

New Hampshire Municipal Association

THE SERVICE AND ACTION ARM OF NEW HAMPSHIRE MUNICIPALITIES

MEDIA RELEASE

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RETIREMENT DOWNSHIFTING SUIT FILED

Concord – The City of Concord, Belknap County, and Mascenic Regional School District today filed a lawsuit charging that the State of New Hampshire violated Part 1, Article 28-a of the New Hampshire Constitution. The three local governments are serving as lead plaintiffs in a class action lawsuit on behalf of all the cities, towns, counties, and school districts that have had to make increased payments for their employees in the New Hampshire Retirement System (NHRS).

The lawsuit charges that a provision in the 2010-11 state budget violates Part 1, Article 28-a of the New Hampshire Constitution by mandating that all political subdivisions in the state must now pay a greater share of the employer retirement contributions for police, firefighters, and teachers. County corrections officers are covered as police members of the retirement system. State statute requires all of these employees to be members of the retirement system.

Since the inception of the NHRS in 1967, the state and local governments have shared employer contribution costs for police, firefighters, and teacher members of the system. In 1977, the cost sharing formula was fixed at 65/35, with the state responsible for 35% of the employer costs, and local governments paying 65% .

An amendment in the 2010-11 state budget changed this traditional cost-sharing arrangement. Starting July 1, 2009, the local government share increased to 70% of the employer's contribution, and in 2010, it increases to 75% of the employer's share.

“The City of Concord agreed to participate in this suit because it believes this increase in the city's retirement contribution rates is a violation of Article 28-a, which exists to protect our taxpayers against the downshifting of costs by the state,” said Carlos Baia, Deputy City Manager for the City of Concord.

Approved by the voters in 1984, Article 28-a prohibits the state from mandating or assigning “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.”

The NHRS estimated during last year’s legislative hearings on the budget that the change in the contribution rates would increase local government expenses by more than \$27 million in fiscal years 2010 and 2011.

“Every year, the financial downshifting increases,” said Christian Lund, chair of the Mascenic Regional School Board. “Municipalities, counties, and schools are struggling to provide services while keeping property taxes in check. When the state reneges on its financial obligations to cities, towns, counties, and school districts, then we have no choice but to curtail services or raise property taxes or both.”

Although the budget amendment says that the traditional 65/35 cost sharing arrangement will be reinstated in fiscal year 2012, there is no guarantee that this will occur, according to Belknap County Commissioner Edward Philpot.

“We can’t be the state’s banker every time it needs a loan to balance its budget. If the Legislature needs more money next year, we doubt that it will return to the 65/35 sharing formula. This is exactly the kind of cost shifting the voters wanted to prevent with the adoption of Article 28-a in the state constitution.”

Local governments first started making the increased employer retirement payments in July 2009. Municipalities, counties and schools have paid the monthly amounts owed, but many have done so under protest.

The lawsuit seeks to reinstate the 65/35 split for employer retirement payments and requests that the court require the state to either credit or reimburse local governments for the overpayments they have made since last July, including accrued interest on those overpayments.