



MAJOR POLICY SHIFTS

2008

S.B. 328

For ERS new hires, the Georgia Legislature enacted a new hybrid plan that is a combination defined benefit and 401(k) plan: the Georgia State Employee Pensions and Savings Plan (GSEPS). GSEPS automatically enrolls new hires as of January 1, 2009 in both a defined benefit (1% benefit calculation multiplier and 1.25% contribution rate) and a defined contribution (1% default contribution rate) plan. New hires may opt out of the defined contribution component within 90 days of their hire.

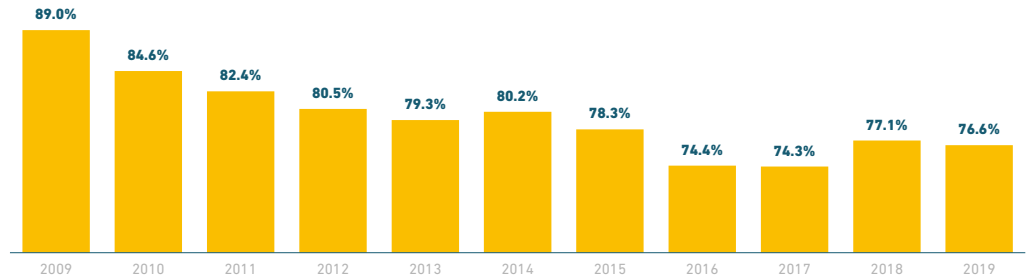
2014

H.B. 764

The Georgia Legislature increased the defined contribution plan employee contribution rate for GSEPS new hires from 1% to 5%.

FUNDED RATIO

The graphic below covers the following retirement systems: the Employees' Retirement System of Georgia (ERS) and the Teachers' Retirement System of Georgia (TRS).



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

Legislative efforts confined to new hires are excluded from analysis because they rarely face significant legal challenges.

Table with 4 columns: Policy Shift, Relevant Policy Shifts, Legal Challenges, and Legal Prospects. Rows include: Increase Employee Contributions, Decrease or Eliminate Cost-of-Living Adjustments, Change Vesting Period, and Change Benefit Calculation.

\* FAVORABLE indicates that the issue survived litigation in the past and/or there is a permissive legal environment for the change.
\* UNFAVORABLE indicates that the issue did not survive litigation in the past and/or there is a non-permissive legal environment the change.
\* UNDEVELOPED indicates that the issue has not been litigated and/or the current legal environment is unclear as to what the outcome would be.

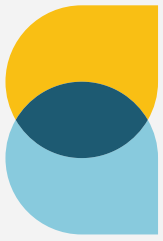
DISCLAIMER: Equable is not necessarily recommending any of the policy concepts listed above. Some of them may be good ideas, bad ideas, or involve trade-offs between various stakeholders. This document only provides information about the likely legal outcomes of pursuing different policy concepts by stakeholders. The document does not constitute legal advice or representation, and the authors are not liable for any actions taken relying on this information.



GEORGIA

# LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020



## GEORGIA STATE LAW CONTEXT

### State Provisions

**ARTICLE I, SECTION 1, PARAGRAPH 10 OF THE GEORGIA CONSTITUTION:** "Bill of attainder; ex post facto laws; and retroactive laws: No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunities shall be passed."

### Key Opinions

#### **WITHERS V. REGISTER, 269 S.E.2D 431 (GA. 1980)**

The claimants were active employees who sued the City of Atlanta for unconstitutional impairment of contract pursuant to the state constitution over a 1975 amendatory ordinance that reduced benefit payouts. This 1975 amendment corrected a typographical error in the early retirement payout formula contained in a 1970 ordinance that would have led to excess benefits of 200- 300%. *Withers v. Register*, 269 S.E.2d 431 at 431. The court declined to find impairment of contract because "public employees had no constitutionally vested right to early retirement benefits calculated using mathematical formulas that omitted, as a result of typographical error, one salient factor, thereby producing benefits for early retirees that would be some 200 to 300 percent in excess of benefits those employees would have received had they remained in service until age 65." *Id.* at 433.

The court recognized that a contractual relationship existed in the following way: "a statute or ordinance establishing a retirement plan for government employees becomes a part of an employee's contract of employment if the employee contributes at any time any amount toward the benefits he is to receive, and if the employee performs services while the law is in effect . . . the [impairment clause of the Georgia Constitution] precludes the application of an amendatory statute or ordinance . . . if the effect of the amendment is to reduce rather than increase the benefits payable." *Id.* However, the court reasoned that the 1975 amendment, in lieu of the error, spoke to the true intentions of the parties and therefore the impairment clause did not prevent the reformation of the contract. *Id.*

#### **BORDERS V. CITY OF ATLANTA, 779 S.E.2D 279 (GA. 2015)**

The claimants were active employees who sued the city of Atlanta for unconstitutional impairment of contract over an ordinance that increased their contribution rate (the change did not reduce the employees' retirement benefit payout), *Borders v. City of Atlanta*, 779 S.E.2d at 280. The court held that "the challenged ordinance did not alter pension benefits, but rather modified their pension obligations, and in no manner divested them of their earned pension benefits so as to implicate constitutional concerns." *Id.* at 287.

The court reasoned that, "the present case is not one in which there is an express legislative statement regarding the acquisition of vested pension rights, or the lack thereof; however, it is also not a situation in which pension benefits, which have already been conferred upon pensioners, are being reduced, suspended, or terminated. . . . [T]he Plans as set forth in the Related Laws expressly provide for modification by explicit notice in the Plans' Enrollment Provisions [which are a part of the plaintiff's contract]." *Id.* at 284.

### FOR MORE INFORMATION

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