



MAJOR POLICY SHIFTS

2011

S.B. 687

For TSERS new hires, the North Carolina Legislature increased the member vesting period from 5 years to 10 years and changed the average annual compensation calculation to be based on the most recent 10 years rather than 4 years.

2014

H.B. 1192

For active TSERS members and new hires, the North Carolina Legislature decreased vesting periods from 10 years to 5 years.

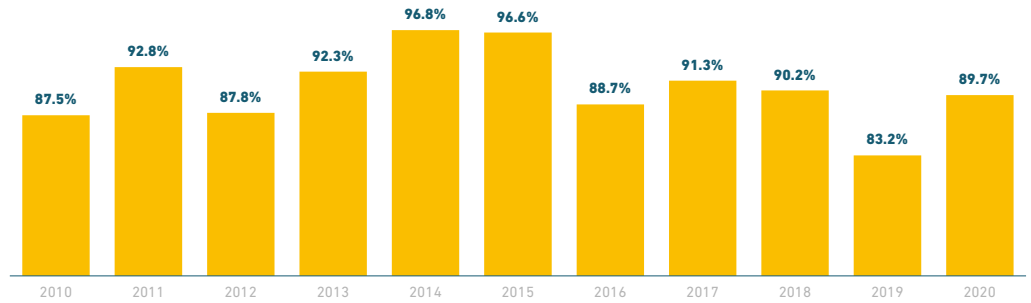
2014

H.B. 1195

For active TSERS members, the North Carolina Legislature established a "contribution-based" cap on benefits based on final average salaries above \$100,000 (indexed to inflation). The cap requires government employers to pay certain benefits earned above the cap or to require that members hired after 2014 self-fund such benefits.

FUNDED RATIO

The graphic below covers the following retirement systems: North Carolina Local Governmental Employees' Retirement System (LGERS) and North Carolina Teachers' and State Employees' Retirement System (TSERS).



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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

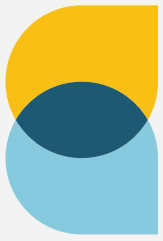
What are some policy options?	Were there relevant policy shifts for active employees or retirees?	Have there been legal challenges?	What are the legal prospects for future changes?*
INCREASE EMPLOYEE CONTRIBUTIONS	NO	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees who have not yet met the years-of-service requirement UNDEVELOPED as to active employees who have met the years-of-service requirement 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 who have not yet met the years-of-service requirement UNFAVORABLE as to active employees who have met the years-of-service requirement and retirees
CHANGE VESTING PERIOD	YES H.B. 1129 (2014)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees who have not yet met the years-of-service requirement UNFAVORABLE as to active employees who have met the years-of-service requirement N/A as to retirees
CHANGE BENEFIT CALCULATION	YES H.B. 1195 (2014)	NO	<ul style="list-style-type: none"> FAVORABLE as to active employees who have not yet met the years-of-service requirement UNFAVORABLE as to active employees who have met the years-of-service requirement and 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.



NORTH CAROLINA LEGAL ENVIRONMENT FOR PENSION POLICIES

As of August 2021



NORTH CAROLINA STATE LAW CONTEXT

State Provisions

U.S. CONSTITUTION ARTICLE I, SECTION 10: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contract . . ."

NORTH CAROLINA CONSTITUTION ARTICLE I, SECTION 19: "No person shall be . . . in any manner deprived of his life, liberty or property, but by the law of the land."

