the two statutes at issue.

### Statutory Analysis

Questions of law, such as the proper interpretation of a statute, are reviewed by this court under the *de novo* standard of review. *Cleco Evangéline v. Louisiana Tax Com’n*, 2001-2162 p. 3 (La. 4/3/02), 813 So.2d 351, 353. After our review, we “render judgment on the record, without deference to the legal conclusions of the tribunals below. This court is the ultimate arbiter of the meaning of the laws of this state.” *Id.*<sup>89</sup>

“Legislation is the solemn expression of legislative will, and therefore, the interpretation of a law involves primarily the search for the legislature’s intent.” La. Code Civ. art. 2; *Detillier v. Kenner Regional Medical Center*, 2003-3259 p. 3 (La. 7/6/04), 877 So.2d 100, 103; *Grant v. Grace*, 2003-2021 p. 4 (La. 4/14/04), 870 So.2d 1011, 1014; *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 2003-0360 p. 3 (La. 12/3/03), 860 So.2d 1112, 1115. The interpretation of a statute starts with the language of the statute itself. *Grant*, 2003-2021 p. 4, 870 So.2d at 1014. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written, and no further interpretation may be made in search of the intent of the legislature. La. Code Civ. art. 9; *Detillier*, 2003-3259 p. 4, 877 So.2d

---

<sup>89</sup> To the extent that the trial judge made factual findings in reaching its legal conclusions on the interpretation of the statutes at issue, we find that any factual determinations inconsistent with the findings expressed in this opinion are manifestly erroneous. *Hall v. Folger Coffee Co.*, 2003-1734 p. 9 (La. 4/14/04), 874 So.2d 90, 98.

at 103.

The laws of statutory construction require that laws on the same subject matter must be interpreted in reference to each other. La. Code Civ. art. 13; *Detillier*, 2003-3259 p. 4, 877 So.2d at 103. The legislature is presumed to have acted with deliberation and to have enacted a statute in light of the preceding statutes involving the same subject matter. *Detillier*, 2003-3259 p. 8, 877 So.2d at 106; *Grant*, 2003-2021 p. 5, 870 So.2d at 1014, *citing Theriot v. Midland Risk Ins. Co.*, 95-2895 (La. 5/20/97), 694 So.2d 184, 186. “Under our long-standing rules of statutory construction, where it is possible, courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter.” *Hollingsworth v. City of Minden*, 2001-2658 p. 4, 828 So.2d 514, 517; *Grant*, 2003-2021 p. 5, 870 So.2d at 1014, *citing Theriot*, 95-2895, 694 So.2d at 186.

A statute must be “applied and interpreted in a manner that is logical and consistent with the presumed fair purpose and intention the Legislature had in enacting it.” *Sultana Corp.*, 2003-0360 p. 4, 860 So.2d at 1116. In addition, “courts are bound to give effect to all parts of a statute and cannot give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided.” *Hollingsworth*, 2001-2658 p. 5, 828 So.2d at 517; *Sultana Corp.*, 2003, 0360 p. 4, 860 So.2d at 1116.

Giving effect to all of the parts of La. R.S. 11:103 and La. R.S. 11:2262(D)(1), as we are bound to do, and interpreting each statute in reference to the other, we find that the two statutes not only *can* be read together, but *must* be read together in order to determine the actuarially required employer contribution rate for the FRS. Since its original enactment, the formula for determining the employer contribution rate

found in La. R.S. 11:103 has been applicable to all public retirement systems whose benefits are not guaranteed by the state. We know this from the clear wording of the statute: "The provisions of this statute **are applicable** with respect to those state and statewide public retirement systems whose benefits are not guaranteed ...",<sup>90</sup> "for each public retirement system referenced in Subsection A of this Section, **the employer contribution rate shall equal ...**";<sup>91</sup> and "the **actuarially required employer contribution ... shall be ...**".<sup>92</sup> In 1991, the legislature repealed the state guarantee of FRS benefits. Thereafter, the provisions of La. R.S. 11:103 applied to determine employer contributions to the FRS.

