

New Hampshire Municipal Association

THE SERVICE AND ACTION ARM OF NEW HAMPSHIRE MUNICIPALITIES

This fact sheet provides background information regarding the lawsuit, the history of the New Hampshire Retirement System (NHRS) and employer contribution rates, and a chart showing the traditional employers' rates and the new employer rates for 2010 and 2011.

1. What is Part 1, Article 28-a of the NH Constitution?

In the November general election of 1984, the voters approved an amendment to the New Hampshire Constitution. That amendment says:

The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless the programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

2. Why is Part 1, Article 28-a important in this lawsuit?

Beginning with the 1985 legislative session and every legislative session thereafter, this paragraph in the NH Constitution prevents the state from mandating any new, expanded, or modified financial obligations on any local government, and ultimately property taxpayers, unless it obtains their consent or provides the funding to pay for the program.

The shared responsibility between the state and local governments of the employer retirement contribution for police, firefighters, and teachers was established in 1977, seven years before voters approved Part 1, Article 28-a, and it remained unchanged until last year.

3. What are the plaintiffs seeking with this lawsuit?

The lawsuit is a Petition for Declaratory Judgment and Injunctive Relief. It asks the court to declare that the increased employer contribution rates mandated by Section 52 of HB 2, passed in 2009, is a violation of the purpose and intent of Part 1, Article 28-a of the NH Constitution. It also asks the court to restore the traditional 65/35 shared employer contribution agreement retroactive to July 2009. Finally, the lawsuit requests that the court require the NHRS to reimburse local governments for those increased payments or, as an alternative, to give local governments a credit equal to the amount of overpayments they have made since July 2009.

4. How is the New Hampshire Retirement System funded?

The system is funded by employee contributions, employer contributions, and income earned on investments made with the employee and employer contributions.

5. What is the history of the New Hampshire Retirement System?

The NHRS was created in 1967 in an effort to unify all of the separate retirement systems covering different categories of public employees.

At the time of the System's creation, there were four separate statewide retirement programs for public employees: the New Hampshire Teacher's Retirement System, the New Hampshire Policeman's Retirement System, the New Hampshire Permanent Firemen's Retirement System, and the Employees Retirement System of the State of New Hampshire. Each system had its own governing board and administrative staff. The rules governing benefits differed between the systems, as did the cost sharing ratio between the state and the participating entities for police, firefighters, and teachers.

The NHRS brought all four systems under a single regulatory authority with a single board of trustees and a single administrative staff. The system includes both mandatory and elective coverage. It is mandatory for all state employees, and for all teachers and permanent police and firefighters employed by municipalities, counties, and school districts to participate in the unified retirement system. These employees are entitled by right to the system's benefits.

The system also allows municipalities, counties, and school districts to elect to have their remaining employees – those who are not teachers, police or firefighters – participate in the System.

6. When was the shared responsibility established for the contribution rates?

Since its creation in 1967, the state and the political subdivisions have always shared the employer contributions for police, firefighters, and teachers, but not other local government employees. For the first ten years, the state's contribution was different for each group. However, in 1977, the contribution share was fixed for all three groups. For the last 32 years, local governments have been responsible for 65% of the employer contribution for police, firefighters and teachers, and the state has been responsible for the remaining 35%.

In 2009, the General Court passed HB 2, which amends RSA 100-A:16 to reduce the state's retirement contribution for police, firefighters, and teachers to 30% in FY10 and to 25% in FY11, and therefore increasing the municipal share from 65% to 70% in FY2010 and to 75% in FY2011.

In legislative testimony last year about the 2010/2011 state budget, NHRS estimated that this change in the share ratios will increase costs to municipalities, counties, and schools by approximately \$9 million in FY10 and \$18 million in FY11, for a total of \$27 million for the biennium.

The last page of this memo is a table showing the employer contribution rates before and after the passage of HB 2 in 2009.

7. What are the employee and employer contribution rates, and how are they determined?

Employee contribution rates are a percentage of earnable compensation (salary, overtime, stipends, etc.). For police and firefighters, the contribution was fixed by law in 1977 at 9.3% and has remained unchanged ever since; for teachers, the contribution rate was set at 9.2% in 1977, but was reduced to 5% in 1988 and has remained unchanged since then.

Employer rates fluctuate every two years. State law requires the NHRS to use actuarially sound principles to determine how much the pension system needs from employers, and then calculates the amount local governments and the state must pay for their employees. In recent years, employer contribution rates have increased every two years.

8. Are local governments paying the increase in employer contribution rates?

Yes. All of the political subdivisions started paying 70% of the retirement costs for all police, firefighters and teachers as of July 1, 2009. However, many of the municipalities, counties, and school districts have notified the NHRS that they are paying the increased contribution rates under protest. This lawsuit is the response.

9. Who are the plaintiffs in this lawsuit?

The three-named plaintiffs bringing this lawsuit in Merrimack County Superior Court are the City of Concord, Belknap County, and Mascenic Regional School District. The lawsuit asks the court to include as a class all of the municipalities, counties, and school districts who are subject to the increased employer contribution rates and find themselves affected in the same way as the three named plaintiffs.

10. How many local governments have contributed in support of this lawsuit?

168 cities and towns (of 201 with members enrolled in the NHRS); 7 counties; 119 school districts and SAUs. The complete list of participants will be available on the NHMA web site:

www.nhlgc.org/nhma/ongoingtopics.asp.

11. Will this lawsuit address the under-funding of the New Hampshire Retirement System?

No. This lawsuit only challenges the increase in the local government employer retirement contribution rate for police, firefighters, and teachers. The under-funding of the public employees pension fund continues to be a concern even after the state and local government employers agreed to invest \$3.2 billion over the next 30 years to help restore financial stability to the pension fund.

EMPLOYER RETIREMENT CONTRIBUTION RATES

Employee Group	Certified Employer Rates FY 2010/2011 BEFORE Passage of HB 2 Local 65% - State 35%		Certified Employer Rates FY 2010 AFTER Passage of HB 2 Local 70% - State 30%		Certified Employer Rates FY 2011 AFTER Passage of HB 2 Local 75% - State 25%	
Teachers:						
Local	6.96%		7.49%		8.02%	
State	3.74%		3.21%		2.68%	
Total	10.70%		10.70%		10.70%	
Police:						
Local	12.68%		13.66%		14.63%	
State	6.83%		5.85%		4.88%	
Total	19.51%		19.51%		19.51%	
Fire:						
Local	16.05%		17.28%		18.52%	
State	8.64%		7.41%		6.17%	
Total	24.69%		24.69%		24.69%	