



MAJOR POLICY SHIFTS

2007

H.B. 765

The Montana Legislature reduced the Guaranteed Annual Benefit Adjustment (GABA) for new PERS members from 3% to 1.5%.

2011

H.B. 122

For PERS new hires, the Montana Legislature (1) increased the employee contribution rate from 6.9% to 7.9%; (2) increased the retirement age from 60 to 65; and (3) modified the formula used to calculate retirement benefits.

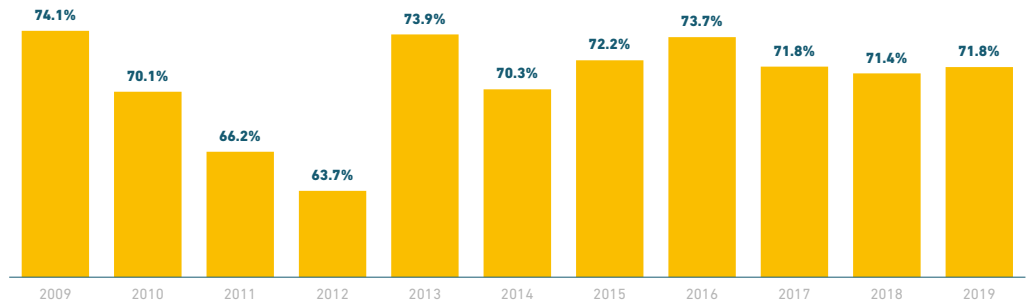
2013

H.B. 454, H.B. 377

The Montana Legislature enacted: (1) H.B. 454, permanently revising the GABA for PERS retirees and current employees by increasing an existing additional employer contribution from .27% to 1.27% with subsequent annual increases of .1% through 2024, and increasing employee contributions from 6.9% to 7.9%; and (2) H.B. 377, which modified TRS by (a) increasing employer contribution rates from 7.47% to 8.47%; (b) increasing employee contributions from 7.15% for Tier 1 members and 8.15% for Tier 2 members to 8.15% and 9.15%, respectively; and (c) requiring a reduction in the existing GABA (1.5%) by up to 1% if the system's funded ratio falls below 90%.

FUNDED RATIO

The graphic below covers the following retirement systems: Montana Public Employees Retirement Board (PERS) and Montana Teacher Retirement System (TRS).

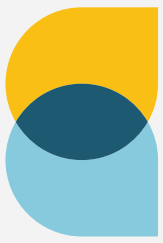


LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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	YES H.B. 377 (2013)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees if there is no prior legislative intent to create a contractual right N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	YES H.B. 454 (2013)	YES Did not survive legal challenge in <i>Byrne v. State</i> (2015)	<ul style="list-style-type: none"> UNFAVORABLE as to active employees if there is prior legislative intent to create a contractual right 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	YES	YES Survived legal challenge in <i>Baumgardner v. Public Employees Ret. Bd.</i> (2007)	<ul style="list-style-type: none"> FAVORABLE as to active employees FAVORABLE 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.



MONTANA STATE LAW CONTEXT

State Provisions

ARTICLE II, SECTION 31 OF THE MONTANA CONSTITUTION: “No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.”

ARTICLE VIII, SECTION 15(1) OF THE MONTANA CONSTITUTION: “Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.”

MONTANA CODE ANNOTATED SECTION 19-2-409: “For a defined benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.”

Key Opinions

WAGE APPEAL OF MONTANA STATE HIGHWAY PATROL OFFICERS V. BOARD OF PERSONNEL APPEALS, 676 P.2D 194 (MONT. 1984)

Public employees claimed that legislation eliminating an annual 1% salary increase included in prior legislation violated the state’s constitutional contract clause. The court ruled that “an employee’s right to compensation vests or accrues only after he or she has performed the required services for that pay period” and thus that the change did not affect a vested contractual right. *Wage Appeal of Montana State Highway Patrol Officers v. Board of Personnel Appeals*, 676 P.2d at 199. More generally, the court limited the scope of contract protections arising from legislative acts, stating that “it is presumed that [a] statute does not create contractual rights, but is intended merely to declare a policy to be pursued until the Legislature declares otherwise.” *Id.* The court reasoned that “[i]f contractual rights are to be created by statute, the language of the statute and the circumstances must manifest a legislative intent to create private rights of a contractual nature enforceable against the State.” *Id.*

Decisions relying on *Wage Appeal*’s logic to permit pension modifications absent a clearly manifested statutory intent to establish private contractual rights in the preexisting benefits include:

1. *Sheehy v. Public Employees Ret. Div’n*, 864 P.2d 762 (Mont. 1993) (holding that repeal of a statute exempting public pension benefits from state income taxes and treating such benefits as taxable income was constitutional, because the prior statute did not contain a “manifestation of legislative intent to create private and enforceable contractual rights” in the exemption).

2. *Baumgardner v. Public Employees Ret. Bd.*, Mont. Dist. LEXIS 133 at 24 (1st Jud. Dist. 2007) (rejecting retiree’s challenge to legislation changing PERS members’ benefit calculation as unconstitutional under the federal and state contract clauses because, although “in Montana, a contractual right to pension benefits accrues upon acceptance of employment,” such protections do not extend to particular factors for calculating pension benefits when the statute delineating those factors did not manifest an intent to create private contractual rights).

Byrne v. State, TRS ADV-2013-738 (1ST JUD. DIST. 2015)

In *Byrne v. State*, TRS ADV-2013-738 at (1st Jud. Dist. 2015), however, the district court agreed with retired and active TRS members that legislation reducing the TRS GABA from 1.5% to 0.5% percent was an unconstitutional impairment of contract, because the controlling statute made “benefits and refunds . . . payable pursuant to a contract as contained in statute,” and the GABA was among the protected “benefits.” *Byrne v. State*, TRS ADV-2013-738 at 9 (emphasis added) (quoting § 19-20-501(6), MCA). The court also noted that because “TRS members’ contributions increased at the time the GABA was first enacted,” the GABA was something “for which TRS members paid consideration.” *Id.* at 12. Having found that lowering the GABA materially altered a financial term of a statutorily created employee-employer agreement, the court found an unconstitutional impairment of contract and enjoined the state from enforcing the reduction in benefits. *Id.* at 18.

FOR MORE INFORMATION

Anthony Randazzo
Executive Director
anthony@equable.org

Jon Moody, PhD
Vice President, Research
jon@equable.org



This analysis was developed in partnership with Columbia Law School’s Center for Public Research and Leadership.