



MAJOR POLICY SHIFTS

2012

H.B. 4967

For RS and PORS, the South Carolina Legislature (1) created a schedule of increasing contribution rates for active employees and new hires; (2) increased the number of years used in the final average salary calculation for active employees and new hires from 3 to 5 years; (3) increased the normal retirement threshold, defined by the sum of a member's age and years of service, for new hires (exact changes varying by type of employee); and (4) reduced cost-of-living adjustments (COLAs) for new hires, active employees, and retirees from 2% to 1%.

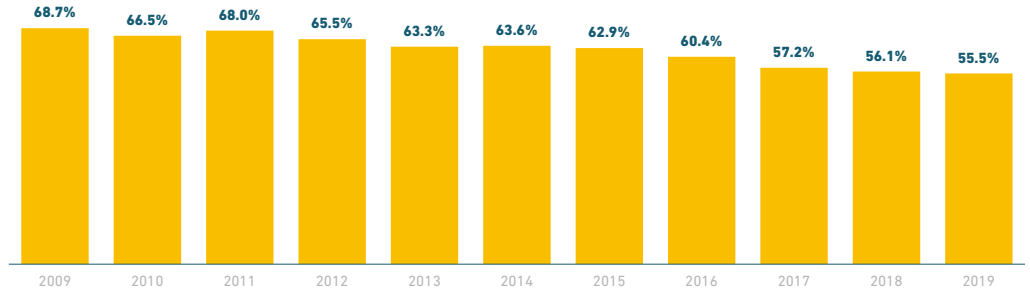
2017

H.B. 3726

The South Carolina Legislature increased the employee contribution rate from 8% to 9% for active RS members and from 8% to 9.75% for active PORS members.

FUNDED RATIO

The graphic below covers the following retirement systems: South Carolina Retirement System (RS) and South Carolina Police Officers' Retirement System (PORS).



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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

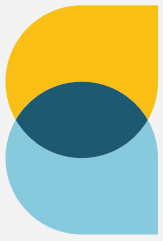
What are some policy options?	Were there relevant policy shifts for active employees or retirees?	Have there been legal challenges?	What are the legal prospects for future changes?*
INCREASE EMPLOYEE CONTRIBUTIONS	YES H.B. 4967 (2012) H.B. 3726 (2017)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	YES H.B. 4967 (2012)	NO	<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. 4967 (2012)	NO	<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.



SOUTH CAROLINA LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020



SOUTH CAROLINA STATE LAW CONTEXT

State Provisions

ARTICLE I, SECTION 4 OF THE SOUTH CAROLINA CONSTITUTION: “No bill of attainder, ex post facto law, law impairing the obligation of contracts, . . . shall be passed . . .”

ARTICLE I, SECTION 13(A) OF THE SOUTH CAROLINA CONSTITUTION: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.”

ARTICLE X, SECTION 16 OF THE SOUTH CAROLINA CONSTITUTION: “The governing body of any retirement or pension system in this State funded in whole or in part by public funds shall not pay any increased benefits to members or beneficiaries of such system above the benefit levels in effect on January 1, 1979, unless such governing body shall first determine that funding for such increase on a sound actuarial basis has been provided or is concurrently provided.”

Key Opinions

2016 ATTORNEY GENERAL OPINION, OP. ATT’Y GEN. 2016 WL 4698867 (S.C.A.G.) (2016)

The South Carolina Legislature asked the state’s Attorney General for a formal opinion on (1) whether South Carolina pension-related statutes create a contract between plan members and the state; (2) whether such a contract (if it existed) would limit the legislature’s authority to change aspects of the retirement system (including, but not limited to, COLAs, employee contributions, and retirement benefits) and if so, what those limitations may be; (3) whether the legislature has the authority to direct the retirement system to grant or take away COLAs contrary to the statutory allowance; and (4) whether directing the legislature to grant COLAs would create a contract between the plan and beneficiaries such that subsequent changes would not be permissible.

