Delegation of Authority

The plaintiffs' first constitutional challenge was that the legislature's delegation of authority to the PRSAC as found in La. R.S. 11:103 and La. R.S. 11:104 constituted an improper delegation of legislative authority to an executive branch commission in violation of La. Const. art. 3, § 1 and La. Const. art. 10, § 29(E)(3). La. Const. art. 10, § 29(E)(3) provides in pertinent part that "the legislature shall determine all required contributions ... to be made by employers ... ."

La. Const. art. 3, § 1 provides that the legislative power of the state is vested in the legislature. The legislative power includes "absolute control over the finances of the state, except as limited by constitutional provisions." *Louisiana Pub. Facilities Auth. v. Foster*, 2001-0009 p. 18 (La. 9/18/01), 795 So.2d 288, 301. Moreover, "it is the legislature that decides how the branches and departments of government shall be funded from the public fisc." *Id.* The plaintiffs maintain that PRSAC improperly wields legislative power in setting the employer contribution rate for the FRS pursuant to La. R.S. 11:103 and La. R.S. 11:104. Plaintiffs also complain there are no checks and balances to PRSAC's power in setting the employer contribution rate for statewide public retirement systems whose benefits are not guaranteed by the state, including the FRS.

"Primary legislative power, strictly speaking, may not be delegated, but administrative and ministerial functions may, by statute, be delegated to an agency in the executive branch." *State v. Alfonso*, 1999-1546 p. 6 (La. 11/23/99), 753 So.2d 156, 160. Considering the vast spectrum of governmental functions vested in the legislature, the delegation of certain administrative functions may be appropriate, especially where the legislative body may wish to utilize the particular skills and experience of various agencies or commissions. *Id.*, 1999-1546 p. 6-7, 753 So.2d at

160-161. With regard to the legislative delegation of authority to an executive branch agency or commission, this court has previously stated:

> Recognizing that the Louisiana Constitution unequivocally mandates the separation of powers among the three branches of state government, this court in delegation cases traditionally has distinguished between delegations of purely *legislative* authority, which necessarily violate the separation of powers, and delegations of *ministerial or administrative* authority, which do not. The court explained the distinction in *Schwegmann Brothers Giant Super Markets v. McCrory*, 237 La. 768, 787-88, 112 So.2d 606, 613 (1959), (footnotes omitted) (emphasis added):
>
> > Due to the complexity of our social and industrial activities, the decisions display an increasing tendency to hold as *non-legislative* the authority conferred upon commissions and boards to determine the facts or state of things upon which the law intends to make its action depend. It is now well settled that the Legislature may make the operation or application of a statute contingent upon the existence of certain conditions, and may delegate to some executive or administrative board the power to determine the existence of such facts and to carry out the terms of the statute. So long as the regulation or action of the official or board authorized by statute does not in effect determine what the law shall be, or involve the exercise of primary and independent discretion, but only determines within prescribed limits some fact upon which the law by its own terms operates, such regulation is *administrative* and not *legislative* in its nature.
> >
> > * * *
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> Consistent with the distinction drawn in *Schwegmann* between delegations of legislative authority versus delegations of administrative or ministerial authority, the court on numerous occasions has recognized that where an enabling statute expresses a clear legislative policy and contains sufficient standards for the guidance of the administrative official empowered to execute the legislative will, the legislature may delegate to an administrative agency and determine the facts upon which the law is to be applied and enforced.

State v. All Pro Paint & Body Shop, Inc., 93-1316 p. 5-6 (La. 75/94), 639 So.2d 707, 711-712 (emphasis in originals).

This court has adopted a three-prong test for determining, on a case-by-case basis, whether a particular delegation of power is constitutional. A delegation of

authority to an administrative agency, or commission, is constitutionally valid if the enabling statute: (1) contains a clear expression of legislative policy; (2) prescribes sufficient standards to guide the agency in the execution of that policy and (3) is accompanied by adequate procedural safeguards to protect against abuse of discretion by the agency. *Alfonso*, 1999-1546 p. 8, 753 So.2d at 161; *All Pro*, 93-1316 p. 7, 639 So.2d at 712.

Application of the three-prong *Schwegmann* test to determine the constitutionality of La. R.S. 11:103 and La. R.S. 11:104 convinces us that the statutes delegate only ministerial or administrative authority to the PRSAC, and not legislative authority, and that sufficient standards and procedural safeguards are present to protect against an abuse of discretion.

The *Schwegmann* test first requires us to determine whether the enabling statute contains a clear expression of legislative policy. To make this determination, we must look to the legislatively-stated purpose of both the statutes at issue and the statutes relating to the formation of the PRSAC. Title 11 ["Consolidated Public Retirement Systems"], Chapter 2 ["Required Contributions"], Part 2 ["Contribution Provisions"], Subpart E ["Employer Contributions"], contains the legislative statement of purpose applicable to both La. R.S. 11:103 and La. R.S. 11:104 in La. R.S. 11:101, which provides:

> The purpose of this Subpart is to provide mechanisms to implement compliance with the requirements of Article X, Section 29(E)(2)(b) and (c) and (3) of the Constitution of Louisiana that the legislature provide with respect to employer funding of state and statewide public retirement systems.

The purpose of the statutes at issue is clear. The legislature is providing the formula by which the employee contributions, employer contributions, dedicated tax contributions and amortized unfunded accrued liabilities will be considered in order

to achieve actuarial soundness of the state and statewide public retirement systems, as required by the constitution.

Title 11 ["Consolidated Public Retirement Systems"], Chapter 3 ["Public Retirement Systems' Actuarial Committee"] contains the legislative statement of purpose applicable to the PRSAC in La. R.S. 11:121(B), which provides:

> B. 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 Chapter 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.