When understood in context, former La. R.S. 33:2160(D)(1), now La. R.S. 11:2262(D)(1), provides one of the factors of the formula described in La. R.S. 11:103, i.e. the rate of 9% as the fixed portion of the employer's contribution. The flaw in the plaintiffs' argument is that they maintain both that the fixed 9% rate in La. R.S. 11:2262(D)(1) is a flat, fixed rate that cannot be decreased nor increased and that La. R.S. 11:2262(D)(1) describes the *only* contribution to the FRS for which the employers are directly responsible. This has never been the case.

The fact that the 9% rate fluctuates was included in the annual FRS valuation reports from 1989 until 2002.<sup>93</sup> Indeed, even the 1997 Actuarial Report by the

---

<sup>90</sup> La. R.S. 11:103(A).

<sup>91</sup> La. R.S. 11:103(B)(1).

<sup>92</sup> La. R.S. 11:103(B)(3).

<sup>93</sup> In 1989 and 1990, the report specifically stated in its "Summary of Principal Plan Provisions," "Employer contribution's are determined annually based on results of the valuation of the prior fiscal year with adjustments for any dedicated tax monies or appropriated funds." Vol. 2, p. 226, 258. Starting in 1991, this section of the annual actuarial report was even more specific: "Net direct employer contributions are nine percent (9%) of earnable compensation unless the funds allocated from dedicated taxes are insufficient to provide the actuarially required contributions or the actuarially required contributions are less than 9%." See Vol. 2, p. 285 (Valuation as of June 30, 1991); Vol. 2, p. 313 (Valuation as of June 30, 1992); Vol. 2, p. 347 (Valuation as of June 30, 1993); Vol. 2, p. 385 (Valuation as of June 30, 1994); Vol. 2, p. 418 (Valuation as of June 30, 1995); Vol. 3, p. 454 (Valuation as of June 30, 1996); Vol. 3, p. 560 (Valuation as of June 30, 1997); Vol. 3, p. (continued...)

Legislative Auditor on Louisiana public retirement, issued May 1998, specifically provides in the Executive Summary on "Overall Funding for Pension Benefits," that "[e]mployer contribution rates are actuarially determined each year through an actuarial valuation. For FRS, MPERS and SPRF, a portion of the employer contribution rate is set by statute."<sup>94</sup> That a portion of the direct employer contribution rate is fixed has been a part of the overall funding mechanism of the FRS since its inception.

Former La. R.S. 33:2160(D)(1) provided that the employers "shall contribute an amount equal to nine percent of the earnable compensation excluding overtime but including state supplemental pay ...". Additionally, former La. R.S. 33:2160(D)(3) also envisioned a fluctuating "normal contribution rate" payable by the employers based on periodic and current actuarial valuations that included factors such as regular interest and mortality tables. Moreover, the gross employers' contribution, which would be accumulated in the Pension accumulation sub-fund of the FRS, included not only the fixed amount and any additional amount needed paid directly by the employer, but also the dedicated IPTF funds, "as necessary to fund the system on the basis of its accrued liabilities, as shown by actuarial valuation."<sup>95</sup>

As explained by the FRS actuary, Mr. Curran, the components of the total [or gross] employer contribution rate for the FRS are as follows:<sup>96</sup>

The employer contribution rate for Firefighters' Retirement System

---

<sup>93</sup>(...continued)

601 (Valuation as of June 30, 1998); Vol. 3, p. 643 (Valuation as of June 30, 1999); Vol. 4, p. 682 (Valuation as of June 30, 2000); Contribution Rates page missing from Valuation as of June 30, 2001; Vol. 4, p. 766 (Valuation as of June 30, 2002).

<sup>94</sup> Vol. 3, p. 472.

<sup>95</sup> La. R.S. 33:2160(D)(6) (1980).