In answering these questions, the Attorney General contrasted earlier rulings of the South Carolina Supreme Court treating pension rights as purely statutory and not contractual (e.g., *McKinney v. South Carolina Police Officers Ret. Sys.*, 429 S.E.2d 797 (S.C. 1993)) with the court’s more recent willingness to treat retirement benefits as contractual (e.g., *Evans v. State*, 543 S.E.2d 547 (S.C. 2001); *Layman v. State*, 630 S.E.2d 265 (S.C. 2006)). However, the court has not identified all retirement benefits as contractual (e.g., *Anonymous Taxpayer v. South Carolina Dept. of Revenue*, 661 S.E.2d 73 (S.C. 2008), a case where the court did not find contractually significant language in the statute). The Attorney General also cautioned that changes in COLAs and other benefits may not be found to impair contracts, firstly because impairments must be substantial and COLAs and other adjustments are a small portion of retirement benefits, and secondly because courts may defer to the Legislature’s efforts to protect the fiscal soundness of state retirement systems. In particular, the Attorney General noted that Article X, Section 16 of the South Carolina Constitution obliges the South Carolina Legislature to fund state retirement plans on an actuarially sound basis, potentially supporting arguments that legislative acts impairing pension rights are nonetheless constitutional because they fulfill a necessary and important public purpose.

Decisions the Attorney General mentioned are outlined in more detail below:

MCKINNEY V. SOUTH CAROLINA POLICE OFFICERS RETIREMENT SYS., 429 S.E.2D 797 (S.C. 1993)

A retired public employee sought a court order requiring the retirement system to recognize service he rendered both before his sixteenth birthday and later as a county undercover. The South Carolina Supreme Court ruled that the authorizing statute included within its purview the service plaintiff rendered prior to his sixteenth birthday but not any service as an undercover agent as to which the plaintiff was unable to offer proof of any work performed. *McKinney v. South Carolina Police Officers Ret. Sys.*, 429 S.E.2d at 798. In reaching these conclusions, the court noted that the plaintiff had “misconstrue[d] the nature of his right to retirement benefits” as contractual. “[T]he source of his right is the statutes, not a contract.” *Id.* (citations omitted).

EVANS V. STATE, 543 S.E.2D 547 (S.C. 2001)

State and local government retirees argued that a statute eliminating tax exemptions for state retirement benefits impaired their contractual and property rights to tax exempt retirement benefits in violation of the state and federal constitutions. Although the South Carolina Supreme Court ultimately dismissed the case on procedural grounds without resolving the plaintiffs’ constitutional claims, that court’s decision included the following sentence: “[a]ssuming State Retirees have either a contract right or a property interest in the full tax exemption of their retirement benefits . . . the [lower] court could have considered whether State Retirees’ contract had been substantially impaired or their property taken without just compensation in violation of the federal and state constitutions.” *Evans v. State*, 543 S.E.2d at 551. In the opinion cited above, the Attorney General cited the court’s willingness in this passage to contemplate the possibility of contractual rights in pension benefits as evidence that the South Carolina Supreme Court is moving in the direction of recognizing contractual rights in some retirement benefits.

LAYMAN V. STATE, 630 S.E.2D 265 (S.C. 2006)

Working retirees participating in the Teacher and Employee Retention Incentive Program (TERI) (which allows retired teachers to re-enter the teaching force) filed suit challenging new legislation requiring them to pay an employee contribution of 6.25%. Because when plaintiffs entered the program, the statute required no employee contribution, they alleged that the new statute impaired their contractual rights by requiring a new financial contribution. Noting that “contractual rights are created by statute only when they are expressly found in the language of the legislation,” the court concluded that “the language in the old TERI statute demonstrates, in unambiguous terms, the intent of the legislature to bind itself to the terms in the statute. We find it telling that the legislature used terms that are indicative of a contract: ‘A . . . member who is eligible [to retire under TERI] . . . and complies with the requirements of this article . . . shall agree . . .’” *Layman v. State*, 630 S.E.2d at 269. Given the intent of the prior statute to create a contract, the Legislature could not thereafter unilaterally alter the contract’s terms. *Id.* at 270.

ANONYMOUS TAXPAYER V. SOUTH CAROLINA DEPT. OF REVENUE, 661 S.E.2D 73 (S.C. 2008)

A retiree challenged the elimination of tax exemptions for retired state employees, arguing that he had contractual rights to the exemption under the state and U.S. constitutions. Applying its reasoning in *Layman v. State*, the South Carolina Supreme Court looked to the statute establishing the tax exemption to determine whether it revealed a legislative intent to create a contract. After reviewing the relevant language of the prior statute—“[t]he right of a person to an annuity or retirement allowance or to the return of contributions . . . are hereby exempted from any State or municipal tax . . .” (quoting S.C. Code Ann. § 9–1–1680 (1986))—the court concluded that “there was no contractually-significant language that would evidence the Legislature’s intent for the tax exemption to be contractually binding.” *Anonymous Taxpayer v. South Carolina Dept. of Revenue*, 661 S.E.2d at 77. Thus, eliminating the tax exemptions was constitutional. *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.