Thus, the purpose of the PRSAC is to advise and coordinate the legislative process which is charged with attaining and maintaining the soundness of the state and statewide retirement systems, plans or funds.

The clear expression of legislative policy shows that there is no unconstitutional delegation of legislative authority to the PRSAC. Instead, the PRSAC's sole purpose is to "coordinate" the legislative process; in other words, to administer or perform the ministerial tasks assigned by the legislature in its on-going process of providing mechanisms by which actuarial soundness may be achieved and maintained by the state and statewide public retirement systems.

The second and third prongs of the *Schwegmann* test require us to determine whether the legislature prescribes sufficient standards to guide the PRSAC in the execution of its administrative or ministerial function and whether there are adequate procedural safeguards to protect against an abuse of discretion by PRSAC. We find that the legislature has provided a precise blueprint of action for the PRSAC in La. R.S. 11:103 and La. R.S. 11:104.

As previously described, La. R.S. 11:103 provides a multi-level formula for determination of the employer contribution rate for statewide public retirement systems. In very simplified form, the legislature supplies known components of that formula with regard to the FRS by statute. After calculation of the multi-level formula, the unknown components are determined, including the direct employer contribution.

In La. R.S. 11:104, the legislature has authorized the PRSAC to perform the actual calculation of the formula, intrinsically a ministerial duty, and to inform the employers or retirement systems what the employers' contribution rate will be each year. In effect, the legislature has asked actuaries to perform actuarial duties. In performing actuarial duties, actuaries must make assumptions because they are projecting their analysis into the future. The legislature understood that this is part of an actuary performing his or her duty and that this type of calculation was necessary for determining actuarial soundness into the future. The fact that the PRSAC must make actuarial assumptions in order to make actuarial valuations does not mean that the PRSAC has unbridled discretion in performing its function. The legislature provided guidelines in La. R.S. 11:103 for the assumptions that the actuaries are required to make in performing the calculations of the formula.

Each step of the multi-level formula is guided by legislative instruction. La. R.S. 11:103(A) states to which public retirement systems the formula applies. La. R.S. 11:103(B)(1) provides the general formula and mandates that "the employer contribution rate **shall equal** ... ." La. R.S. 11:103(B)(2) provides the method for determining the fiscal year's short fall amount, yet another factor in the equation.

La. R.S. 11:103(B)(3) provides the formula for determining the actuarially required employer contribution as the sum of several factors. At each step, the

legislature directs how those factors are to be determined, including the funding method as specified by the legislature in La. R.S. 11:22, the amortization method specified in La. R.S. 11:42, and the period of time over which the amortized payments are to be computed.[106]

La. R.S.11:103(C) provides the formula for determining the net direct actuarially required employer contribution for each fiscal year. The legislature directs a precise formula, describing the factors to be used in the calculation. The legislature even clarified that the "targeted portion" of the net direct employer's contribution– 9% for the FRS, 9% for the Municipal Police Employees' Retirement System, and 7% for the Sheriffs' Pension and Relief Fund–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

[106] As stated, the legislature was not unaware that actuarial valuation requires making certain actuarial assumptions. However, the legislature detailed how actuarial assumptions were to be considered under the formula in La. R.S. 11:103(B)(3) for determining the actuarially required employer contribution. Subparagraph (a) sets forth the formula for determining the factor of the employer's normal cost. The computation must use the system's actuarial funding method as specified in the legislature at La. R.S. 11:22. This factor takes into account the value of employee contributions, including interest, and projects such normal cost to the middle of the fiscal year at the assumed actuarial interest rate. Subparagraph(b) adds the factor of the projected noninvestment related administrative expenses for the fiscal year. Subparagraph (c) adds as a factor that fiscal year's payment necessary to amortize the previous year's shortfall amounts at the actuarially assumed interest rate. The legislature directs that if an "immediate gain funding method" is used, the factor should be amortized at the same rate as established in Subparagraph (e)(i) (which provides for amortization over 15 or 30 years, depending on the funding method used), of over the future working lifetime of current participants. Subparagraph (d) adds as a factor that fiscal year's payment necessary to amortize (using that system's amortization method specified in La. R.S. 11:42) the unfunded accrued liability as of the end of the fiscal year ending 1989, computed using the system's actuarial funding method as specified under La. R.S. 11:22 and projected to the middle of that fiscal year at the actuarially assumed interest rate. Subparagraph (e) adds as a factor that fiscal year's payment necessary to amortize changes in actuarial liability due to (i) actuarial gains and losses, (ii) changes in actuarial assumptions or the method of valuing of assets, (iii) changes in actuarial funding methods, and (iv) changes in actuarial accrued liability. At each stage, the legislature has directed how such factors are to be computed, including amortization methods, funding methods and the period of time over which such amounts are to be computed. Subparagraph (e) was amended effective July 2, 2003 to further specify a separate set of instructions for determination of the factors necessary to calculate the actuarially required employer contribution for the Municipal Police Employees' Retirement System at La. R.S. 11:103(B)(3)(c)(i)(bb), (ii)(bb) and (iv)(bb). Acts 2003, No. 1079 § 1. Although these amendments were not part of the statute at the time suit was filed, the amendments show the legislature's continuing direction and involvement in all aspects of the provisions of the multi-level formula in La. R.S. 11:103.

entirety."[107]

La. R.S. 11:103(D) was enacted by Acts 2003, No. 620, § 1 and became effective June 27, 2003. Although this amendment to the statute was not in effect at the time this suit was filed, the amendment shows the continuing input of the legislature into all of the details of the multi-level formula. In Paragraph (D), the legislature responded to a funding issue which impacted FRS actuarial soundness by changing the method of amortizing FRS debt.[108]

Each stage of the calculation described in La. R.S. 11:103 is directly controlled by legislative instruction. At trial, the FRS actuary, Mr. Curran, seemed honestly puzzled when questioned about PRSAC's "interpretation" of the formulas in La. R.S. 11:102 and 103. To an actuary, the formulas provided by the legislature are clear and explicit:

Q: ... Now, has the PRSAC adopted a position in the interpretation of Louisiana Revised Statute 11:102 and 11? 103? And if so, please state what the position is.