<sup>96</sup> Although the district judge did not allow Mr. Curran to testify about his *inferences* regarding the FRS statutes, *see infra* at page 32, he did allow Mr. Curran to testify as to what he actually does. *See* Vol. 13, 2232.

consists, really, of three parts. It's a baseline rate of nine percent paid by the employers, an additional portion allocated from the insurance premium taxes, and then any additional required component above that nine percent for the employers.<sup>97</sup>

The interrelation of the three factors of gross employer contributions, along with the other factors considered in the multi-level formula, achieve actuarial soundness of the FRS by balancing the equation. If the actuarially determined liabilities increase, they must be balanced by assets of the retirement system. The assets of the FRS include employee contributions, interest from investments, direct employer contributions and dedicated tax revenue from the IPTF. Since the employee rate of contribution is set by statute, and interest on investments will be determined by prevailing market conditions, the only other method of increasing assets is by increasing the actuarially required employer contribution rate, which consists of direct employer contributions and IPTF funds. If IPTF funds are limited or exhausted, then the only source of funding which is able to "move" or "float" under that scenario is the direct employer contribution rate, which will rise above the fixed portion of the direct employer contribution set forth in former La. R.S. 33:2160(D)(1) (now La. R.S. 11:2262(D)(1)).<sup>98</sup>

A reading of La. R.S. 11:103 together with former La. R.S. 33:2160 in their

---

<sup>97</sup> Vol. 13, p. 2231.

<sup>98</sup> When asked if actuarial soundness could be attained and maintained by having contribution rates that remain level over an extended period of time, the FRS actuary, Mr. Curran, testified as follows:

"... To have a sound plan on an actuarial basis, you have to have sufficient support for that plan on the asset side to offset match against the promised liabilities that have been made. And because of that, you have to respond to conditions as they unfold. There is no way to set out in advance any immutable rate which does not change, because that would presuppose that all the conditions and the components of the plan do not change. Even if the benefit structure would remain the same, the persons that are members of the plan change over time. The parameters which govern their career changes. All of these things must be responded to or reflected to in establishing the contributions; otherwise, you run the risk of having the plan either, on the one hand, piling up unnecessary surplus, or on the other hand, becoming insolvent." Vol. 13, p. 2236.



entirety and within the proper historical context plainly demonstrates that, from the inception of the FRS, the legislature understood the rate of direct employer contributions, as a portion of the gross employer contribution, could fluctuate from year to year based on periodic actuarial valuations. After the enactment of Acts 1988, No. 81 in the midst of the state's fiscal crisis, La. R.S. 11:103 and former La. R.S. 33:2160(D) could clearly be read together, with La. R.S. 11:103 supplying the formula by which the actuarially required employer contribution was determined and former La. R.S. 33:2160(D) supplying one of the factors to fit into the formula. The only fixed mandate was that the employers directly contribute a baseline rate of 9% monthly to the FRS.<sup>99</sup>

The re-designation of former La. R.S. 33:2151 through La. R.S. 33:2165 into Title 11 did not effect a change in the law.<sup>100</sup> In addition, the current versions of La. R.S. 11:103 and La. R.S. 11:2262 that are applicable to the instant case do not indicate any intent on the part of the legislature to change this scheme.

La. R.S. 11:103 continues to provide the formula used to determine the employer contributions to public retirement systems whose benefits are not guaranteed by the state.<sup>101</sup> La. R.S. 11:2262(D)(1) still provides one of the factors

---

<sup>99</sup> The Municipal Police Employees' Retirement System and the Sheriffs' Pension and Relief Fund have the same sort of structure as the FRS, where there is a fixed component employer portion, but the fixation is a device used to calculate the variable amount payable on the premium taxes. Vol. 13, p. 2259. The funding sources for these retirement systems, however, are different. Vol. 13, p. 2267.

<sup>100</sup> Acts 1991, No. 74 § 4.

<sup>101</sup> La. R.S. 11:103 currently provides:

**§ 103. Employer contributions; determination; payment not guaranteed**

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

(continued...)

<sup>101</sup>(...continued)

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. Active member payroll shall include participants in the Deferred Retirement Option Plan, but only if direct employer contributions are made based on salaries for such participants.

