

MAJOR POLICY SHIFTS

1991

West Virginia Code Section 18-7B-7

For new hires, the West Virginia Legislature established the Teachers' Defined Contribution Retirement System, a 401(k)-style Defined Contribution Plan, and closed the previous Defined Benefit Plan to new members.

1994

H.B. 4680

For active public safety employees and retirees, the West Virginia Legislature (1) increased the employee contribution from 6% to 9% effective July 1, 1995; and (2) reduced cost-of-living adjustment (COLA) from 3.75% to 2% annually, effective Sept. 15, 1994.

2005

H.B. 2984

For TRS new hires, the West Virginia Legislature closed the Defined Contribution plan and reopened the Defined Benefit plan. For active members in the Defined Contribution Plan, the legislature merged and consolidated them into the reopened Defined Benefit Plan.

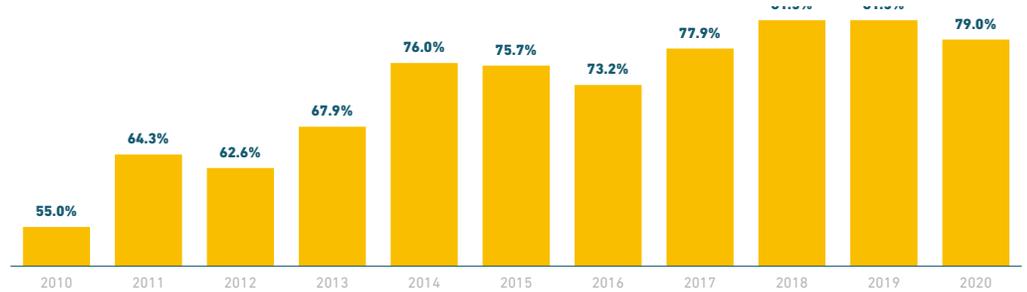
2015

S.B. 529

For PERS new hires as of July 1, 2015 (state employees, teachers, and public safety officers), the West Virginia Legislature established a new benefits tier (PERS Tier II). For these members, the legislature (1) increased employee contributions from 4.5% to 6%; (2) changed the benefit calculation by considering final average salary used to calculate benefits over 15 years rather than 3 years; (3) eliminated a previously existing option to retire at age 55 if an employee's age and years of service totaled 80 years for PERS members or 85 years for TRS members; and (4) increased the retirement age from 60 to 62.

FUNDED RATIO

The graphic below covers the following retirement systems: West Virginia Public Employees Retirement System (PERS) and Teachers Retirement System (TRS).



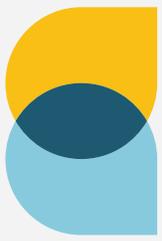
LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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

Table with 4 columns: Policy Shift, Were there relevant policy shifts for active employees or retirees?, Have there been legal challenges?, and What are the legal prospects for future changes?*. Rows include: INCREASE EMPLOYEE CONTRIBUTIONS, DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS, CHANGE VESTING PERIOD, CHANGE BENEFIT CALCULATION, and CHANGE RETIREMENT AGE.

* 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.

**An employee "substantially relies" on benefits to their detriment when they forgo opportunities such as private employment or earlier retirement and remain in public employment for an extended time. Courts presume an employee has substantially relied on a particular benefit that has been in place for at least 10 of an employee's years of service. See Myers v. W. Virginia Consol. Pub. Ret. Bd. (W. Va. 2010).



WEST VIRGINIA STATE LAW CONTEXT

State Provisions

WEST VIRGINIA CONSTITUTION ARTICLE III, SECTION 4: "No bill of attainder, ex post facto law, or law impairing the obligation of a contract, shall be passed."