A: I think you'd have to be more specific. With regard to what? I mean, you know we operate on a whole ...

Q: In regard to the interpretation of the two provisions?

A: A position on the interpretation of those provisions?

Q: Yes, sir.

A: I don't understand with regard to what issues though.

Q: To the interpretation of the provisions. What do they mean? Has the PRSAC adopted such a position?

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[107] La. R.S. 11:103(C)(2)(b)(iv).

[108] La. R.S. 11:103(D) now provides:

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.

A: I think operationally, we've dealt with our understanding of what those two sections mean, yes. I mean, they - - those sections, in effect, give a very long lengthy description, 102 and 103, which describes the methodology that is utilized to arrive at the employer contribution rate, and that methodology has got a lot of steps involved into it. And it stipulates to the actuarial funding method for each plan, and the amortization periods and methods for funding the unfunded liability. ***I don't know if there's a position with regard to it, just read on the face of it is pretty explicit.*** I really don't understand, beyond that, what you're asking for.

Q: I'm asking, has the committee formally adopted a position on the interpretation of that provision?

A: Well, I'm sorry, I just - -

Q: If you don't know - -

A: I don't understand. A position on that, you're talking about maybe forty or fifty elements, you know. Are you talking about a particular element?

Q: I'm talking about the whole section.

A: Well, we have - - we are interpreting - - we're forced to interpret, in order to execute the assignment we've been handed, to interpret all the elements of 102 and 103.

Q: Have there been any disagreements among members of the PRSAC about the interpretation of 103?

A: 103? Not that I can recall in terms of - - in terms of 103 and interpreting it, possibly, but I don't recall right now if there were.

Q: That's fair enough.[109]

Although an actuary exercises independent judgment and discretion in a broad sense in performing the calculation,[110] the actuarial assumptions applied in

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[109] Vol. 13, p. 2277-2278 (emphasis added).

[110] Plaintiffs' counsel sought to make the point that an actuary uses independent judgment and discretion in performing his function as an actuary. From this broad generalization, plaintiffs argue the PRSAC exercises legislative authority. Yet even under cross-examination, the FRS actuary, Mr. Curran, made clear that the assumptions made by actuaries are discretionary only in a broad sense:

Q: Sir, in practicing your profession of being an actuary, do you feel that you

(continued...)

performing the calculation set forth by the legislature must be done so within the guidelines which are supplied by the legislature. As described by Mr. Curran:

> Q: How is it that you go about applying those assumptions?
>
> A: They're really within the framework of the actuarial method that is adopted for the valuation, and that method is explicitly given for each system in the statute. In addition, certain of the assumptions or procedures are also explicitly given in the statutory language. The length of the period for amortization of each unfunded liabilities is listed in the statute. The method over which that amortization takes place is listed in the statute as well. So the basic starting point of all of that process is the statutory language which describes or gives a recipe, if you will, for arriving at the results.
>
> Q: Okay. Mr. Curran, then – in your practice and applying within that framework, do you, as a practice, deviate from the framework of the law?
>
> A: No, we have to follow what the statute gives us.[111]

Because the legislature has prepared such a precise blueprint in providing the multi-level formula in La. R.S. 11:103, the only thing for the PRSAC to do is to

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[110](...continued)

> exercise your independent judgment and discretion in arriving at your recommendations?
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> A: That's part of our job.
>
> Q: And, sir, do you feel that the recommendations that you make and exercise in those independent judgments and discretions are an integral part of arriving at the employer contribution level?
>
> A: ***Within the structure of the confines of the statute, yes.***
>
> Q: And it is true, sir, that you make a number of assumptions based on the exercise of your independent judgment and discretion as an actuary; isn't that true?
>
> A: I wouldn't want to mischaracterize it as independently arrived at, as if there were no input from the relevant historical factors and experience studies that we do. Those assumptions really have to be reality based and based on studies and experience, not exogynous to the process where we just plug them in.

Vol. 13, p. 2287 (emphasis added).

[111] Vol. 13, p. 2300.

perform the calculations as instructed. La. R.S. 11:104(A) merely instructs the PRSAC to determine the employer contribution rate "as referred to in this Subpart" by a certain date.

Within ten business days thereafter, the PRSAC chairman must notify each employer or retirement system that the referenced rate will be recommended to the legislature for approval, or that the given rate is the rate which must be used by the employer or retirement system, "whichever is appropriate under the provisions contained in R.S. 11:102 and 103." La. R.S. 11:104(B). Whether the legislature must approve or adopt the recommendation of the PRSAC as to the employer contribution rate or whether the rate calculated by the PRSAC *is* the rate to be used depends on whether the formula used is for state guaranteed systems, La. R.S. 11:102, or whether the formula used is for systems not guaranteed by the state, La. R.S. 11:103.

Under La. R.S. 11:104(B), the employer contribution rate obtained by the PRSAC after performance of the calculation described in La. R.S. 11:103 *is* the employer contribution rate prescribed by the legislature. The legislature has provided explicit instructions for how the rate is to be determined. The PRSAC has only to apply the legislature's instructions to determine what the rate should be.

