



MAJOR POLICY SHIFTS

2008

H.B. 1645

For active employees and new hires the New Hampshire Legislature (1) modified final average salary calculations by changing the definition of "earned compensation" to exclude "other compensation" and (2) limited cost-of-living adjustments (COLAs) to 1.5% on the first \$30,000 of retirees' annual pensions.

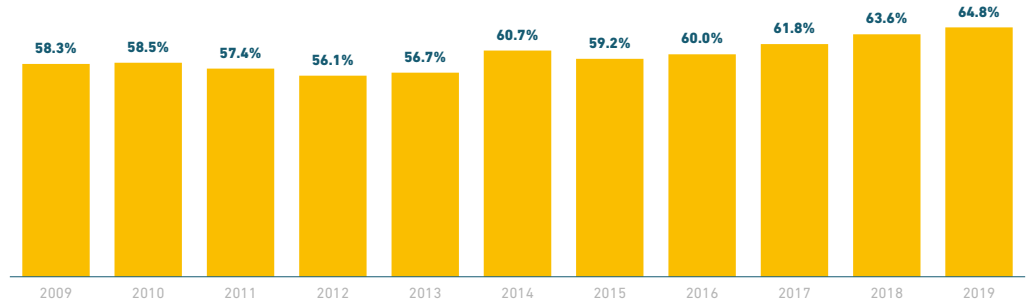
2011

H.B. 2

For active employees, the New Hampshire Legislature increased the employee contribution rate from 5% to 7% for general employees and teachers, from 9.3% to 11.55% for police officers, and from 9.8% to 11.8% for firefighters. For unvested active employees and new hires, it (1) established a transitional schedule of increased retirement age and service requirements (changes varying depending on the type of employee); and (2) increased the benefit calculation multipliers (changes varying depending on the type of employee).

FUNDED RATIO

The graphic below covers the New Hampshire Retirement System (NHRS).

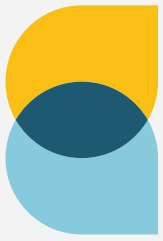


LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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. 2 (2011)	YES Survived legal challenge in <i>Professional Fire Fighters v. State</i> (2014)	<ul style="list-style-type: none"> • FAVORABLE as to active employees • N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	YES H.B. 1645 (2008)	YES Survived legal challenge in <i>American Fed. of Teachers v. State</i> (2015)	<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"> • UNDEVELOPED as to active, unvested employees • N/A as to active, vested employees and retirees
CHANGE BENEFIT CALCULATION	YES H.B. 1645 (2008) H.B. 2 (2011)	YES (2008 legislation only) Survived legal challenge in <i>American Fed. of Teachers v. State</i> (2015)	<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 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.



NEW HAMPSHIRE STATE LAW CONTEXT

State Provisions

PART I, ARTICLE 23 OF THE NEW HAMPSHIRE CONSTITUTION: “Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.”

In *Opinion of the Justices (Furlough)*, 609 A.2d 1204 (N.H. 1992), the New Hampshire Supreme Court interpreted Part I, Article 23 of the New Hampshire Constitution as providing protections equivalent to those in the federal Contracts Clause. “We . . . understand article I, section 10 [of the Federal Constitution] and part I, article 23 [of the State Constitution] to offer equivalent protections where a law impairs a contract, or where a law abrogates an earlier statute that is itself a contract[.]” *Id.* at 1207.

Key Opinions

STATE EMPLOYEES’ ASS’N V. BELKNAP COUNTY, 448 A.2D 969 (N.H. 1982)

Employees of Belknap County who were denied credit for their past service upon enrollment in NHRS petitioned to have this credit recognized and for Belknap County to make appropriate employer contributions to NHRS for past service. The Supreme Court found that the statute enabling the enrollment of local municipal employees in NHRS “clearly entitles certain [including the plaintiff] governmental employees to receive retirement and other related benefits [for their prior government service] These benefits constitute a substantial part of an employee’s compensation and become vested upon the commencement of permanent employee status.” *State Employees’ Ass’n, Inc. v. Belknap County*, 448 A.2d at 972. The court remanded this case to the lower court to address issues unrelated to the credit for past service and employer contributions.

PROFESSIONAL FIRE FIGHTERS OF NEW HAMPSHIRE V. STATE, 107 A.3D 1229 (N.H. 2014)

The Professional Fire Fighters of New Hampshire, the New Hampshire Police Association, and other organizations claimed that 2011 legislation increasing future employee contribution rates impaired their contract rights in violation of Part I, Article 23 of the New Hampshire Constitution. In interpreting Part I, Article 23, the court adopted “[t]he unmistakability doctrine [which] mandates that we determine whether the challenged legislative enactment evinces the clear intent of the state to be bound to particular contractual obligations.” *Professional Fire Fighters v. State*, 107 A.3d at 1234. The court upheld the modification, concluding that the statute originally setting employee contribution rates manifested no “clear intent” to “establish NHRS member contribution rates as a contractual right that cannot be modified.” *Id.* at 1235. In reaching this conclusion, the court found persuasive court decisions from Florida and Michigan allowing their legislatures to change pension plans prospectively without running afoul of constitutional protections against impairment of contract. See *Scott v. Williams*, 107 So.3d 379 (Fla. 2013); *In re Enrolled Senate Bill 1269*, 209 N.W.2d 200 (Mich. 1973).

AMERICAN FEDERATION OF TEACHERS V. STATE, 111 A.3D 63 (N.H. 2015)

The American Federation of Teachers–New Hampshire, the National Education Association–New Hampshire, and other organizations challenged the constitutionality of 2008 legislation that (1) prospectively excluded “other compensation” earned by active employees after the effective date of the new law from the statutory definition of “earnable compensation” used to calculate final average salary for pension benefit purposes, and (2) limited future COLAs. Rejecting the lower court inference of contractual rights from statutory language stating that employees “vested” after ten years, the Supreme Court ruled that “vesting” and “contractual” are not synonymous “when used in the context of a pension plan.” *American Federation of Teachers v. State*, 111 A.3d at 70. Applying *Professional Fire Fighters’* unmistakability doctrine, the court found no clear legislative intent to create a binding contractual right to either a fixed definition of “earnable compensation” or a fixed COLA. *Id.* at 73. The prospective nature of the new “earnable compensation” definition—applying only to income earned after the effective date of the statute—strengthened the court’s conclusion, because legislatures are unlikely to bind themselves against making prospective changes. *Id.*

FOR MORE INFORMATION

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