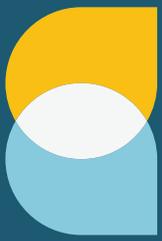




ARKANSAS

LEGAL ENVIRONMENT FOR PENSION POLICIES

As of August 2021



MAJOR POLICY SHIFTS

2005

S.B. 69

For new APERS members, the Arkansas Legislature required a contribution of 5% of salary. Active employees had the option to remain non-contributory or to become contributory members.

2011

S.B. 127

For APERS members participating in DROP (Deferred Retirement Option Plan), member contributions ceased; the employer was still required to make contributions.

2017

ARTRS Board Resolution 2017-30, 2017-40

The ARTRS board increased member contribution rates for new hires and active employees from 6% to 7% of employee compensation over a four-year period (0.25% increments each year). Employer contributions were scheduled to increase from 14% to 15% of the employees' salary over the same time period. These were the maximum increases allowed based on powers granted by the legislature in 2013 (e.g., Act 602 and Act 1446).

2017

S.B. 155

For ASHERS active members and retirees, the Arkansas Legislature changed cost-of-living adjustments (COLAs) from a fixed 3% increase to a calculation based on the Consumer Price Index (CPI) with a 3% cap.

2019

H.B. 1358

For APERS active members and new hires, the Arkansas Legislature decreased interest paid on accumulated member contributions from 4% to 2%.

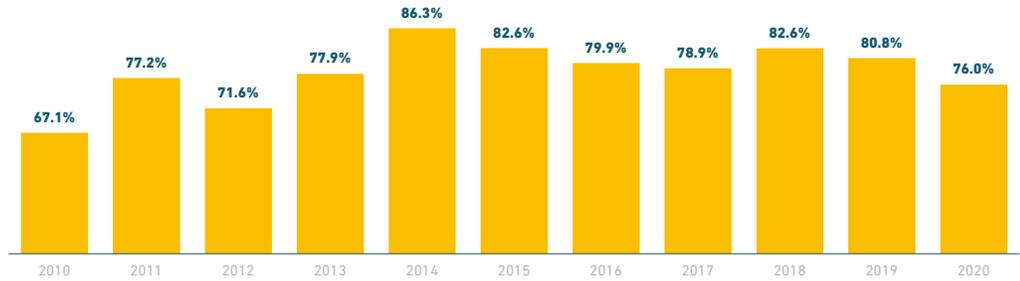
2021

H.B. 1348, H.B. 1347, H.B. 1281, H.B. 1346

For APERS members, the Arkansas Legislature (1) increased contributions from 5% to 7% of payroll over an eight-year period (0.25% annual increments) for new hires and active members; (2) changed COLAs for new members from a fixed 3% to a fluctuating COLA based on the CPI with a cap at 3%; (3) increased the maximum duration of participation in DROP for new and active members from 7 years to 10 years; and (4) based the final average compensation for new hires on a five-year rather than a three-year average.

FUNDED RATIO

The graphic below covers the following retirement systems: the Arkansas Public Employees Retirement System (APERS), the Arkansas State Highway Employees Retirement System (ASHERS), and the Arkansas Teacher Retirement System (ARTRS).



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. 69 (2005) ARTRS Board Resolution 2017-30, 40 (2017) H.B. 1348 (2021) | 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 S.B. 155 (2017) | NO | <ul style="list-style-type: none"> FAVORABLE as to active employees who have not yet met service requirements FAVORABLE as to employees who have met service requirements given S.B. 155 (2017); but also UNDEVELOPED given a potential successful challenge to S.B. 155 based on precedent (see "Key Opinions," <i>Jones v. Cheney</i>) UNFAVORABLE as to retirees |
| CHANGE VESTING PERIOD | YES Act 148 of 1967 | YES Did not survive legal challenge in <i>Jones v. Cheney</i> (1973) | <ul style="list-style-type: none"> FAVORABLE as to active employees who have not yet met service requirements UNFAVORABLE as to active employees who have already met service requirements N/A as to retirees |
| CHANGE BENEFIT CALCULATION | YES H.B. 1358 (2019) | NO | <ul style="list-style-type: none"> FAVORABLE as to active employees who have not yet met service requirements FAVORABLE as to employees who have met service requirements given S.B. 1358 (2019); but also UNDEVELOPED given a potential successful challenge to S.B. 1358 based on precedent (see Key Opinions, <i>Jones v. Cheney</i>) 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 for 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.