By contrast, the result of the calculation of the formula in La. R.S. 11:102, applicable to public retirement systems whose benefits are guaranteed by the state, must be presented to the legislature because, by statute, "the *legislature shall set* the required employer contribution rate." La. R.S. 11:102(B)(1). The legislature must set the rate for state guaranteed systems because the state must directly pay the annual shortfall between the actuarially required employer contribution rate and the employer contributions actually received and that amount is paid by the state treasurer from the state's general funds. Therefore, under La. R.S. 11:104(B), it is appropriate for the

PRSAC to recommend to the legislature for approval the employer contribution rate for state guaranteed systems and it is appropriate for the PRSAC to notify each employer or retirement system what the rate shall be for systems not guaranteed by the state.

The plaintiffs' argument, that PRSAC improperly wields legislative power in setting the employer contribution rate for the FRS, fails because it is the legislature which provides the precise formula by which the employer contribution rate is set. The PRSAC is merely the commission directed by the legislature to perform the calculations of the formula. Each step of the calculation of the formula which the legislature directs the PRSAC to perform is determined and guided by the legislature. Therefore, any delegation of authority by the legislature is ministerial or administrative in nature, and is motivated by the legislature's need for the actuarial expertise of the PRSAC. We find the delegation of this ministerial or administrative duty with sufficient standards and adequate procedural safeguards is proper.

Based on the foregoing, the district court's analysis of this issue, and its conclusion that La. R.S. 11:103 and 104 are unconstitutional delegations of authority as they pertain to the FRS, are reversed.[112] We find that La. R.S. 11:103 and 104 are constitutional both facially and as applied to the FRS.[113]

Funding of FRS

The plaintiffs' second and third constitutional challenges concern amendments to the funding structure of the FRS which plaintiffs claim violate the constitutional mandate in La. Const. art. 10, § 29(E)(5) that "[t]he accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired."

[112] Written Reasons for Judgment, Vol. 10, p. 1949-1957; Judgment, Vol. 10, p. 1964.

[113] The trial court's finding that there are not sufficient checks and balances is both legally and factually erroneous.

Act 645 of 1991 repealed the state guarantee of benefits in favor of members of the FRS set forth in former La. R.S. 33:2165 and re-designated as La. R.S. 11:2269. Plaintiffs argue that the state guarantee of benefits was an accrued benefit of the statewide retirement system when Section 29(E) was adopted. Thus, they claim that repealing the state guarantee of benefits impairs the accrued benefits of the members, in violation of the state constitution, because the system can no longer require the state to pay the shortfall amounts calculated on an annual basis.

Act 397 of 1997 and § 2 of Act 1160 of 2001 changed the amount of IPTF funds available and the priority of how those IPTF funds are paid out to the FRS and to two other public retirement systems. The plaintiffs argue that the former funding structure prior to amendment was an accrued benefit to the system and that the amendments to the funding structure impairs the accrued benefits of the members, in violation of the state constitution, in that there are less funds from which the annual shortfall amount may be paid.

The plaintiffs, and the district court in its judgment, have confused the accrued benefits of its members with the benefit to the employers which existed in the former funding structure of the FRS.[114] The funding of the system and the payment of benefits to the members of the system are not synonymous. A change in the funding structure does not mean a change in accrued benefits; the only thing changed is how the accrued benefits will be funded. The fact that a statewide public retirement system is not guaranteed by the state means that shortfalls in the annual calculation of actuarially required contributions are not paid directly each year by the state treasurer from the state general fund. The legislature still has the ultimate obligation

[114] The district court reasons for judgment held that the state guarantee of benefits was an accrued benefit of the *system*. Vol. 10, p. 1958 (emphasis supplied). What is constitutionally protected, however, are the accrued benefits of the systems' *members*.

under the constitution to ensure that the system is actuarially sound, and that accrued benefits are paid. The legislature can do so by devising another method of funding the system or by devising another method to deal with the shortfall amount between the actuarially required employer contribution and the employer contributions actually received, such as providing a formula where these shortfalls are amortized over time.[115]

Under the former funding structure, the *plaintiffs* benefitted when the system's shortfall amount was paid by the state general fund or when the contributions of employers at 9% and the funds in the IPTF were sufficient to balance the actuarial formula. The legislative acts at issue affected the funding structure, i.e. by whom the accrued benefits would be paid, and not the accrued benefits themselves.

As previously stated, the legislative power of the state is vested in the legislature. La. Const. art. 10, § 3. "In its exercise of the entire legislative power of the state, the legislature may enact any legislation that the state constitution does not prohibit." *Louisiana Pub. Facilities Autho.*, 2001-0009 p. 14, 795 So.2d at 298. The Louisiana Constitution mandates in Section 29(E) that the legislature must attain and maintain actuarial soundness of the state and statewide public retirement systems. The Louisiana Constitution does not dictate how that actuarial soundness is to be accomplished, nor does it prescribe how the state and statewide public retirement systems are to be funded. The mechanism by which actuarial soundness is achieved is left to the discretion of the legislature.

