



OHIO

# LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020



## MAJOR POLICY SHIFTS

### 2008

#### S.B. 20 SERS Board Decision with Legislative Approval

For new employees, the Board changed the SERS retirement age plus years of service from any age with 30 years of service to: 57 years of age with 30 years of service; 67 years of age with 10 years of service; or 65 years of age with 5 years of service.

### 2012

#### S.B. 340, S.B. 341, S.B. 342, S.B. 343

The Ohio Legislature passed S.B. 340 (affecting PFPF), S.B. 341 (affecting SERS), S.B. 342 (affecting STRS), and S.B. 343 (affecting PERS). Additional detail on reverse.

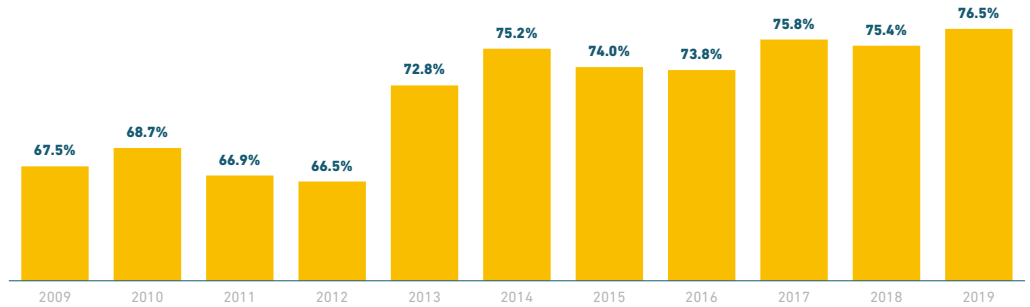
### 2017

#### H.B. 49

The Ohio Legislature delegated authority to modify the STRS cost-of-living adjustment (COLA) to the STRS Retirement Board, which then reduced COLA to 0% for all employees and retirees.

## FUNDED RATIO

The graphic below covers the following retirement systems: Ohio Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (PFPF), Ohio School Employees Retirement System (SERS), and Ohio State Teachers' Retirement System (STRS).



## 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?*
<b>INCREASE EMPLOYEE CONTRIBUTIONS</b>	<b>YES</b> S.B. 340, S.B. 342 (2012)	<b>NO</b>	<ul style="list-style-type: none"> <li>• <b>FAVORABLE</b> as to active employees</li> <li>• <b>N/A</b> as to retirees</li> </ul>
<b>DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS</b>	<b>YES</b> H.B. 49 (2017) (delegating authority to the retirement board) STRS Board Decision (2017) (reducing the COLA)	<b>YES</b> Survived challenge in <i>Ohio Ass'n of Pub. Sch. Emps. (OAPSE) v. School Emps. Ret. Sys.</i> (2020)	<ul style="list-style-type: none"> <li>• <b>FAVORABLE</b> as to active employees</li> <li>• <b>FAVORABLE</b> as to retirees</li> </ul>
<b>CHANGE VESTING PERIOD</b>	<b>NO</b>	<b>NO</b>	<ul style="list-style-type: none"> <li>• <b>FAVORABLE</b> as to active, unvested employees</li> <li>• <b>N/A</b> as to active, vested employees and retirees</li> </ul>
<b>CHANGE BENEFIT CALCULATION</b>	<b>YES</b> S.B. 340, S.B. 342 (2012)	<b>NO</b>	<ul style="list-style-type: none"> <li>• <b>FAVORABLE</b> as to active employees</li> <li>• <b>UNFAVORABLE</b> as to retirees</li> </ul>
<b>INCREASE RETIREMENT AGE</b>	<b>YES</b> SERS Board Decision (2008) S.B. 341, S.B. 342, S.B. 343 (2012)	<b>NO</b>	<ul style="list-style-type: none"> <li>• <b>FAVORABLE</b> as to active employees</li> <li>• <b>N/A</b> as to retirees</li> </ul>

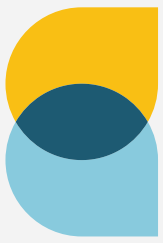
\* **FAVORABLE** indicates that the issue survived litigation in the past and/or there is a permissive legal environment for the change.  
 \* **UNFAVORABLE** indicates that the issue did not survive litigation in the past and/or there is a non-permissive legal environment the change.  
 \* **UNDEVELOPED** indicates that the issue has not been litigated and/or the current legal environment is unclear as to what the outcome would be.