Key Opinions

BOOTH V. SIMS, 56 S.E.2D 167 (W. VA. 1995)

Active employee state troopers who were eligible for retirement brought a mandamus action under West Virginia Constitution Article III, Section 4 (Contract Clause) challenging the constitutionality of a 1994 amendment to West Virginia Code Section 15-2-27a that increased employee contributions and reduced retirees' COLA, claiming impairment of vested rights in the pension plan. As to the COLA reduction, the West Virginia Supreme Court of Appeals held that the employees had vested rights that the legislation unconstitutionally impaired. The employees had substantially relied to their detriment on the benefit by spending more than half their work years employed with the state and foreclosing other career options. The court reasoned that in determining whether the legislature can reduce an employee's pension benefits, an employee has vested contract rights only if he or she "relied substantially to his or her detriment on the existing pension benefits and contribution schedules." *Booth v. Sims*, 56 S.E.2d 167 at 181. To determine substantial reliance, the court looks for "an employee's membership in a pension system and his or her forbearance in seeking other employment" on a case-by-case basis. *Id.* The court indicated that reliance should be presumed after 10 years of service. *Id.* at 184. Reaffirming West Virginia's adoption of the "California rule," the court noted that to reduce pension benefits where substantial detrimental reliance is found, the state must provide equal benefits as just compensation. *Id.* at 185. Under the rule, an employee's vested contractual pension rights may be modified before retirement to keep the pension system flexible and maintain its integrity if such modification is reasonable and necessary (bears some material relation to the successful operation of the pension system), and disadvantages are accompanied by comparable new advantages. *Id.* As to the employee contribution increase, the court held that the employees' vested rights were not unconstitutionally impaired because the amendment provided for salary increases that covered the cost of the employees' increased contributions. *Id.* at 186.

ADAMS V. IRELAND, 528 S.E.2D 197 (W. VA. 1999)

A retiree challenged under West Virginia Constitution Article III, Section 4 (Contract Clause) the constitutionality of a 1989 amendment to West Virginia Code Section 5-5-3 that had changed the benefit calculation while he was still an active employee, claiming impairment of his contractual rights in pension benefits. The 1989 amendment repealed a provision enacted the previous year that had allowed for inclusion of accrued, unpaid leave in the benefit calculation, increasing the benefits retirees could expect to receive. The plaintiff, an active employee in 1988 and 1989, asserted that he had elected not to retire early because of the promise of increased benefits from accrued unpaid leave under the 1988 provision. The 1989 amendment removed this benefit. The West Virginia Supreme Court of Appeals held that if the retiree demonstrated, as a matter of fact, that he had relied to his detriment on the promised benefits, then he had contractual rights that the amendment impaired. *Adams v. Ireland*, 528 S.E.2d 197 at 204. The court remanded the case for the trial court to determine whether the retiree met the standard.

MYERS V. WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD, 704 S.E.2D 738 (W. VA. 2010)

Retirees challenged under West Virginia Constitution Article III, Section 4 (Contract Clause) the constitutionality of the same 1989 amendment to West Virginia Code Section 5-5-3 that had been at issue in *Adams v. Ireland* (above). The 1989 amendment repealed a provision enacted the previous year that had allowed for inclusion of accrued, unpaid leave in the benefit calculation, increasing the benefits retirees could expect to receive. The West Virginia Supreme Court of Appeals held that there was no contract impairment. Retirees were not entitled to the 1988 benefits because they had not substantially relied to their detriment on the promise that accrued unpaid leave could be included in their benefits calculations. *Myers v. West Virginia Consolidated Public Retirement Board*, 704 S.E.2d 738 at 750. The court rejected the retirees' claim that, based on *Booth v. Sims*, their 10 years of service entitled them to a presumption of substantial reliance. See *Booth v. Sims*, 56 S.E.2d 167 at 181 (presuming reliance after 10 years of service). The court distinguished *Booth* on the grounds that the 1988 benefits had been in place for only one year so the retirees could not have relied on them for longer than that. *Myers v. West Virginia Consolidated Public Retirement Board*, 704 S.E.2d 738 at 750. The court deferred to the retirement board's factual findings that retirees had not demonstrated substantial reliance on the 1988 benefits because neither employee had been eligible for retirement at the time of the amendment, nor had either one deferred retirement in order to accrue additional benefits. *Id.* at 751.

FOR MORE INFORMATION

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