Public Retirement System Governance Stakeholder Roles

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Public retirement system governance pertains to the systems and processes that comprise oversight of retirement benefits for employees of state and local government. The governing structure in the U.S., manifest chiefly in the U.S. Constitution, 50 state constitutions, and state laws, is designed to disperse power among different groups and individuals so as to prevent one group from accumulating excessive authority in one area. The principle of dispersed power holds true with public pensions: generally, no one group or person has complete authority over public retirement systems. Rather, as described below, different groups and individuals have different levels and types of responsibility to govern the retirement system and its chief components: the plan, i.e., the benefit structure and how it's paid for, and the fund—the assets and how they're managed and invested.

This paper follows and builds on the NASRA publication, *Overview of Public Pension Plan Governance*, first published in November 2019, by focusing on the respective role certain groups and individuals—the legislature, the governor, retirement system boards, and retirement system staff—play in public pension plan governance.

Key Takeaways

- Public retirement system governance is dispersed among different stakeholders – chiefly, the legislature, the chief executive, and the retirement system board – to prevent one group from accumulating excessive authority in one area.
- Public retirement system governance stakeholders play certain roles in the oversight and administration of retirement benefits for employees of state and local government, and within their unique responsibilities each stakeholder faces restrictions and limitations on their activities.
- The legislature is generally responsible for the primary elements of public retirement system governance – setting benefits and funding the plan – which are the most consequential in terms of affecting a plan's funding level and cost.

Plan Sponsor Role: The Legislature

The legislature (or city council or other elected body responsible for establishing laws within the jurisdiction) typically is the main policymaking authority over the most consequential governance elements of a public retirement system. In nearly all cases, the legislature (or other governing legislative body) is responsible for sponsoring, or establishing, the retirement system and the benefits the system administers, and for determining how the benefits are funded. These are the most substantive elements affecting the overall cost and funding condition of a pension plan.

Not every legislature, however, is equal in terms of its governance authority. For example, this paper's section on the role of public retirement system boards identifies examples of systems whose board has been given authority—by the legislature—to adjust benefit levels, contribution rates, or both. Other notable exceptions to legislative control over the primary elements of public pension governance are legal protections, which take the form of explicit constitutional protections, contractual protections, and case law. These protections limit the ability of the legislature to determine or adjust benefits or to fund the plan.

Perhaps the clearest example of a state constitutional provision limiting a legislature's control is that of the Illinois State Constitution:

> Membership in any pension or retirement system of the State, any unit of local government, or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.[1]

Established as part of a state constitutional convention in 1970, this provision has been cited repeatedly in recent years by the Illinois Supreme Court to justify rejecting efforts by the state legislature to reduce pension benefits for public workers in the state.

Other states have different forms of constitutional protections of pension benefits for public employees; one common form is contractual protection pursuant to either the Contracts Clause of the U.S. Constitution or similar provisions in state constitutions. Such a protection precludes a legislature from diminishing an employee's benefit as any contract with the state, although many legal challenges in recent years illustrate that the extent of this protection varies among states.

Voters in two states—Louisiana and Maine—approved constitutional amendments requiring that unfunded pension liabilities be eliminated within a specified timeframe. These amendments require designated levels of funding, effectively overriding the legislature's authority to determine the level of funding, and restricts the legislature from incurring additional pension liabilities through changes to benefits.[2]

A different application of a state constitution requiring legislative action with respect to how a pension plan is governed is Georgia, where the constitution requires that the Georgia General Assembly establish funding standards and limit legislative changes in order to ensure the actuarial soundness of pension plans:

> It shall be the duty of the General Assembly to enact legislation to define funding standards which will assure the actuarial soundness of any retirement or pension system supported wholly or partially from public funds and to control legislative procedures so that no bill or resolution creating or amending any such retirement or pension system shall be passed by the General Assembly without concurrent provisions for funding in accordance with the defined funding standards.[3]

The Texas State Constitution imposes pension funding requirements for the state Teacher Retirement System and Employees Retirement System that may conflict with one another, first by requiring that pension benefits be funded in a sound actuarial manner, then by limiting the employer contribution rate to 10 percent of employee pay, except in cases of emergency. The Texas constitution also prohibits legislative approval of a cost-of-living adjustment unless the plans' amortization period is 31 years or less.[4]

These examples of constitutional provisions serve as boundaries to the role of the legislature and other entities, such as the governor and retirement board, in effecting the primary elements of public pension plan governance: benefit levels and funding the plan.

The Chief Executive

For state retirement systems, the chief executive is the governor; for retirement systems sponsored by counties, cities, and other political subdivisions, the chief executive may be a county commissioner, mayor, city manager, etc. This discussion is targeted at state retirement systems and governors, although the same principles may apply for many local retirement systems.