Moreover, the funding system provided by the legislature for statewide public retirement systems whose benefits are not guaranteed by the state is working as it was

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[115] Not all statewide public retirement systems have the same funding structure. The legislature has chosen in its discretion to fund other statewide systems differently. Some use a combination of employee contributions, employer contributions, *ad valorem* taxes, dedicated taxes or revenue sharing in order to fund the systems. Vol. 4, p. 801.

designed to with regard to the FRS. The FRS is a defined benefit plan. A defined benefit plan is one where the employee, upon retirement, is entitled to a fixed payment, in this case as provided by statute. In this type of plan, typically, the employer bears the risk of any under-funding as a result of a shortfall which may occur from the system's investments.[116]

La. R.S. 11:103 is conducive to a defined benefit plan. The formula established therein provides for the employer to bear the risk of a shortfall that may occur from the system's investments. That risk is assumed by the ability to float the employer rate, which helps the system maintain actuarial soundness.[117] Ultimately, the accrued benefits of the system's members will not be diminished or impaired as long as the funding structure is actuarially sound. It is within the legislature's discretion to determine how that funding structure is to be configured and who is required to contribute into the system.[118]

If the plaintiffs' argument were true, there would be no public retirement systems whose benefits were not guaranteed by the state, the legislature would not have the authority to determine how public retirement systems should be funded from the public fisc nor would the legislature be able to change a funding structure once implemented. The converse of all of these situations is true. There are nine public

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[116] Mr. Curran testified that the employer bears the risk in a defined benefit plan. By contrast, the employee bears the risk of market changes in a defined contribution plan. Vol. 13, p. 2233-2235.

[117] Mr. Curran explained that the changing employer contribution rate is the method in which actuarial soundness is achieved and maintained: "Actually, the change in that contribution level is, in fact, the methodology of attaining soundness. The , let's say matching, if you will, of increased income stream to offset those losses is an essential ingredient in maintaining the soundness of the plan. If you don't respond to economic conditions, you run the risk of starving the plan." Vol. 13, p. 2239.

[118] Plaintiffs argued that funds were diverted and that, if FRS had received the influx, the system would be in a more financially sound position. However, actuarial valuation requires a balance, not a surplus. *See* Vol. 13, p. 2249. Just as the system's liabilities cannot be out of balance, neither can its assets be out of balance. The funding structure, as currently configured, is actuarially sound. The real issue driving the plaintiffs' argument is the fact that greater contribution through dedicated taxes would decrease the annual employer contribution rate.

retirement systems whose benefits are not guaranteed by the state. The legislature retains complete authority for determining how the branches and departments of government shall be funded from the public fisc. *Louisiana Pub. Facilities Auth.*, 2001-0009 p. 18, 795 So.2d at 301. The legislature has the discretion to change the funding structure of a public retirement system, provided that the constitutional requirements are met. Indeed, the constitution contemplates the legislature's use of its authority to make changes even to the future benefit provisions of public retirement systems, as long as these amendments are properly made through legislation.[119]

Based on the foregoing analysis, the district court's judgment, which found Acts 397 and 645 of 1991, and § 2 of Act 1160 of 2001 to be in violation of La. Const. art. 10, § 29(E)(5), is reversed.[120]

Amendments to Formula

In the plaintiffs' fourth constitutional challenge, they asserted that Acts 792 and 1293 of 1997, as they amended the formula in La. R.S. 11:103, violate La. Const. art. 10, § 29(E)(3) and (4). The plaintiffs contend that the amendments turn the formula in La. R.S. 11:103 into a method by which the expected costs of expenditures

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[119] La. Const. art. 10, § 29(E)(5) states, in pertinent part, that "[f]uture benefit provisions for members of the state and statewide public retirement systems shall only be altered by legislative enactment." The district court's reliance on *Firefighters' Retirement System v. Landrieu*, 572 So.2d 1175 (La. App. 1 Cir. 1990), *writ denied*, 575 So.2d 811 (La. 1991) ("*Landrieu*") and *Louisiana State Employees' Retirement System v. State*, 423 So.2d 73 (La. App. 1 Cir. 1982), *writ denied*, 427 so.2d 1206 (La. 1983) ("*LASERS*"), in holding that the legislature could not make changes to the funding structure, was misplaced. In *LASERS*, the appellate court held that the contributions of the members and the state contributions *once made*, no longer belonged to the state, and are held in trust for the members of the retirement system. *LASERS* stands for the private, as opposed to state, interest in already existing funds being held by the retirement system. In *Landrieu*, at issue was the state's ability to retain IPTF funds already collected by the State Insurance Rating Commission pursuant to La. R.S. 22:1419(A); the state treasurer refused to remit those already collected funds to the FRS. Neither *LASERS* nor *Landrieu* can be read for the proposition that the legislature has no authority to change the way in which future contributions are to be collected or allocated to the FRS.

[120] Written Reasons for Judgment, Vol. 10, p. 1957-1960; Judgment, Vol. 10, p. 1964.

will ultimately drive or fix the amount of the employer contribution and result in a formula in which there are no limits to the costs that are passed on to the employers. The plaintiffs urge that these acts violate the constitution because application of a formula which allows the employer contribution rate to float makes the value of assets and the value of expected future contributions undeterminable. The plaintiffs argue that these two amendments to the formula in La. R.S. 11:103 have allowed the unfunded accrued liability to continue to grow and that the growth of the unfunded accrued liability is inconsistent with the mandate to maintain actuarial soundness. Finally, the plaintiffs complain that this system is unfair because the employers have no say in granting benefits, authorizing cost-of-living increases or investing the assets of the retirement system, all factors which could cause the employers' contribution rate to rise under the formula.

As previously stated, Act 792 of 1997 amended La. La. R.S. 11:103(B)(1) and (3)(a) and (C)(1). Act 792 did not change the already existing employer contribution rate setting formula.[121] The changes in La. R.S. 11:103 made pursuant to Act 792 of 1997 did not change the statute into an expenditure driven employer contribution rate formula. Plan expenditures, including benefits and administrative expenses, have always been one factor in the overall rate setting equation. The amendments to the statute did not change the nature of the formula, the amendments merely clarified some of the factors of the formula.

