



TEXAS

LEGAL ENVIRONMENT FOR PENSION POLICIES

As of December 2020



MAJOR POLICY SHIFTS

2003

Constitutional Amendment

The Texas Legislature adopted Article XVI, Section 66 of the Texas Constitution, which created a constitutional protection for accrued pension benefits for non state-wide retirement systems (see additional information on the reverse side).

2009

H.B. 2559

For new ERS hires, the Texas Legislature (1) lengthened the vesting period from 5 to 10 years; and (2) modified the final average salary (FAS) from the highest 36 to the highest 48 months.

2013

S.B. 1458, S.B. 1459

For new and active TRS employees, the Texas Legislature (1) increased employee contribution rates from 6.4% to 7.7%; and (2) modified the "rule of 80" (permitting employees to retire when their years of service + age = 80) by establishing a minimum retirement age of 62 (S.B. 1458). For ERS, it (1) increased the employee contribution rate from 6.6% to 7.5% for new and active employees and (2) changed FAS from the highest 48 months to the highest 60 months for new hires (S.B. 1459).

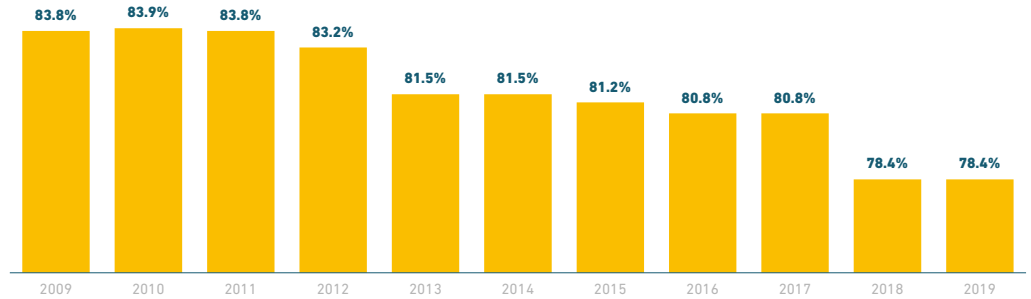
2015

H.B. 9

For new and active ERS employees, the Texas legislature increased the employee contribution rate from 7.5% to 9.5%

FUNDED RATIO

The graphic below, as well as the information in the table below covers the following statewide retirement systems: Texas County & District Retirement System (CDRS), Texas Employees Retirement Fund (ERS), Texas Municipal Retirement System (MRS), and Texas Teachers' Retirement System (TRS).



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 S.B. 1458 (2013) S.B. 1459 (2013)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees N/A as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	NO	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees FAVORABLE as to retirees
CHANGE VESTING PERIOD	YES H.B. 2559 (2009)	NO	<ul style="list-style-type: none"> FAVORABLE as to active, unvested employees N/A as to active, vested employees and retirees
CHANGE BENEFIT CALCULATION	YES H.B. 2559 (2009) S.B. 1459 (2013)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees FAVORABLE as to retirees
INCREASE RETIREMENT AGE	YES S.B. 1458 (2013)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees N/A as to retirees

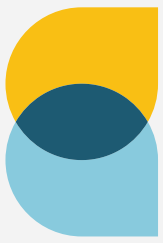
* **FAVORABLE** indicates that the issue survived litigation in the past and/or there is a permissive legal environment for the change.
 * **UNFAVORABLE** indicates that the issue did not survive litigation in the past and/or there is a non-permissive legal environment the change.
 * **UNDEVELOPED**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



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TEXAS STATE LAW CONTEXT

State Provisions

ARTICLE XVI, SECTION 66 OF THE TEXAS CONSTITUTION:

(a) This section applies only to a public retirement system that is not a statewide system and that provides service and disability retirement benefits and death benefits to public officers and employees. . . .

(d) On or after the effective date of this section, a change in service or disability retirement benefits or death benefits of a retirement system may not reduce or otherwise impair benefits accrued by a person if the person:

(1) could have terminated employment or has terminated employment before the effective date of the change; and

(2) would have been eligible for those benefits, without accumulating additional service under the retirement system, on any date on or after the effective date of the change had the change not occurred.

(e) Benefits granted to a retiree or other annuitant before the effective date of this section and in effect on that date may not be reduced or otherwise impaired.

Key Opinions

DALLAS V. TRAMMELL, 101 S.W.2D 1009 (TEX. 1937)

A retired policeman sued the city of Dallas following the passing of a law which has reduced his pension benefits, claiming he had a contractual right to his prior benefits. The Supreme Court of Texas disagreed, holding that “there can be no vested interest in future installments of pensions which will prevent the Legislature from repealing the law upon which the system is founded, or modifying the law in such a way as to diminish the amount of future monthly payments.” *Dallas v. Trammell*, 101 S.W.2d at 1012. Recognizing the power of the relevant legislature to amend pension laws, the court found against the plaintiff, writing that “the contract entered into by the employee with the city is made subject to the reserved power of the Legislature to amend, modify or repeal the law upon which the pension system is erected.” *Id.* at 1014. The Texas Supreme Court applied *Trammell*’s gratuity approach to all pension systems in the state, including statewide systems.

VAN HOUTEN V. CITY OF FORT WORTH, 837 F.3D 530 (5TH CIR. 2016)

Employees who belonged to the city pension plan sued in federal court over reductions to their COLA and benefit calculation multiplier rates, invoking a 2003 constitutional amendment which established that, for non-statewide systems, accrued benefits cannot be reduced or impaired. The Fifth Circuit Court of Appeals, interpreting Article XVI, Section 66 of the Texas Constitution (which had not yet been interpreted by the Texas Supreme Court), wrote that “[a]s we have interpreted it, Section 66 reverses the core unfairness of the *Trammell* decision by ensuring that earned benefits cannot be reduced.” *Van Houten v. City of Fort Worth*, 837 F.3d at 537-38. However, the court did not go so far as to suggest that Section 66 would prevent legislatures from making changes to future benefits for non-statewide systems, writing that “[b]y going no further, our interpretation of Section 66 stays true to Texas’ long-held flexible approach permitting municipalities to revise their pension plans in light of changing economic conditions.” *Id.* at 538.

DEGAN V. BOARD OF TRUSTEES OF DALLAS POLICE AND FIRE PENSIONS SYSTEM, 594 S.W.3D 309 (TEX. 2020)

Retired employees of the Dallas Police and Fire Pensions System challenged modifications to the method of disbursing pension payments. The Texas Supreme Court affirmed the accuracy of *Van Houten*’s interpretation of Section 66, stating that “Section 66 does not prohibit prospective pension reforms.” *Degan v. Board of Trustees*, 594 S.W.3d at 317. It continued on to hold against the plaintiffs, writing that although Section 66 does “prohibit the reduction or impairment of an accrued service retirement benefit, which we have interpreted as protection for the pensioner’s vested annuity payments,” a “pension reform that abandons a more flexible distribution scheme . . . that preserves access through a vested annuity--does not violate the constitutional prohibition.” *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.