DISCLAIMER: Equable is not necessarily recommending any of the policy concepts listed above. Some of them may be good ideas, bad ideas, or involve trade-offs between various stakeholders. This document only provides information about the likely legal outcomes of pursuing different policy concepts by stakeholders. The document does not constitute legal advice or representation, and the authors are not liable for any actions taken relying on this information.





ARKANSAS STATE LAW CONTEXT

State Provisions

ARKANSAS CONSTITUTION ARTICLE 2, SECTION 17: "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall ever be passed."

ARKANSAS CONSTITUTION ARTICLE 2, SECTION 22: "private property shall not be taken, appropriated or damaged for public use, without just compensation therefor."

Key Opinions

JONES V. CHENEY, 253 ARK. 926 (ARK. 1973)

An official enrolled in Arkansas's state pension system challenged under the state constitution's contracts clause the denial of his retirement benefits based on a legislative amendment to the pension system's years-of-service requirements enacted after he had already met the previous years-of-service requirements. Shortly before he reached retirement age, the General Assembly amended the law to require service in any one of several named state offices for at least 10 years. The official did not meet this new requirement because, while he had served the state for 15 years, he had not served 10 years in any one office. Thus, when the official filed for retirement the state denied his retirement benefits, and the official sued.

The Arkansas Supreme Court held that the amendment did not apply to the official. The official had made voluntary contributions to the plan making the benefits in the nature of deferred compensation. The contributions created an obligation that became contractually binding on the state once he completed the pre-amendment requirements, notwithstanding that he had not yet reached the retirement age. The court held that once he met the requirements, his benefits were protected by the contracts clause and subsequent legislative changes "can apply only to conditions in the future, and never to the past." *Jones v. Cheney*, 253 Ark. 926 at 933.

ROBINSON V. TAYLOR, 342 ARK. 459 (ARK. 2000)

A former mayor of Pine Bluff challenged as a violation of the state constitution's contracts clause the city's denial of an annual pension when she had already received a lump sum payment for the same service. The Arkansas Legislature had enacted a provision prohibiting elected officials from receiving both a lump sum payment and a pension for their service (i.e., prohibiting "double dipping"). The legislation became effective while the plaintiff was serving her final term as mayor and before she had served the minimum number of years required to be eligible for the pension. The Arkansas Supreme Court held that the legislation applied to the former mayor, denying her the second payment that she sought.

The court distinguished *Cheney* on two grounds: (1) Unlike the plaintiff in *Cheney*, the mayor had not met all of the pension's years-of-service requirements before the prohibition against double dipping became effective. She did not meet the pension requirements until she completed her final term as mayor more than a year later; and (2) unlike the plaintiff in *Cheney*, the mayor had not made any contributions towards her elected-official pension, making it "merely a gratuitous allowance." *Robinson v. Taylor*, 342 Ark. 459 at 462-63. The legislature had, therefore, been "free to alter or abolish" the retirement benefit at any time. *Id.* at 464.

ARKANSAS TECH UNIVERSITY V. LINK, 341 ARK. 495 (ARK. 2000)

Active employees of a state university claimed that a change to the university's retirement health care benefits violated the employees' contract rights. The Arkansas Supreme Court dismissed the claim, holding that the benefit was a gratuity to which the plaintiffs never had any right. The university had an established — though never formally adopted — practice of providing retirees with lifetime health insurance. When the university board formally adopted a policy modifying the healthcare benefit for financial reasons, the active employees sued, arguing that under *Cheney* they had vested contract rights to the benefits. The court disagreed and distinguished *Cheney*: (1) The benefits in *Cheney* were created by statute whereas these post-retirement healthcare benefits were not statutorily created; and (2) the post-retirement health benefits were funded entirely by the university with state funds; the employees had contributed nothing. As such, the benefit was merely a "gratuitous allowance" rather than a contract right. *Arkansas Tech University v. Link*, 341 Ark. 495 at 505.

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.