

MAJOR POLICY SHIFTS

2009

S.B. 296

The Louisiana Legislature raised the qualifying age for LASERS and TRS cost-of-living adjustments (COLAs) for retired employees from 55 to 60 years old.

2010

H.B. 1337

The Louisiana Legislature restructured and consolidated plans administered by LASERS, TRS, SRS, and SPRS.

2012

H.B. 61

The Louisiana Legislature established a cash balance retirement plan for employees of LASERS, TRS, and SRS hired on or after July 1, 2013. The Louisiana Supreme Court struck down this legislation on procedural grounds (see Retired State Emps. Ass'n v. State on the reverse side).

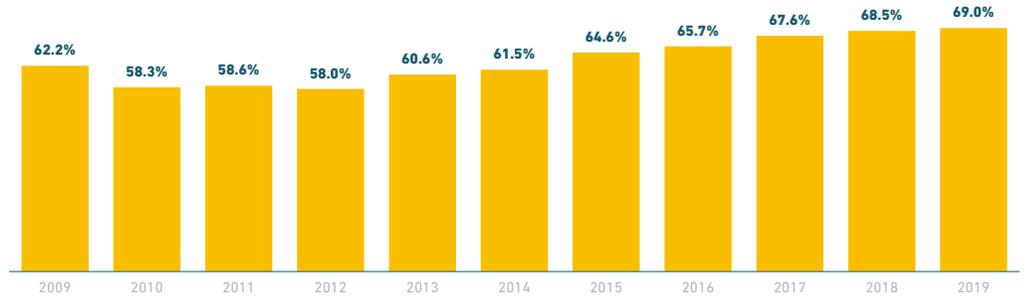
2014

H.B. 1225, H.B. 38

The Louisiana Legislature changed LASERS, MPERS, SRS, and TRS COLA requirements for active employees by limiting COLAs to (1) every other year until the system is 85% funded; (2) the first \$60,000 of annual retirement benefits; and (3) between 1.5% to 3.0% (H.B. 1225). It also increased the LASERS, SRS, and TRS retirement age for new hires from 60 to 62 (H.B. 38).

FUNDED RATIO

The graphic below covers the following retirement systems: Louisiana State Employees' Retirement System (LASERS), Louisiana Municipal Police Retirement System (MPERS), Louisiana State Parochial Employees' Retirement System (SPERS), Louisiana State Police Retirement System (SPRS), Louisiana School Employees' Retirement System (SRS), and Louisiana Teachers' Retirement System (TRS).

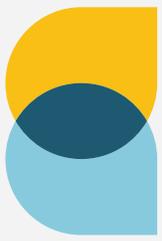


LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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 but subject to the terms of Article X, Section 29(E)(2) (see reverse side) • N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	YES S.B. 296 (2009) (changed eligibility requirements for COLAs) H.B. 1225 (2014)	NO	<ul style="list-style-type: none"> • FAVORABLE as to active employees • FAVORABLE as to retirees
CHANGE VESTING PERIOD	NO	NO	<ul style="list-style-type: none"> • FAVORABLE 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 • 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 for 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.



LOUISIANA STATE LAW CONTEXT

State Provisions

ARTICLE III, SECTION 23 OF THE LOUISIANA CONSTITUTION: "No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted."

ARTICLE X, SECTION 29(A) OF THE LOUISIANA CONSTITUTION: "The legislature shall provide for retirement of teachers and other employees of the public educational system through establishment of one or more retirement systems. Membership in such a retirement system shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member or retiree or to his lawful beneficiary upon his death."

ARTICLE X, SECTION 29(B) OF THE LOUISIANA CONSTITUTION: "The legislature shall enact laws providing for retirement of officials and employees of the state, its agencies, and its political subdivisions . . . Membership in any retirement system of the state or of a political subdivision thereof shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member of a state retirement system or retiree or to his lawful beneficiary upon his death."

ARTICLE X, SECTION 29(E)(1) OF THE LOUISIANA CONSTITUTION: "The actuarial soundness of state and statewide retirement systems shall be attained and maintained . . ."

ARTICLE X, SECTION 29(E)(2) OF THE LOUISIANA CONSTITUTION: "For public retirement systems whose benefits are guaranteed by this constitution as is specified in Paragraphs (A) and (B) of this Section: (a) The legislature shall, by law, determine and set all required contributions to be made by members. However, until the unfunded accrued liability . . . is eliminated, this determination and setting shall not cause the ratio of employee contributions to total contributions, on the basis of each particular plan or classification within each particular retirement system, to exceed such ratio as it existed on January 1, 1987. Upon elimination of the unfunded accrued liability . . . this determination and setting shall not cause a member's contribution to exceed an amount contributed on his behalf as an employer contribution."