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[121] Specifically, Act 792 did the following: (1) relocated the provision requiring mathematical rounding to the nearest quarter of one percent by moving it from Paragraph (B)(1) to Subsection (C) (introductory paragraph); (2) added language in (B)(1) regarding the inclusion of DROP participants in the calculation of active member payroll; (3) updated the dates that employer contributions were to begin being paid under Paragraph (B)(3); (4) removed the provision in Subparagraph (B)(3)(a) regarding inclusion of dedicated funds as one of the factors in the employer's normal costs, because dedicated funds were already defined in Subparagraph (C)(2)(c) as one of the factors used to reduce the employer's gross employer contributions; (5) updated the date that the net actuarially required employer contributions were to begin being calculated in Subsection (C) (introductory paragraph); and (6) eliminated duplicate language regarding the elements of cost contained in the gross required employer contribution in Paragraph (C)(1).

Act 1293 of 1997 amended La. R.S. 11:103(C)(2)(b) to clarify that the "fixed" portion of the net direct employer's contribution is not "fixed" as the sole portion of the direct employer's contribution to the system but is actually a "targeted" portion of the direct employers' contribution. In addition, the legislature enacted La. R.S. 11:103(C)(2)(b)(iv) to provide that the "targeted" rate was to be treated as a "fixed" rate unless a higher or lower rate results from application of the entire formula.

Contrary to the district court's conclusions, the combination of Acts 792 and 1293 did not cause the employer contribution rate to float to cover future expenditures and benefits; these acts clarified that the employers' contribution rate does float, and always has.[122] The statute has always required the employer contribution rate to be higher or lower if the circumstances warranted.[123] As previously explained, that is the nature of a defined benefits plan, i.e. the shortfalls

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[122] For example, the total or gross employer contribution rate, expressed as a percentage of projected payroll, has not been 9% in these years:

Fiscal Year 2003	36.76%
Fiscal Year 2002	30.75%
Fiscal Year 2001	27.64%
Fiscal Year 2000	20.86%
Fiscal Year 1999	19.76%
Fiscal Year 1998	21.80%
Fiscal Year 1997	21.67%
Fiscal Year 1996	18.08%
Fiscal Year 1995	14.47%
Fiscal Year 1994	10.58%

See Vol. 4, p. 764, "Year to Year Comparison" included in FRS Actuarial Valuation as of June 30, 2002.

[123] That the actual rate directly paid by the employers for all the years prior to 2002 was maintained at 9% was a direct reflection of market forces. Evidence introduced at trial shows that interest on FRS investments was received well above the actuarially assumed rate of 7% for the late 1980's and early 1990's. Since interest on investments, employee contributions and IPTF funds were sufficient to offset the actuarially determined liabilities of the FRS with the direct employer contribution rate at 9%, the direct employer contribution rate did not change. The FRS then began to grow, more than doubling the size of its membership. The actuarially determined liabilities grew, including the increased benefits required for the larger membership compounded by the lower than assumed return on investments. Even though IPTF funds increased, they did not increase at a rate sufficient to balance the increase in actuarial liabilities. IPTF funds, interest on investments and employee contributions became insufficient to "balance" the equation with the direct employer contribution rate at 9%, and the direct employer contribution rate had to rise to achieve actuarial soundness. Vol. 13, p. 2238-2239, 2242.

of the system are balanced by increases in the employers' contribution rate.[124]

La. Const. art. 10, § 29(E)(3) requires the legislature to determine for public retirement systems therequired contributions of employees, employers, and dedicated taxes. The legislature does this by statute, as previously explained. In addition, La. Const. art. 10, § 29(E)(3) requires that the legislature must include in its considerations the elimination of the unfunded accrued liability as of the end of the 1988-1989 Fiscal Year, by the year 2029.

The "unfunded accrued liability" ("UAL") of a public retirement system is described in the 2001 Legislative Auditor's Actuarial Report as:

> that portion of the actuarial accrued liability that is not funded by the system's Valuation Assets on the valuation date. Normally, as of each valuation date, it consists of the unamortized value of the initial unfunded accrued liability (IUAL) and the unamortized values of supplemental accrued liabilities that may be generated each year. These supplemental liabilities originate through actuarial gains or losses, changes in actuarial assumptions or funding methods, and any changes in benefit structures. The UAL is amortized according to the payment methods and periods specified by statute. Under some actuarial cost methods, supplemental accrued liabilities are not amortized and are funded as future normal cost payments.[125]

Contrary to the plaintiffs' contention, the evidence shows the legislature is working to eliminate the unfunded accrued liability of the FRS. The annual calculation of the employer contribution rate includes the determination of the amortization of the unfunded accrued liability in order to ascertain the year's payment.[126] In addition, the legislature in 2003 enacted La. R.S. 11:103(D), which, effective with the June 30, 2002 valuation, "combined, offset and reamortized" all outstanding amortization bases in existence on June 30, 2002, exclusive of merger

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[124] This fact was confirmed by the legislative actuary. Vol. 13, p. 2206.

[125] Vol. 4, p. 799.

[126] *See ex.* Vol. 4, p. 751, Exhibit V-Schedule C, "Amortization of Unfunded Actuarial Accrued Liability," FRS Actuarial Valuation as of June 30, 2002.

bases, over the period ending June 30, 2029, with level dollar payments. Thus, the legislature has taken actions to ensure that the unfunded accrued liability be eliminated by the constitutionally-required deadline of the year 2029.