(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 employer contributions actually 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 1997, 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, including interest thereon, such employer's normal cost projected to the middle of the fiscal year at the assumed actuarial interest rate.

(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, in the same manner as provided in Subsection B(3)(e)(i) of this Section if an immediate gain funding method is used; otherwise, amortized over the future working lifetime of current participants.

(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)(aa) Except as provided in Subitem (bb), 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.

(bb) For the Municipal Police Employees' Retirement System, 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

(continued...)

<sup>101</sup>(...continued)

June 30, 2002, such payments to be computed as level dollar amounts over a period of thirty 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)(aa) Except as provided in Subitem (bb), 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.

(bb) For the Municipal Police Employees' Retirement System, changes in actuarial assumptions or the method 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.

(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)(aa) Except as provided in Subitem (bb), 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.

(bb) For the Municipal Police Employees' Retirement System, 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 thirty years from the year of occurrence of the change.

(4) At the end of the fiscal year during which the assets, excluding the outstanding balance due to Subparagraph b(3)(c) of this Section, exceed the actuarial accrued liability, the amortization schedules contained in Subparagraphs B(3)(d) and (e) of this Section shall be fully liquidated and assets in excess of the actuarial accrued liability shall be amortized as a credit in accordance with the provisions of Subparagraph B(3)(e) of this Section.

C. The net direct actuarially required employer contribution for each fiscal year, commencing with fiscal year ending 1997, shall be that dollar amount equal to the contribution rate specified in Subparagraph (2)9b) of Subsection C, if any, increased by the cost itemized in Paragraph (C)(1), reduced by the contributions itemized in Paragraph (C)(2), rounded to the nearest one-quarter percent:

(1) The gross required employer contribution as provided in Paragraph B(1) of this Section.

(2) Elements of the gross employer contributions:

(a) Dedicated ad valorem taxes and revenue sharing funds.

(b) Targeted portion of the net direct employer's contributions:

(continued...)

which is plugged into the formula in order to make the actuarial calculation. Subsequent amendments to La. R.S. 11:103 have clarified that this is so. The enactment of and subsequent amendments to Paragraph(C) of La. R.S. 11:103 make explicit the fact that the fixed portion of the employers' contribution rate, the 9% described in La. R.S. 11:2262(D)(1), is an element of the gross employer contribution, a factor in the formula to determine the actuarially required employer contribution.<sup>102</sup>

It is clear that the legislature must provide some fixed factors in the equation in order for the actuarial analysis to be performed. The formula described in La. R.S. 11:103 is structured in such a way that the fixed and known factors can be plugged in to determine the unknown factors for determining actuarial soundness, such as whether an additional amount above the fixed portion of the direct employer contribution rate of 9% is required in order to maintain the FRS on an actuarially sound basis. As explained by the FRS actuary, some parts of the formula must be known in order for the actuarial calculation to be made:

---

<sup>101</sup>(...continued)

(i) Firefighters' Retirement System -- 9%

(ii) Municipal Police Employees' Retirement System - - 9%

(iii) Sheriffs' Pension and Relief Fund -- 7%

(iv) Each rate set forth in this Subparagraph is to be treated as a fixed rate unless a higher or lower rate results from application of the provisions of this Section in its entirety.

(c) Dedicated assessments against insurers. Such amounts, excluding amounts paid for funding of mergers, to be the lesser of available funds or cost stated in C(1) reduced by contributions stated in C(2)(a) and C(2)(b) but in no event shall be less than zero.

(d) For the Firefighters' Retirement System of Louisiana, effective with the June 30, 2002, valuation, all outstanding amortization bases in existence on June 30, 2002, exclusive of merger bases, shall be combined, offset, and reamortized over the period ending June 30, 2029, with level dollar payments. This Subsection shall not apply to amortization bases established after June 30, 2002.

<sup>102</sup> See La. R.S. 11:103(C)(2)(b)(i).

FRS Counsel:

Can you please tell the court why you begin with the nine percent component when you formulate your rate?