ARTICLE X, SECTION 29(F) OF THE LOUISIANA CONSTITUTION: "No such [retirement system] benefit provisions having an actuarial cost shall be enacted unless approved by two-thirds of the elected members of each house of the legislature."

Key Opinions

BOWEN V. BOARD OF TRUSTEES OF POLICE PENSION FUND, 76 SO.2D 430 (LA. APP. ORL. 1955)

A member of the police force who was denied the ability to retire with benefits after 16 years of service brought suit alleging that legislation passed a few years after he joined the force increasing the required years of service for retirement with benefits from sixteen to twenty violated his federal and state constitutional non-impairment of contract, due process, and equal protection rights. Focusing on the impairment of contract claim, the court ruled that contractual rights to retirement benefits become "vested" only at the time of retirement eligibility and until then are "inchoate and may be modified by subsequent legislation." *Bowen v. Board of Trustees of Police Pension Fund*, 76 So.2d at 434 (citations omitted). The court based this conclusion on how courts in other states had resolved similar claims, quoting an Iowa Supreme Court decision upholding the legislature's authority to amend retirement system rules: "[c]hanges in details, such as length of service required, contributions needed, and age requirements, to keep the fund on sound actuarial practices, are essential. Flexibility in component parts is a paramount necessity to guard against changed conditions and to permit keeping abreast with actuarial science." *Id.* at 435 (quoting *Talbot v. Independent Sch. Dist. of Des Moines*, 299 N.W. 556, 567 (Iowa 1941)). Applying this rationale, the court concluded that the plaintiff had no contractual right to retirement benefits after sixteen years of service.

SMITH V. BD. OF TRS. OF LOUISIANA STATE EMP'S. RETIREMENT SYS., 851 SO.2D 1100 (LA. 2003)

LASERS members who had retired and been re-hired pursuant to legislation (Act 455) allowing members to retire, receive their full retirement package after 12 months, subsequently be re-hired, and earn a supplemental retirement benefit after 36 months, challenged the application to them of new legislation (Act 165) repealing Act 455 and restoring the lesser re-employment benefits that had previously been available to retirees. Plaintiffs alleged that Act 165 violated their non-impairment of contract rights under the U.S. and Louisiana Constitutions. The Louisiana Supreme Court found that Act 165 was adopted before the pre-conditions for receiving benefits under Act 455 had been satisfied, i.e., before the passage of twelve months after plaintiffs retired (as required to become eligible to receive full retirement package) plus thirty-six more months (as required to become eligible to receive the supplemental retirement benefit). As such, no rights under the previous statute had vested as of the date Act 165 became law. *Smith v. Board of Trustees of Louisiana State Emps.' Ref. Sys.*, 851 So.2d at 1106. To vest, the court ruled, a right must be "absolute, complete and unconditional, [and] independent of a contingency," so that "a mere expectancy of future benefit . . . does not constitute a vested right." *Id.* (citation omitted). The court clarified that in Louisiana, pension rights vest upon retirement eligibility, and prior to vesting, "the details of a contributory retirement system, such as rate of contribution, benefits, length of service, and age requirements could be modified to the prejudice of the employee." *Id.* at 1108. On these bases, the court upheld Act 165's application to the plaintiffs.

RETIRED STATE EMP'S. ASS'N V. STATE, 119 SO.3D 568 (LA. 2013)

The Retired State Employees Association challenged the constitutionality of the 2012 creation of a cash balance plan with elements of a defined contribution plan under Article X, Section 29(F) of the Louisiana Constitution, which states that "[n]o such benefit provisions having an actuarial cost shall be enacted unless approved by two-thirds of the elected members of each house of the legislature." The plan was passed by a majority vote without the support of two-thirds of the House. A legislative auditor had determined that there would be an additional actuarial cost imposed by the bill, while an outside auditor had determined that there would be additional savings. The Supreme Court found that only the legislative auditor had the authority to prepare an actuarial note for the legislator, and that therefore Article X, Section 29(F) applied: for this bill to pass, two-thirds of each house of the legislature must approve it. Thus, the creation of this plan was struck down. Note that the plan was struck down because of a procedural issue and that the court did not rule on the constitutionality of the plan.

FOR MORE INFORMATION

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