La. Const. art. 10, § 29(E)(4) prohibits the state and the governing authority of each state and statewide public retirement system from taking "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 ... ." The evidence shows that there have been no actions taken relative to the FRS which have violated this constitutional requirement. The annual actuarial valuations performed from 1989 through 2002 and admitted into evidence show that the actuarial present value of expected future expenditures of the system, i.e. the benefits which will be paid in the future to the system's members, have not exceeded or have equaled the sum of the actuarial value of the assets added to the present value of expected future contributions.[127] Thus, this constitutional requirement has been achieved by the FRS.

The amendments to La. R.S. 11:103 at issue here are not responsible for the existence of unfunded accrued liabilities in the FRS. Some actuarial funding methods create unfunded accrued liabilities, some do not. The actuarial funding method set

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[127] *See* Vol. 2, p. 213-215, FRS Actuarial Valuation as of June 30, 1989; Vol. 2, p. 245-247, FRS Actuarial Valuation as of June 30, 1990; Vol. 2, p. 273-275, FRS Actuarial Valuation as of June 30, 1991; Vol. 2, p. 300-302, FRS Actuarial Valuation as of June 30, 1992; Vol. 2, p. 328-330, FRS Actuarial Valuation as of June 30, 1993; Vol. 2, p. 368-370, FRS Actuarial Valuation as of June 30, 1994; [the FRS Actuarial Valuation as of June 30, 1995 is missing the page detailing the present value of future contributions]; Vol. 3, p. 437-439, FRS Actuarial Valuation as of June 30, 1996; Vol. 3, p. 544-546, FRS Actuarial Valuation as of June 30, 1997; Vol. 3, p. 584-586, FRS Actuarial Valuation as of June 30, 1998; Vol. 3, p. 626-628, FRS Actuarial Valuation as of June 30, 1999; Vol. 4, p. 667, 669, 671, FRS Actuarial Valuation as of June 30, 2000; vol 4, p. 709-711, FRS Actuarial Valuation as of June 30, 2001; Vol. 4, p. 748-750, FRS Actuarial Valuation as of June 30, 2002.

by statute for the FRS creates unfunded accrued liabilities.[128]

Nor did the amendments to La. R.S. 11:103 cause the unfunded accrued liability in the FRS to grow. The evidence shows the unfunded accrued liability in the FRS has grown as the result of several factors, but primarily due to the exponential growth of the system over the time period at issue. As the FRS merged with local firefighter retirement systems, the FRS absorbed the unfunded accrued liabilities of the individual local retirement systems. As the FRS took on more and more systems, the unfunded accrued liability of the system grew. In addition, the FRS membership more than doubled in the time period at issue, meaning that future benefits that must be accounted for has grown, as well. During the same time period, the FRS experienced under-performance of its investments. The record indicates the increase in the unfunded accrued liabilities, and the need for an increase in the employer contributions, was anticipated even in the late 1980's, when the investments were doing well.[129]

The presence or growth of unfunded accrued liabilities in the actuarial equation is not inconsistent with the constitutional requirement that the public retirement systems maintain actuarial soundness. The unfunded accrued liability is but one

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[128] *See* Vol. 4, p. 798.

[129] These increases were anticipated in the FRS Actuarial Valuation as of June 30, 1989:

> In the event that additional groups of firefighters are merged into the system, changes in the employer funding requirements will potentially arise from two sources. First, any merger completed in which the assets merged are less than the accrued liabilities assumed will result in an increase in the unfunded accrued liability for the Firefighters' Retirement System. The resulting amortization payments will be shared by all contributing employers. For every increase of $1,000,000 in the system's unfunded accrued liability, annual employer payments will increase $77,906 for each of the next 30 years with this amount to be shared by all employers in proportion to the amount of their covered payroll for participating members. Secondly, any merger produces an additional increase in costs by spreading the current funding excess credit over a larger payroll base and reducing the benefit to current employers. The current credit is $19,032. Any merger will divide this credit among a larger group of employers. However, since the credit itself is small relative to required contribution, the effect of this "dilution" of the credit is not significant. *See* Vol. 2, p. 211.

factor in the multi-level formula for determining actuarial soundness of the system. To focus on one factor in the multi-level formula to the exclusion of the other 40 or 50 factors and without the proper context is error. The one factor of the unfunded accrued liability taken alone, or the increase of it, does not destroy actuarial soundness.[130] An increasing unfunded accrued liability is nevertheless consistent with maintaining actuarial soundness provided there is a funding structure present to liquidate the liability. A floating employer contribution rate as determined by La. R.S. 11:103, which increases the assets of the system to offset increased liabilities, helps the current funding structure of the FRS to achieve this.

The plaintiffs' other contentions are without merit, as well. The plaintiffs' claim that the floating employer contribution rate would make the value of assets and the value of future contributions undeterminable is refuted by the fact that the system actuaries perform that determination annually. In addition, the plaintiffs' complaint that they have no input into the retirement system is not entirely accurate. Two of the eight trustees on the board of the FRS directly represent the interest of the employers of FRS members. Both the executive director of the Louisiana Municipal Association, and a mayor appointed by the Louisiana Municipal Association that has a fire department participating in the system, are on the FRS board of trustees.[131] Moreover, to the extent that the plaintiffs seek a change in the legislative allocation of responsibility for the funding of the FRS or input into the system itself, the plaintiffs must address those complaints to the legislature, and not to the judiciary.

Ultimately, the legislature is responsible for maintaining the actuarial soundness of the system. The legislature has sole discretion within its funding authority to determine by which method it will maintain actuarial soundness of the

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[130] *See* Vol. 13, p. 2283-2284.