Mr. Curran:

The insurance premium tax component has the potential to vary, depending upon the circumstances in funding of the retirement system. And in order to determine the amount necessary from insurance premium taxes, the formula in the law is structured in such a way as to provide a nine percent baseline for that calculation purpose.

FRS Counsel:

So in your individual expert formulation of the rate, do you find that you are able to set the employer rate without first knowing that first component?

Mr. Curran:

No, you have to have sort of a constant, if you will. If the funding is above that nine percent level, then you'd have to hold that constant in order to determine the variable portion of the insurance premium taxes.<sup>103</sup>

When all of the parts of the two statutes are understood, and the two statutes are read together, it is clear that La. R.S. 11:103 and La. R.S. 11:2262(D)(1) are not in conflict, but work together seamlessly to create an actuarially sound retirement system. Insofar as the district court concluded that these two statutes are not in conflict and must be read together, that finding is affirmed.<sup>104</sup>

Insofar as plaintiffs argue that the formula described in La. R.S. 11:103 is not applicable to the FRS, the plaintiffs' statutory argument has no merit. Therefore, we must now address the plaintiffs' constitutional challenges to the statutes comprising the funding structure of the FRS.

---

<sup>103</sup> See Vol. 13, p. 2232-2233.

<sup>104</sup> The district court's analysis was different in some respects from the analysis presented here. Where the district court found the statutes at issue ambiguous, we find the statutes to be clear and unambiguous. The district court found that La. R.S. 11:2262(D)(1) sets a target rate, which the formula in La. R.S. 11:103 strives to reach. To the contrary, we hold that the statutory scheme is actually the opposite, that La. R.S. 11:2262(D)(1) supplies one of the factors to be used in the formula described in La. R.S. 11:103. Nevertheless, the district court's *conclusion*, that the statutes do not conflict and must be read together, is correct. See Written Reasons For Judgment, Vol. 10, p. 1943-1949; Judgment, Vol. 10, p. 1964.

### Constitutional Analysis

The question whether the statutes at issue are constitutional is a legal question which will be reviewed *de novo*. *Cleco Evangeline*, 2001-2162 p. 3, 813 So.2d at 353.<sup>105</sup> This court has repeatedly held that statutes are generally presumed to be constitutional and the party challenging the validity of the statute has the burden of proving it is unconstitutional. *State v. Fleury*, 2001-0871 p. 5 (La. 10/16/01), 799 So.2d 468, 472; *Board of Com'rs of North Lafourche Conservation, Levee and Drainage Dist. v. Board of Com'rs of Atchafalaya Basin Levee Dist.*, 95-1353 p. 3 (La. 1/16/96), 666 So.2d 636, 639. Unlike the federal constitution, the Louisiana "constitution's provisions are not grants of power but instead are limitations on the otherwise plenary power of the people of a state exercised through its legislature." *Board of Com'rs*, 95-1353 p. 3, 666 So.2d at 639. Therefore, "the legislature may enact any legislation that the state constitution does not prohibit." *Id.* Because this is so, "[t]he party challenging the constitutionality of a statute must also cite to the specific provision of the constitution which prohibits the legislative action." *Fleury*, 2001-0871 p. 5, 799 So.2d at 472; *Board of Com'rs*, 95-1353 p. 4, 666 So.2d at 639.

The plaintiffs bear the burden of proving the unconstitutionality of the statutes at issue. Thus, the plaintiffs' constitutional challenges advanced in the trial court and in brief to this court will be reviewed. *Womack v. Louisiana Commission on Governmental Ethics*, 250 La. 833, 841, 199 So.2d 891, 894 (La. 1967) (when a trial judge declares a statute or act unconstitutional, we do not limit our review to the reasons set forth by the trial court, but "shall discuss all constitutional contentions advanced by plaintiff in the trial court and argued herein in brief.").

---

<sup>105</sup> As previously stated, any factual findings made by the trial court which conflicts with the holdings of this opinion are specifically found to be manifestly erroneous. See footnote 89.