As with other areas of public policy, within constitutional constraints (as described previously), governors may propose changes to retirement plan design and funding, i.e., benefit levels and how benefits are structured and financed. Chief

[1] Illinois Constitution, Article XIII, §5
[2] State Legal Provisions Addressing Pension Funding, NASRA, April 2017, https://www.nasra.org//Files/Topical%20Reports/Funding%20Policies/FundingLanguage.pdf
[3] Georgia Constitution, Article 3, §10
[4] Texas Constitution Article 16, §67

executives typically also have authority to approve or deny (veto) changes to these areas after legislative approval; and governors are authorized to appoint some, and in some cases, all, members of retirement system boards.

In addition, governors usually have some budget authority, including the power to propose budgets, which may include the governor's proposal for funding the pension plan. Depending on the state and its laws governing pension funding, the legislature may accept, modify, ignore, or reject a governor's pension funding proposal.

Governors also appoint some or many members of public retirement system boards; depending on the board, other board members may be elected by system participants, serve by virtue of their position, such as a state treasurer, or may be appointed by someone else, such as legislative leaders. Once confirmed for the position, public retirement system trustees ordinarily are allowed to serve the duration of their term without threat of removal, unless in cases of malfeasance. As a result, once confirmed, public retirement system board members are independent fiduciaries and the governor or whoever appointed or elected that member has limited governance authority through that board member.

The Fiduciary Role: Retirement System Boards

Public retirement system boards typically operate within a statutory framework that is created by the legislature (or city council, or equivalent), and a chief executive—governor, mayor, etc. Most public retirement systems are overseen by a board of trustees. Typically, the primary responsibility of a retirement system board is to ensure that the system is fulfilling its statutory duties in the sole interest of the members and beneficiaries of the system. These duties generally include paying benefits; calculating, with the assistance of an actuary, funding required to pay future benefits; ensuring systems are in place to control and process claims for benefits; maintaining records; and adopting rules governing various system administrative functions, such as managing funds and assets, the frequency and conduct of board meetings, etc.

Executing these responsibilities requires the board to hire (and sometimes fire) key retirement system staff; set staff compensation levels; hire and fire external consultants (for example, auditors, actuaries, asset managers, etc.), or, depending on the system, to approve rules authorizing retirement system staff to do so; and to set actuarial assumptions. Most public retirement system boards are responsible for managing assets; those boards must establish an investment policy, which provides rules and guidelines for how retirement fund assets are maintained. Some boards are responsible for selecting consultants needed to enable the system to fulfill its statutory duties; for some systems, selection of investment consultants is delegated to the staff.

One important area of governance within the area of responsibility of most public retirement system boards is the selection of actuarial methods and assumptions. These factors affect the cost and funding condition of a pension plan. Not every board, however, is authorized to select every actuarial method and assumption. In a few states, another entity, particularly the legislature, is responsible for setting the plan's investment return assumption, which is the most consequential actuarial assumption in terms of its effect on the plan's cost and funding level. For example, in Minnesota and South Carolina, the legislature sets the investment return assumption for public pension plans. In addition, as described above in the section on the role of the legislature in plan governance, state constitutions in some states prescribe actuarial methods.

In the context of public pension governance, it may be the areas over which the typical public retirement system board has no authority that are more pertinent than those areas over which these boards do exercise responsibility. With rare exceptions, public retirement system boards determine neither benefit levels provided to members nor do they approve the plan funding responsibility of the plan sponsor. These are the two most consequential factors affecting the cost and funding condition of a public pension plan.

Independent authority of many public retirement system boards is further constrained by the plan sponsor. For example, it is not unusual for public retirement system salaries to be limited to those allowed by the pay scale of the sponsoring state or city. Similarly, many retirement system operating budgets must be approved by the sponsoring government—the state, county, or city—and may not reflect the level of spending the retirement system board believes is necessary to accomplish the system's objectives. Limitations, such a requirement to follow state procurement guidelines, may also exist on retirement systems' ability to procure professional services.

Exceptions to limitations of board authority

Some exceptions exist to board authority to affect benefit levels and plan funding. For example, pension reform bills enacted by the Ohio Legislature in 2012 authorize four of the state's five statewide retirement system boards to make limited adjustments to their pension plan designs. The State Teachers' Retirement System of Ohio board is authorized to adjust (up or down) retirement eligibility requirements and the plan's cost-of-living adjustment provisions if the board's actuary determines that an adjustment "does not materially impair the fiscal integrity of the retirement system or is necessary to preserve the fiscal integrity of the system." The STRS board also is authorized to reduce employee contribution rates based on specified conditions.

Boards of other retirement systems in Ohio, excluding the Ohio Public Employees' Retirement System board, also are authorized to make specified adjustments to employee contribution rates, retirement eligibility requirements, or COLAs, according to specified conditions. This authority varies by system.

Similarly, legislation approved by the Arkansas Legislature in 2013 enables the board of the Arkansas Teachers' Retirement System to adjust contribution rates, within a one percentage point range, and also to adjust the plan's retirement factor and COLA provisions, within specified ranges.

State retirement system boards in Idaho and Iowa, and Montana, for the Teachers' Retirement System, also are authorized to make adjustments to employer and employee contribution rates, within specified circumstances.