[131] La. R.S. 11:2260(A)(2)(c) and (d).

statewide public retirement systems, including increased employer contribution rates, amendments to the formula described in La. R.S. 11:103, or direct assistance from the state. The legislature has shown by its actions that it is actively monitoring the public retirement systems. The legislative auditor conducts periodic actuarial valuations of the retirement systems.[132] The legislative auditor recommends improvements to the systems to the legislature and points out any problems which are perceived through the audit. The 2003 amendment enacting La. R.S. 11:103(D), through which the legislature combined, offset and reamortized all outstanding amortization bases in the FRS until 2029, exhibits the legislature's close scrutiny of the FRS system. Finally, on June 30, 2002, the legislature appropriated an additional $4,500,000 to the FRS "for the purpose of subsidizing the increase in the employer contribution rate (from 9.00% to 18.255) that was recommended by the Public Retirement Systems' Actuarial Committee for fiscal year ending June 30, 2003."[133]

For the foregoing reasons, the district court's conclusion that Acts 792 and 1293 of 1997 are unconstitutional violations of La. Const. art. 10, § 29(E)(3) and (4) are reversed.[134]

Injunctive Relief

The plaintiffs' request for injunctive relief was based on their allegations that: (1) the only statute which applied to set the employer contribution rate to the FRS was La. R.S. 11:2262(D)(1), which fixed the rate of employer contribution at 9%; or (2) the statutory provisions detailing the funding mechanism of the FRS, and legislative

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[132] *See* La. R.S. 24:513(C)(1).

[133] *See* Vol. 1, p. 81, Legislative Audit Report on FRS, November 20, 2002.

[134] Written Reasons for Judgment, Vol. 10, p. 1960-1961; Judgment, Vol. 10, p. 1965. After finding these acts unconstitutional, the trial judge additionally concluded that La. R.S. 11:103 and 104 were unconstitutional as applied to the FRS. For the reasons expressed in this opinion, that finding is found to be legally and factually erroneous.

acts making various amendments to those statutes, violated the Louisiana Constitution. Based on these allegations, the plaintiffs sought to enjoin the state and the FRS from collecting or demanding an employer contribution rate of more than the 9% provided in La. R.S. 11:2262(D)(1) under either their statutory or constitutional argument. Instead, this court has determined that the formula provided in La. R.S. 11:103 is applicable to determine the employer contribution rate to the FRS and that the statutory funding mechanism of the FRS and the cited amendments to the statutes setting forth that mechanism are constitutional. Thus, there is no basis for the plaintiffs' claimed entitlement to injunctive relief.

We acknowledge the evidence presented by the plaintiffs which detailed the serious impact on government employers' budgetary considerations and delivery of essential services which rising employer contribution rates to the FRS may occasion in the future.[135] However, as stated herein, these considerations are more properly presented to the legislature, and not in the judicial forum.

CONCLUSION

Based on the foregoing analysis, this court finds that there is no conflict between the provisions of La. R.S. 11:103 and La. R.S. 11:2262(D)(1); that there has been no improper delegation of legislative authority to the PRSAC in La. R.S. 11:103 and La. R.S. 11:104; that Act 645 of 1991, Act 397 of 1991 and § 2 of Act 1160 of

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[135] In its First Amending and Supplemental brief, the FRS argues the plaintiffs failed to show there was an immediate threat necessary for injunctive relief, although there was testimony regarding the possibilities of many things, i.e. reduction of other municipal services, that may happen if municipalities pay the required employer contribution rate. We note parenthetically that some of the witnesses for the plaintiffs testified that the employers were paying the increased employer contribution rates, that whether the employers were paying the increased employer contribution rates was a discretionary budgetary consideration, and that some of the employers which were not paying the increased FRS employer contribution rate were nevertheless paying the increased employer contribution rate for the Municipal Police Employees' Retirement System, which has also increased, although not as much as the FRS. The dissent by Justice Knoll finds that our statutory interpretation, which holds that any shortfall in the funding of the FRS be covered by an increase in the employers' contribution rate, leads to absurd consequences. We find nothing absurd in the legislature's apparent decision to expect the municipal and fire district employers to bear an increased responsibility to a retirement system for their own employees.

2001 do not violate La. Const. art. 10, § 29(E)(5); that Acts 792 and 1293 of 1997 do not violate La. Const. art. 10, § 29(E)(3) and (4); and that La. R.S. 11:103 and La. R.S. 11:104 are constitutional both facially and as applied to the Firefighters' Retirement System. So finding, the district court's judgment is affirmed in part and reversed in part, and the permanent injunction enjoining the Firefighters' Retirement System from collecting an amount in excess of nine percent from any employer whose employees are members of the Firefighters' Retirement System is hereby lifted.[136]

AFFIRMED IN PART; REVERSED IN PART; PERMANENT INJUNCTION LIFTED.

[136] Based on the court's conclusion that all of the statutes and legislative acts at issue are constitutional, the two remaining assignments of error raised by the state–regarding (1) the necessity of joinder of the State Police Pension and Retirement Systems and the Sheriffs' Pension and Relief Fund as parties for adjudication of the constitutionality argument and (2) the correctness of the district court's motion in limine preventing Mr. Curran from offering testimony at the joinder hearing–are pretermitted as unnecessary for consideration. Similarly, we pretermit as unnecessary discussion of an additional assignment of error raised by the FRS in its First Amending and Supplemental brief regarding the district court's sustaining an objection to the testimony of FRS witness Kelli Chandler, the FRS staff CPA, regarding inferences she drew based on the declining numbers of employers who were then paying the full employer contribution rate, including the effect of a preliminary injunction on the FRS' cash flow.