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## OHIO STATE LAW CONTEXT

### 2012 Reforms Continued

#### 2012: S.B. 340, S.B. 341, S.B. 342, S.B. 343

- **S.B. 340:** for active PFPF employees, the Ohio Legislature increased employee contributions from 10% to 14%.
- **S.B. 341:** for active SERS employees, the Ohio Legislature increased the retirement age from any age with 30 years of service, or age 65 with 5 years of service, to (1) age 57 with 30 years of service; or (2) age 67 with 10 years of service.
- **S.B. 342:** for new and active STRS employees, the Ohio Legislature (1) increased the employee contribution rate from 10% to 14% over 4 years; (2) established a flat benefit calculation modifier; and (3) increased the retirement age to 60 with 35 years of service or age 65 with 30 years of service.
- **S.B. 343:** for new and active PERS employees, the Ohio Legislature (1) lengthened the period for final average salary calculations from 3 to 5 years; (2) increased required years of service for a benefit calculation multiplier from 30 to 35; and (3) reduced the cost-of-living adjustment (COLA) from a minimum of 3% to a maximum of 3%.

### State Provisions

**OHIO REVISED CODE SECTION 3309.374(G) (2018):** “Before granting an increase under division (B) of this section, the retirement board may adjust the percentage of any increase if the board’s actuary, in its annual actuarial valuation required by section 3309.21 of the Revised Code, or in other evaluations conducted under that section, determines that an adjustment does not materially impair the fiscal integrity of the retirement system or is necessary to preserve the fiscal integrity of the retirement system.” This statute authorizes the retirement board to make adjustments to COLA independent of the legislature.

### Key Opinions

#### HERRICK V. LINDLEY, 391 N.E.2D 729 (1979)

Retirees sued STRS, claiming a statutory right to pension benefits and that taxing their pension benefits was a violation of this right. The Ohio Supreme Court held that although “[t]he granting of a retirement allowance, annuity, or pension to any person pursuant to action of the state teachers’ retirement board vests a right in such person . . . to receive such retirement allowance, annuity, or pension at the rate fixed at the time of granting such retirement allowance, annuity, or pension” taxing benefits was nevertheless allowable as “[t]he vesting statutes prohibit only a reduction in the rate of payment. They do not prohibit the imposition of a tax.” *Herrick v. Lindley*, 391 N.E.2d at 732-33.

#### STATE EX REL. HORVATH V. STATE TEACHERS RET. BD., NO. 96APE08-983, LEXIS 1767 (CT. APP. 1997)

The husband of a teacher who died while in active service sued the Ohio STRS board, claiming a contractual right to interest on the teacher’s pension payments. The court stated that “[o]nce a member becomes eligible and is granted a benefit, that right to receive payment cannot be reduced or denied by subsequent legislation,” and decided to treat the teacher’s date of death as functionally identical to the date of retirement for the purposes of vesting. *Horvath v. State Teachers Ret. Bd.*, LEXIS 1767 at 18. The court held, however, that the contractual right to pension benefits only vests—i.e., only qualifies as having been “granted”—as of the date of retirement, so the plaintiff had no right to interest rates that had previously applied but later been repealed prior to his wife’s death, as the “STRB did not have any contractual obligation to pay appellant until his rights vested,” and “no right to receive interest was ever vested in appellant or his wife until her death.” *Id.* at 18-20.

#### OHIO ASS’N OF PUB. SCH. EMPs. (OAPSE) V. SCHOOL EMPs. RET. SYS., 2020-OHIO-3005 (CT. APP. 2020)

Retirees challenged the SERS Board decision freezing their COLA after Ohio Rev. Code Section 3309.374 gave the Board power to modify COLAs. The court upheld the freeze because “[t]he plain language of the statute grants discretion to the Board to freeze the COLA for three consecutive years. By use of the word ‘may’ denoting discretion, the statute as amended clearly gives the Board discretion to increase—or not increase—the COLA annually.” *Ohio Ass’n of Pub. Sch. Emps. (OAPSE) v. School Employees Ret. Sys.*, 2020-Ohio-3005 at 20. Plaintiffs also argued that the Legislature’s delegation of authority to the Board to set COLAs was unconstitutional, but the court declined to address that claim on the grounds that the plaintiffs lacked standing to bring the claim as, “if a controversy exists at all, it exists between OAPSE and the General Assembly, not any of the named defendants.” *Id.* at 28 (internal quotation marks omitted).

### FOR MORE INFORMATION

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