



MAJOR POLICY SHIFTS

2013

S.B. 27

The New Mexico Legislature lowered the benefit calculation multiplier, increased the vesting period, and minimum retirement age for PERA new hires. Additionally, it reduced cost-of-living adjustments (COLAs) from 3% to 2% for current PERA retirees.

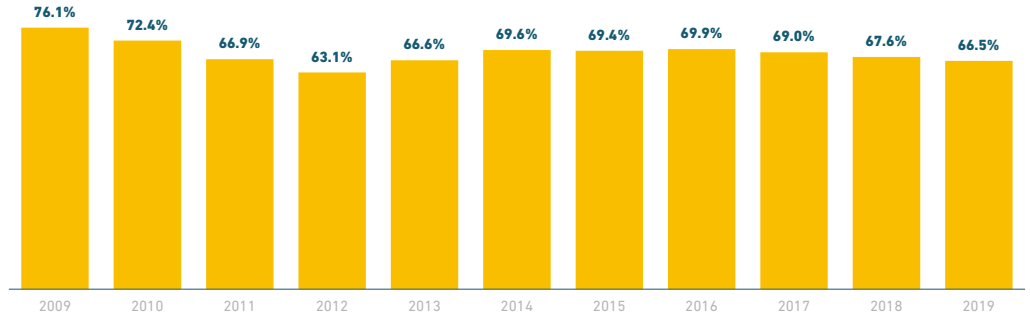
2020

S.B. 72

The New Mexico Legislature enacted policy changes to PERA which included increasing employer and employee contributions by 2% over four years, transitioned from COLAs to a new profit-sharing model aligned with PERA's investment performance, and a state commitment of \$55 million to help improve PERA's funding ratio.

FUNDED RATIO

The graphic below covers the following retirement systems: New Mexico Public Employee Retirement Association (PERA) and Educational Retirement Board of New Mexico (ERB).



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

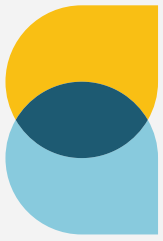
Legislative efforts confined to new hires are excluded from analysis because they rarely face significant legal challenges.

Table with 4 columns: Policy Option, Relevant Policy Shifts, Legal Challenges, and Legal Prospects. Rows include: Increase Employee Contributions, Decrease or Eliminate Cost-of-Living Adjustments, Change Vesting Period, and Change Benefit Calculation.

* 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.

DISCLAIMER: Equable is not necessarily recommending any of the policy concepts listed above. Some of them may be good ideas, bad ideas, or involve trade-offs between various stakeholders. This document only provides information about the likely legal outcomes of pursuing different policy concepts by stakeholders. The document does not constitute legal advice or representation, and the authors are not liable for any actions taken relying on this information.





NEW MEXICO STATE LAW CONTEXT

State Provisions

ARTICLE XX, SECTION 22 OF THE NEW MEXICO CONSTITUTION: “upon meeting the minimum service requirements of an applicable retirement plan . . . a member of a plan shall acquire a vested property right with due process protections under the applicable provisions of the New Mexico and United States Constitutions.” The minimum service requirements are determined by the statute that governs a given plan.

Key Opinions

PIERCE V. STATE, 910 P.2D 288 (N.M. 1996)

A class of retirees, among them PERA and ERB members, appealed a lower court’s decision upholding action by the legislature to repeal long-standing tax exemptions for state retirement benefits, claiming breach and impairment of contract. The court held that a contractual relationship did not exist between the parties, but that the retirees were entitled to property rights upon meeting minimum service requirements for their retirement plans. That said, the court reasoned that vested property rights “do not include the right to receive pension benefits exempt from tax” because they are not a core benefit but rather are an additional form of compensation. *Pierce v. State*, 910 P.2d 288 at 57. See also *Martinez v. Pub. Emps.’ Ret. Ass’n*, 286 P.3d 613, 623 (N.M. Ct. App. 2012) (holding that, in agreement with *Pierce* and the state constitution, a deceased member had vested rights upon meeting minimum service requirements, however, these rights did not automatically translate to his beneficiaries). The court thus distinguished the elimination of the tax exemptions from a modification to a substantive or core pension benefit, for which a claimant would be able to invoke due process protections under both the federal and New Mexico constitutions. See *Pierce v. State*, 910 P.2d 288 at 52 (citing *Copeland v. Copeland*, 575 P.2d 99, 100 (N.M. 1978)).

BARTLETT V. CAMERON, 316 P.3D 889 (N.M. 2014)

ERB retirees challenged a legislative modification to a COLA resulting in lower monthly benefit payments claiming that the New Mexico Constitution granted them a right to an annual COLA based on the formula in effect on the date of their retirement. The court held that the COLA is not part of the core pension benefit and could therefore be modified. The court reasoned that it is “merely a year-to-year expectation that, until paid, does not create a property right under the Constitution.” *Bartlett v. Cameron*, 316 P.3d at 896.

FOR MORE INFORMATION

Anthony Randazzo
Executive Director
anthony@equable.org

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



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