Key Opinions

WIGGS V. EDGECOMBE COUNTY, 361 N.C. 318 (N.C. 2007)

A retiree of the North Carolina Local Governmental Employees' Retirement System (LGERS) challenged, under impairment of contract, an amendment to his retirement plan that would have taken away his special separation allowance because he had sought employment with another employer. The Supreme Court of North Carolina held that because the amendment was made after the retiree's plan rights had vested, both the U.S. and North Carolina Constitutions prohibited applying the change to his benefits because it was not reasonable and necessary to serve an important public purpose. According to the court, the retiree's contractual right to his special separation allowance vested the day he satisfied his years-of-service requirement. *Wiggs v. Edgecombe County*, 361 N.C. 318 at 325. The amendment was a post-vesting impairment of those rights. Furthermore, the amendment was neither reasonable nor necessary to serve an important public service. Preventing "double dipping" did not justify the impairment. *Id.* ("Merely because the governmental actor believes the money can be better spent or should now be conserved does not provide a sufficient interest to impair the obligation of contract.")

SCHIMMECK V. CITY OF WINSTON-SALEM, 130 N.C. APP. 471 (1998)

A retiree who did not meet the years-of-service requirement sued the city for his disability benefits. The court held that the retiree had no contractual right to disability benefits because he had not satisfied his years-of-service requirement. *Schimmeck v. City of Winston-Salem*, 130 N.C. App. 471 at 476.

BAILEY V. STATE, 500 S.E. 2D 54 (N.C. 1998)

Retirees challenged, under Article I, Section 10 of the U.S. Constitution (the Contracts Clause), legislation that capped the amount of retirement benefits that can be tax-exempt. The state had capped the tax exemption because a recent federal decision required federal North Carolina employees to be treated the same as state employees with respect to plan benefits. *Bailey v. State*, 500 S.E. 2d 54 at 68. The court held that the cap was unconstitutional as applied to the retirees. The retirees had vested contractual rights in the tax-exemption benefit, and the change was not "reasonable and necessary to serve an important public purpose." *Id.* The court affirmed that, as a factual matter, the benefit should be treated as part of the contract package that induced the retirees to work for the state. Their contractual rights to receive the benefits "vested" when they had satisfied the plan's years-of-service requirement. *Id.* at 67.

After determining that the retirees had vested contract rights in the benefit, the court evaluated whether capping the benefit constituted an "impairment" and, if so, whether the action was "reasonable and necessary." Noting a cumulative impact in excess of \$100 million, the court found that the change constituted a substantial impairment. *Id.* Further, the amendment was not necessary and reasonable, because the state could have achieved a similar goal (compliance with the order to treat federal employees the same as state employees) by less drastic means, such as giving federal employees the same benefit or by capping the tax exemption only as to non-vested employees. *Id.* at 67. The legislature's wanting to comply in a way that would be revenue neutral was not justification enough. *Id.* The court further held that capping the benefit was an unconstitutional taking of property because the legislature had taken the retirees' benefits without just compensation. *Id.* at 69.

SIMPSON V. NORTH CAROLINA LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, 88 N.C. APP. 218 (N.C. APP. 1987), AFFIRMED PER CURIAM, 372 S.E.2D 559 (N.C. 1988)

Retirees challenged, under Article I, Section 10 of the U.S. Constitution (the Contracts Clause), a modification that retroactively changed the method of calculating disability benefits under the North Carolina LGERS. The court held that the statute impaired the retirees' contractual rights, and was not reasonable and necessary to serve an important public service. The modification took place after the plaintiffs satisfied service requirements, but before they had retired. Prior to the modification, plaintiffs' disability benefits would have been calculated as if they had worked all the way to 65 years. After the modification, plaintiffs' disability benefits would be calculated as if they had retired after working for 30 years. The court held that the plaintiffs "had a contractual right to rely on the terms of the retirement plan as these terms existed at the moment their retirement rights became vested." *Simpson v. North Carolina Local Governmental Employees' Retirement System*, 88 N.C. App. 218 at 225. Furthermore, the state's interest in "correcting inequities in the System" is insufficient to "demonstrate or reflect that the changes were reasonable and necessary to serve an important state interest". *Id.* at 227 (emphasis in original).

FOR MORE INFORMATION

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This analysis was developed in partnership with Columbia Law School's Center for Public Research and Leadership.