



MAJOR POLICY SHIFTS

2008

H.B. 403

The Vermont Legislature increased the employee contribution rate from 3.25% to 5.0% for active SERS employees to offset the cost of an increase in the cost-of-living adjustment (COLA).

2010

H.B. 764

For active STRS employees, the Vermont Legislature (1) increased the employee contribution rate from 3.54% to 5.0% (effective until the system reached a funding ratio of 90%); (2) increased the retirement age from 62 to 65 for employees who were more than 5 years from qualifying for retirement; and (3) limited what can be included in an employee's final average salary for benefit calculation purposes by excluding "sick leave, termination bonuses, and any other compensation for service not actually performed." The legislation included the following offsetting benefits: (1) a new health benefit for spouses of retirees; and (2) application of a higher percentage of the final average salary to the formula used to determine retirement benefits.

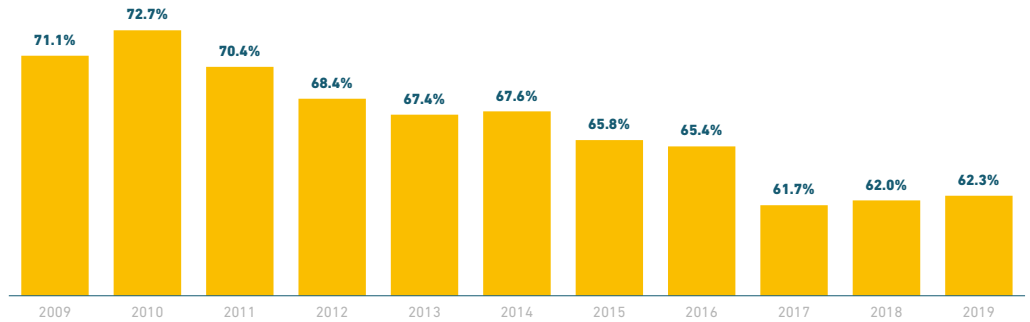
2011

H.B. 441

The Vermont Legislature increased the employee contribution rate for active SERS employees during the period from July 1, 2011 through June 30, 2016 from 5.0% to 6.3% for group A, D, and F members and from 6.18% to 8.18% for group C members. After June 30, 2016, the rate decreased to 5.0% for group A, D, and F members and 6.88% for group C members. Funds derived from additional employee contributions were paid into the annuity savings fund and credited to the individual account of the contributing member.

FUNDED RATIO

The graphic below covers the following retirement systems: the Vermont State Employees Retirement System (SERS) and the Vermont Teachers Retirement System (STRS).

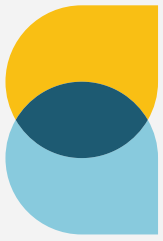


LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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> H.B. 764 (2010) H.B. 441 (2011)	<b>YES</b> Survived legal challenge in <i>Burlington Fire Fighters' Ass'n v. Burlington</i> (1988) (challenge based on an amendment to an ordinance that predates the policy shifts in the timeline to the left)	<ul style="list-style-type: none"> <li><b>FAVORABLE</b> as to active employees if there is an offsetting benefit</li> <li><b>N/A</b> as to retirees</li> </ul>
<b>DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS</b>	<b>NO</b>	<b>NO</b>	<ul style="list-style-type: none"> <li><b>UNFAVORABLE</b> as to active employees unless there is an offsetting benefit</li> <li><b>UNFAVORABLE</b> as to retirees unless there is an offsetting benefit</li> </ul>
<b>CHANGE VESTING PERIOD</b>	<b>NO</b>	<b>NO</b>	<ul style="list-style-type: none"> <li><b>UNFAVORABLE</b> as to active, unvested employees unless there is an offsetting benefit</li> <li><b>N/A</b> as to active, vested employees and retirees</li> </ul>
<b>CHANGE BENEFIT CALCULATION</b>	<b>YES</b> H.B. 764 (2010) (eliminating inclusion of compensation for "service not actually performed" in calculation of average final salary)	<b>NO</b>	<ul style="list-style-type: none"> <li><b>UNFAVORABLE</b> as to active employees, but courts might require an offsetting advantage for changes that unequivocally reduce benefits</li> <li><b>UNFAVORABLE</b> as to retirees if change impacts a fixed numerical value specified in the pension statute</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.



## VERMONT STATE LAW CONTEXT

### State Provisions

The State of Vermont relies on the federal constitution for its analysis of contract impairment.

**ARTICLE I, SECTION 10 OF THE U.S. CONSTITUTION:** "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contract . . ."

### Key Opinions

#### **BURLINGTON FIRE FIGHTERS' ASS'N V. BURLINGTON, 543 A.2D 686 (VT. 1988)**

Two firefighters unions brought claims against the city of Burlington alleging that amendments to an ordinance establishing the pension system for firefighters that increased employee contribution rates retroactively to a date 16 months prior to the amendment's enactment in exchange for increased benefit payments violated the federal Contracts Clause. *Burlington Fire Fighters' Ass'n v. Burlington*, 543 A.2d at 687-88. As to the plaintiff's first claim, that the city lacked authority to apply the ordinance retroactively, the Vermont Supreme Court ruled that "[r]etrospective application of municipal enactments, while not favored in Vermont, is not expressly prohibited by constitutional provisions or statutes" provided that, as in this case, the language of the statute "clearly indicates the Legislature's intent that it have retroactive effect." *Id.* at 688-89.

As to plaintiffs' further claim that the retroactive increase in employee contributions impermissibly impaired their pension contract with the city, the court applied the test for a federal Contract Cause violation from *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). *Burlington Fire Fighters' Ass'n v. Burlington*, 543 A.2d at 689 (citing *United States Trust Co. v. New Jersey*, 431 U.S. at 17). Under that test, a court first must determine whether a change in pension rules impairs an existing contract with the state. *Id.* On this point, the Vermont Supreme Court agreed with plaintiffs: "where an employee makes mandatory contributions to a pension plan, that pension plan becomes part of the employment contract as a form of deferred compensation, the right to which is vested upon the employee's making a contribution to the pension plan." *Burlington Fire Fighters' Ass'n v. Burlington*, 543 A.2d at 689. Plaintiffs thus had a contract with Burlington for pension benefits in return for specified employee contributions, which the amended ordinance had impaired by unilaterally increasing those contributions. The second prong of the test from *United States Trust Co. v. New Jersey* asks whether the impairment was reasonable and necessary to achieve an important public purpose. In analyzing this prong of the test, the Vermont Supreme Court, without saying so, adopted the "California rule" on public pension benefits, citing a Washington State case that in turn quoted the California decision articulating the California rule. *Id.* at 690 (citing *Bakenhus v. Seattle*, 296 P.2d 536, 540 (Wash. 1956), quoting *Allen v. Long Beach*, 287 P.2d 765, 767 (Cal. 1955)). Under these precedents, "[a]n employee's vested contractual pension rights may be modified prior to retirement for the purpose of keeping a pension system flexible to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system." *Bakenhus v. Seattle*, 296 P.2d at 543. But "[t]o be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." *Id.* at 540, quoting *Allen v. Long Beach*, 287 P.2d at 767. Applying these principles, the Vermont Supreme Court concluded that the impairment of plaintiffs' contract was permissible because Burlington's interest in preserving the health of the pension system was sufficient to satisfy an important public purpose, and the retroactive increase in employee contributions was offset by a retroactive increase in retirement benefits. *Burlington Fire Fighters' Ass'n v. Burlington*, 543 A.2d at 690.

### 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.