



MAJOR POLICY SHIFTS

2004

S.B. 779

The Hawaii Legislature created a new plan with lower employee contribution rates and a higher retirement age (referred to as the "Hybrid Plan") for ERS employees hired after July 1, 2006 and gave existing employees the option to elect the new plan or remain in their existing plans. The new plan had a contribution rate of 6% (compared to 0% for the previous noncontributory plan and 7.8% for the previous contributory plan), and a retirement age of 60 or 65 (depending on the credited years of service).

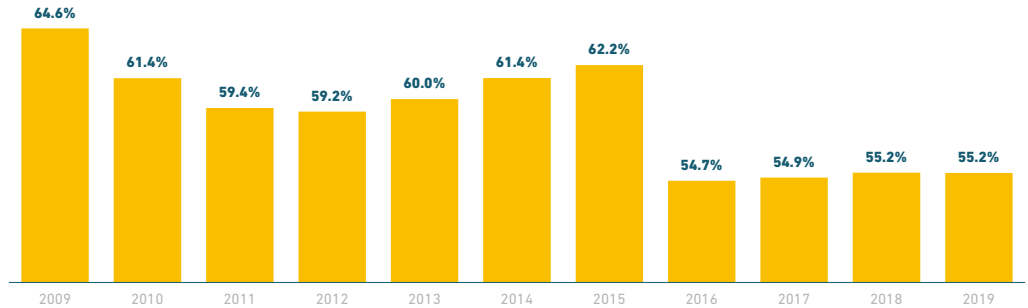
2011

H.B. 1038

For ERS new hires, the Hawaii Legislature (1) increased employee contributions to 8%; (2) decreased cost-of-living adjustments (COLAs) from 2% to 1.5%; (3) increased the vesting period from 5 to 10 years; (4) increased the number of years used in the calculation of the final average salary in the benefit formula from 3 to 5 years; and (5) increased retirement age (dependent on years of service).

FUNDED RATIO

The graphic below covers the Employees' Retirement System of Hawaii (ERS).



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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

What are some policy options?	Were there relevant policy shifts for active employees or retirees?	Have there been legal challenges?	What are the legal prospects for future changes?*
INCREASE EMPLOYEE CONTRIBUTIONS	NO	NO	<ul style="list-style-type: none"> • FAVORABLE as to active employees if the changes don't reduce benefits attributable to past services • N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	NO	NO	<ul style="list-style-type: none"> • FAVORABLE as to active employees if the changes don't reduce benefits attributable to past services • UNFAVORABLE as to retirees
CHANGE VESTING PERIOD	NO	NO	<ul style="list-style-type: none"> • UNDEVELOPED as to active, unvested employees • N/A as to active, vested employees and retirees
CHANGE BENEFIT CALCULATION	NO	NO	<ul style="list-style-type: none"> • FAVORABLE as to active employees if the changes don't reduce benefits attributable to past services • UNFAVORABLE as to retirees

* **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.



HAWAII

LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020



HAWAII STATE LAW CONTEXT

State Provisions

ARTICLE XVI, SECTION 2 OF THE HAWAII CONSTITUTION: "Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired"

Key Opinions

KAHO'OHANOHANO V. STATE, 162 P.3D 696 (HAW. 2007)

Members of ERS and the State of Hawaii Organization of Police Officers brought a class-action suit against the state, claiming that a statutory amendment that diverted \$346.9 million from a pension accumulation fund designed to pay down unfunded liabilities towards an offset for state and county employer contributions was unconstitutional under Article XVI, Section 2 of the Hawaii Constitution. The Supreme Court interpreted Article XVI, Section 2 of the Hawaii Constitution as protecting accrued, but not future benefits, quoting the committee that drafted the constitutional amendment:

It should be noted that the above provision would not limit the legislature in effecting a reduction in the benefits of a retirement system providing the reduction did not apply to benefits already accrued. The legislature could reduce benefits as to (1) new entrants into a retirement system, or (2) as to persons already in the system in[]so[]far as their future services were concerned. It could not, however, reduce the benefits attributable to past services. Further, the section would not limit the legislature in making general changes [to the] system, applicable to past members, so long as the changes did not necessarily reduce the benefits attributable to past services. *Kaho'ohanohano v. State*, 162 P.3d at 738 (citing Committee of the Whole Report No. 18, Journal of the Const. Conv. of 1950, Vol. 1, at 330).

The Supreme Court interpreted "accrued benefits" to include the sources of funds that are used to pay out such benefits, and held that the statutory amendment at issue was unconstitutional. *Id.* at 732.

Although courts in Hawaii have not yet directly addressed whether the state constitution allows many of the policy changes affecting active employees that are listed on the reverse side (e.g., raising employee contributions, decreasing future cost-of-living adjustments, and changing the benefit calculation), the legal environment appears to be favorable to such changes as long as they do not reduce the benefits attributable to past services.

FOR MORE INFORMATION

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