The board of the Colorado Fire & Police Pension Association was granted authority via legislation approved in 2020 to adjust employer and employee contribution rates if certain conditions are met, which include approval of 65 percent of active members and 50 percent of employers in the plan.

Some reasons for granting a public retirement system board authority to adjust benefit levels or contribution rates include expertise and expediency. Board members may be more familiar with the actuarial and financial condition of the plan. As fiduciaries, charged with operating solely in the interest of plan participants, public pension trustees must focus on the relative merits of such changes to the plan as a whole. Further, compared to the legislative process, which can require months to effect a needed change, public pension boards often are in a position to act more quickly and be more responsive to shifting conditions affecting the pension plan.

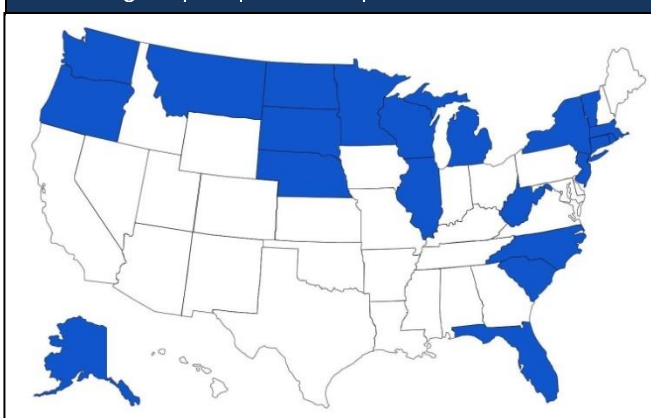
These are a few examples of public retirement system boards that are authorized to make adjustments to contribution rates and plan designs, but these cases are the exception: relatively few public retirement system boards have authority to adjust contribution rates or retirement plan designs.

Retirement systems with separate investment oversight

Approximately 20 states have public retirement system boards whose responsibilities do not include oversight of pension fund assets. In most of these cases, a separate entity and board oversee the management of the assets, allowing the retirement system board to focus on administration of the plan and its benefits. Figure A illustrates the states with a separate investment function for one or more statewide retirement funds.

Where separate investment entities exist, they fall into one of two broad categories: those with boards that oversee the management of the assets, and those with sole fiduciaries.

Figure A: States in which some or all public pension assets are managed by a separate entity or sole trustee



States with sole fiduciaries who are responsible for overseeing the investment of assets include Connecticut, whose state treasurer serves as sole trustee of pension fund assets for the retirement systems for state employees and municipal employees; and New York state and North Carolina, whose state comptroller and state treasurer, respectively, serve as sole trustee of the assets of the state retirement system. An example of a local government sole trustee is the New York City comptroller, who oversees assets held in trust by the city's five retirement systems.

In each of the three states with sole trustees noted above, an investment advisory committee is in place to advise the sole trustee on matters pertaining to investments. For example, they advise on the fund's investment policy, asset allocation, risk, transparency, fees, and selection of professional investment staff.

Retirement system staff

Top staff members of public retirement systems typically are hired or appointed by the board and serve at the board's discretion. As a result, top staff and consultants could be considered agents of the board, responsible for fulfilling the board's directives. The board-staff relationship is symbiotic: the board is responsible for giving top staff direction to carry out the board's instructions, and the staff is responsible for advising the board regarding information the board needs to make knowledgeable decisions.

As it pertains to governance, the role of the retirement system staff may be described as subject matter experts: staff must employ the knowledge and skill necessary to both carry out the board's directives and to advise the board so that it is able to make informed decisions and provide direction.

The areas of responsibility that retirement system staff is responsible for carrying out vary by retirement system, but several areas are common to most or all retirement systems. These would include collecting of contributions from employers and employees; paying benefits; enrolling new members; processing retiring members; conducting financial and performance audits; maintaining information technology systems needed to support system operations; and advising and counseling plan participants. As mentioned previously, some retirement systems are responsible for managing the system's assets, and in other cases, a separate entity is in place to perform that function.

Each of these areas of operation requires managers, and a retirement system requires top management and leadership. With the retirement system board, a system's top managers and leaders are considered to be fiduciaries, i.e., they are responsible for performing exclusively in the interest of the participants of the plan. This responsibility includes their role as subject matter experts in providing guidance to the board and the plan sponsor.

Conclusion

Public retirement systems are characterized by a diffused governance structure, with the legislature, chief executive, and retirement system board each exercising authority over specific governance functions, and system staff responsible for operations, management and advising plan sponsors and fiduciaries. Generally each of these entities also faces constraints or restrictions on certain activities. In most cases the legislature is predominantly responsible for delegating authority for governance functions to various entities, the most consequential of which the legislature generally retains for itself – setting the plan design and appropriating funding.

Links to Resources

- NASRA: Public Retirement System Governance research series

Authors

Keith Brainard, Research Director, keith@nasra.org
Alex Brown, Research Manager, alex@nasra.org

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