

MAJOR POLICY SHIFTS

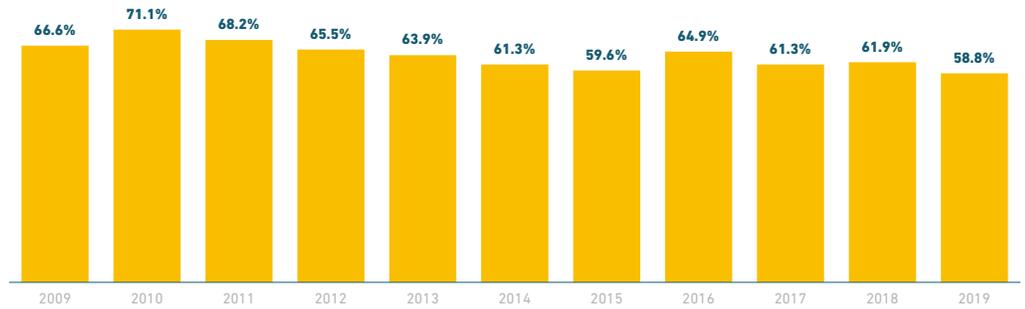
2011

P.L. 2011 C. 78

The New Jersey Legislature made the following changes for PERS and TPAF: (1) it increased the contribution rate for active employees from 5.5% to 6.5% and enacted phased increases that would lead to a 7.5% contribution rate; (2) it raised the retirement age for new hires from 62 to 65; and (3) it froze COLAs for retirees until the systems reached a "target funded ratio" of at least 75% (when comparing assets to accrued liabilities). COLA increases made to retiree benefits prior to the law's effective date were not affected by this legislation.

FUNDED RATIO

The graphic below covers the following retirement systems: the Public Employees' Retirement System (PERS), the New Jersey Police and Firemen's Retirement System (PFRS), the Teachers' Pension & Annuity Fund (TPAF) and the State Police Retirement System of New Jersey (SPRS).

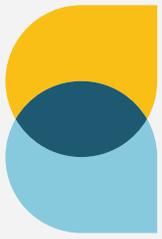


LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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 P.L. 2011 c. 78 (2011)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	YES P.L. 2011 c. 78 (2011)	YES Survived legal challenge in <i>Berg v. Christie</i> (2016)	<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	NO	NO	<ul style="list-style-type: none"> UNDEVELOPED 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 JERSEY STATE LAW CONTEXT

State Provisions

ARTICLE IV, SECTION 7 OF THE NEW JERSEY CONSTITUTION: “The Legislature shall not pass any . . . law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.”

ARTICLE VIII, SECTION 2 OF THE NEW JERSEY CONSTITUTION: “The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein.”

N.J.S.A. 43:3C–9.5 (A): “[A] non-forfeitable right to receive benefits means that the benefits program, for any employee for whom the right has attached, cannot be reduced.”

N.J.S.A. 43:3C–9.5 (B): “Vested members of the [state’s public pension systems] shall have a non-forfeitable right to receive benefits as provided under the laws governing the retirement system or fund upon the attainment of five years of service credit in the retirement system or fund or on the effective date of this act, whichever is later.”

N.J.S.A. 43:3C–9.5 (C)(2): Public Employees “shall have a contractual right to the annual required contribution amount being made by the member’s employer or by any other public entity. The contractual right to the annual required contribution means that the employer or other public entity shall make the annual required contribution on a timely basis to help ensure that the retirement system is securely funded and that the retirement benefits to which the members are entitled by statute and in consideration for their public service and in compensation for their work will be paid upon retirement.”

Key Opinions

SPINA V. CONSOLIDATED POLICE & FIREMEN’S PENSION FUND COMM’N., 197 A.2D 169 (N.J. 1964)

In *Spina*, active members of PFRS alleged that a statutory increase in the retirement age and lengthening of the vesting period violated their contractual and due process rights under the U.S. and New Jersey Constitutions. Focusing its analysis on the presence or absence of contractual rights to pension benefits, the New Jersey Supreme Court ruled that it would not find a legislative “commitment” to create such contractual rights unless that intention was “so plainly expressed” in the relevant statute “that one cannot doubt the individual legislator understood and intended it.” *Spina v. Consolidated Police & Firemen’s Pension Fund Comm’n.*, 197 A.2d at 176. Then in *New Jersey Educ. Ass’n*, relying on *Spina*, a lower court ruled that, although TPAF members had contractual, and thus state constitutional, rights to pension benefits, those rights did not include a requirement that the Legislature appropriate funds for pension benefits in each annual state budget. *New Jersey Educ. Ass’n v. State*, 989 A.2d at 297. In 2011, in response to *Spina* and *New Jersey Educ. Ass’n*, the Legislature amended N.J.S.A. 43:3C–9.5(C)(2), providing that public employees “shall have a contractual right to the annual required contribution amount being made by the member’s employer or by any other public entity” and defining “the contractual right to the annual required contribution” to “mean[] that the employer or other public entity shall make the annual required contribution on a timely basis.”

BURGOS V. STATE, 118 A.3D 270 (N.J. 2015)

Employees and unions sued the state alleging impairment of contractual rights in violation of the U.S. and New Jersey Constitutions based on the state’s failure in 2014 and 2015 to comply with the recently adopted requirement in N.J.S.A. 43:3C–9.5(C)(2) (quoted above) that the state include the amount owed to the pension system in the state’s annual budget. The court held that N.J.S.A. § 43:3C–9.5(C) as recently amended did not create a legally enforceable contract due to the fact that the legislature did not possess the authority to bind the state to such payments. *Burgos v. State*, 118 A.3d at 221. The court based its ruling on the Debt Limitation Clause of the state constitution (Article VIII, Section 2), which provides that the legislature shall not create fiscal obligations for the state that exceed a fiscal year and comprise over one percent of the state’s total budget. *Id.* at 284.

BERG V. CHRISTIE, 137 A.3D 1143 (N.J. 2016)

Retired PERS members alleged that a state statutory freeze on preexisting COLAs unconstitutionally impaired their contractual rights under the U.S. and New Jersey Constitutions. The court held that, when it initially adopted the COLAs, “the Legislature retained its inherent sovereign right to act in its best judgment of the public interest and to pass legislation suspending further COLAs.” *Berg v. Christie*, 137 A.3d at 1147–48. The court reasoned that “[t]o construe a statute as creating a contractual right, the Legislature’s intent to limit the subsequent exercise of legislative power must be clearly and unequivocally expressed concerning both the creation of a contract as well as the terms of the contractual obligation.” *Id.* at 1147. In this instance, the court found that “proof of unequivocal intent to create a non-forfeitable right to yet-unreceived COLAs is lacking. The Legislature retained its inherent sovereign right to act in its best judgment of the public interest and to pass legislation suspending further COLAs.” *Id.*

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.