NORTH DAKOTA

LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020

MAJOR POLICY SHIFTS

2007

S.B. 2046

For new TRS employees, the North Dakota Legislature increased (1) the threshold for normal retirement for the sum of a member's age and years of service from 85 to 90; (2) the service requirement for early retirement from 3 to 5 years at 55 years of age; and (3) the vesting period from 3 to 5 years.

2011

H.B. 1134, S.B. 2046

The Legislature increased new and active employees' contribution rate (1) from 8.24% to 11.75% for TFR (HB 1134); and (2) from 4% to 6% for PERS (S.B. 2108).

2013

S.B. 2060

For PERS new and active employees, the North Dakota Legislature increased the employee contribution rate from 6% to 7%.

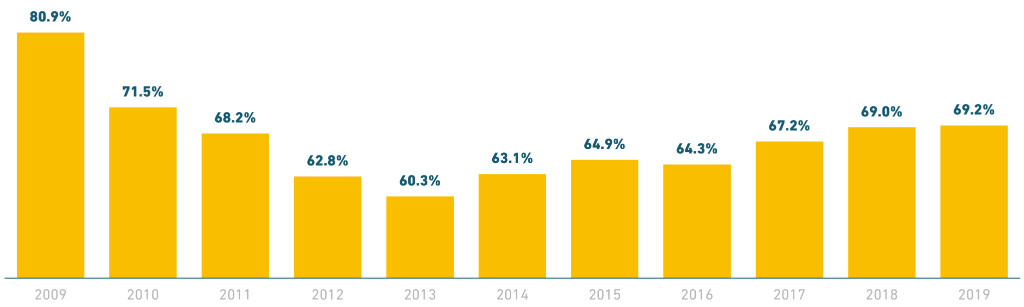
2015

S.B. 2306

For PERS new hires, the North Dakota Legislature increased (1) the threshold for normal retirement for the sum of a member's age and years of service from 85 to 90; and (2) the early retirement penalty from 6% to 8% reduction per year.

FUNDED RATIO

The graphic below covers the following retirement systems: the North Dakota Public Employees Retirement System (PERS) and the North Dakota Teachers' Fund for Retirement (TFR).



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. 1134 (2011) S.B. 2108 (2011) S.B. 2060 (2013)	**NO**	• **FAVORABLE** as to active employees • **N/A** as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	**NO**	**NO**	• **UNFAVORABLE** as to active employees • **UNFAVORABLE** as to retirees
CHANGE VESTING PERIOD	**NO**	**NO**	• **UNDEVELOPED** as to active, unvested employees • **N/A** as to active, vested employees and retirees
CHANGE BENEFIT CALCULATION	**YES**	**NO**	• **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.

EQUABLE

NORTH DAKOTA

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NORTH DAKOTA STATE LAW CONTEXT

State Provisions

ARTICLE X, SECTION 12 OF THE NORTH DAKOTA CONSTITUTION: "All public moneys, from whatever source derived, shall be paid over monthly . . . to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the legislature; provided, however, that there is hereby appropriated the necessary funds . . . required for the payment of losses, duly approved . . . required for payments required by law to be paid to beneficiaries of the teachers' insurance and retirement fund."

Key Opinions

PAYNE V. BOARD OF TRUSTEES OF THE TEACHERS' INS. & RET. FUND, 35 N.W.2D 553 (N.D. 1948)
A retired teacher sued the Board of Trustees of the Teachers Insurance and Retirement Fund, seeking application of a law that was passed after the day of his retirement, but before he submitted his request to the board for his pension benefits, that would have resulted in a higher pension benefit than that to which he was entitled under the law in effect on the day of his retirement. The North Dakota Supreme Court examined how several other states handled pension law, eventually deciding on a contract approach. *Payne v. Board of Trs. of the Teachers' Ins. & Ret. Fund*, 35 N.W.2d at 555. The court ultimately held against the plaintiff, ruling that "his rights in the fund became vested in accordance with the law in effect" at the time of his retirement. *Id.* at 560. The court also held that "[s]o considered, it is clear that the teacher is entitled to his annuity when he ceases teaching if he has met all the conditions of the law. He has then completed his work and is entitled to his pay," suggesting that pension benefits cannot be modified after the point where the beneficiary has retired. *Id.* at 558.

KLUG V. CITY OF MINOT, 795 N.W.2D 906 (N.D. 2011)
City employees sued the city of Minot, arguing that the city's merging the police and city employee pension plans exceeded the city's authority under state law and impaired the plaintiffs' contractual right to the surplus in the police pension plan. The court held against the plaintiffs, stating "[w]e conclude the City had the authority to combine the police and city employee pension plans under its home rule charter, and the City's ordinances relating to the pension plan supersede conflicting state law." The court further stated that the pension plan was not discontinued because "the members' rights and benefits remained the same as they were under the separate plans" and that it did not matter that one plan had a surplus and one had a benefit when merged because "a member of a defined benefit plan does not have a claim to particular assets that are part of the general asset pool and is not entitled to a share of the surplus assets." *Klug v. City of Minot*, 795 N.W.2d at 912. Rather, a member is only "entitled to a fixed periodic payment upon retirement." *Id.*

FOR MORE INFORMATION

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