OKLAHOMA

LEGAL ENVIRONMENT FOR PENSION POLICIES

As of August 2021

MAJOR POLICY SHIFTS

2006

H.B. 1179 (Special Session)

For active OPERS members, the Oklahoma Legislature raised the employee contribution rate from 3% on the first $25,000 of salary and 3.5% on the remainder to a flat rate of 3.5% on all compensation.

2011

H.B. 2132

For OPERS and TRS retirees, the Oklahoma Legislature required that going forward the legislature must fully fund cost-of-living adjustments (COLAs) before approving them.

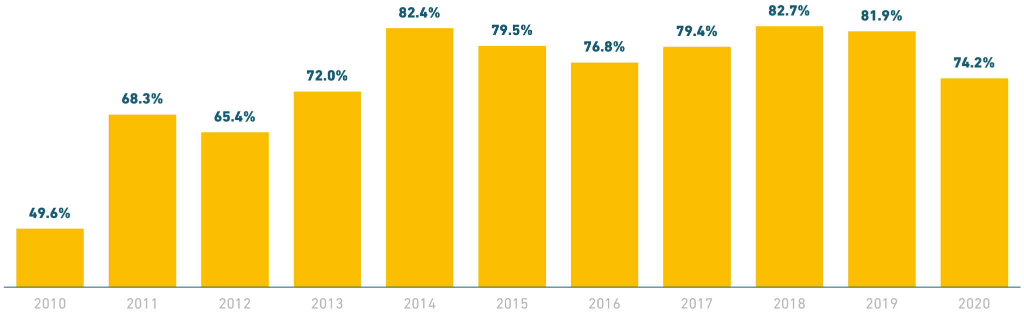
2014

H.B. 2630

For OPERS new hires, the Oklahoma Legislature closed the Defined Benefit plan and created a Defined Contribution plan with minimum employee contributions of 3% and a 6% employer contribution match.

FUNDED RATIO

The graphic below covers the Oklahoma Public Employees Retirement System (OPERS), the Teachers' Retirement System of Oklahoma (TRS), the Oklahoma Police Pension and Retirement System (OPPRS), and the Oklahoma Law Enforcement Retirement System (OLERS). Overall, Oklahoma has 21 public pension systems. The fact sheet mainly focuses on OPERS and TRS.



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

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

All mentions to OPERS in the table below refer only to the OPERS Defined Benefit plan.

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 H.B. 1179	NO	• **FAVORABLE** as to active employees who have not yet met all retirement requirements • **UNFAVORABLE** as to active employees who have met retirement requirements unless change satisfies the "Oklahoma Rule"** • **N/A** as to retirees
DECREASE OR ELIMINATE COST-OF-LIVING ADJUSTMENTS	YES H.B. 2132	NO	• **N/A** as to all employees and retirees. COLAs are ad hoc by legislative approval and must be fully funded. Removal of previously granted COLAs would likely be treated unfavorably
CHANGE VESTING PERIOD	NO	NO	• **FAVORABLE** as to active employees who have not yet met all retirement requirements • **UNFAVORABLE** as to active employees who have met retirement requirements unless change satisfies the "Oklahoma Rule"** and, for OPERS, is prospective only • **N/A** as to retirees
CHANGE BENEFIT CALCULATION	YES TITLE 74, SECTION 973(A) (OPERS)	NO	• **FAVORABLE** as to active employees who have not yet met all retirement requirements • **UNFAVORABLE** as to active employees who have met retirement requirements unless change satisfies the "Oklahoma Rule"** and, for OPERS, is prospective only • **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 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.

**The Oklahoma Rule requires that (1) the modification was "necessary and reasonable"; (2) the disadvantages to the employee were "offset by new advantages"; and (3) the modifications would not impair "the actuarial soundness of the fund" or "detrimentally affect vested rights."

EQUABLE

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OKLAHOMA STATE LAW CONTEXT

State Provisions

OKLAHOMA CONSTITUTION ARTICLE II, SECTION 15: "No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed."

OKLAHOMA CONSTITUTION ARTICLE V, SECTION 54: "The repeal of a statute shall not revive a statute previously repealed by such statute, nor shall such repeal affect any accrued right, or penalty incurred, or proceedings begun by virtue of such repealed statute."

OKLAHOMA STATUTES ANNOTATED TITLE 74, SECTION 923(A) [OPERS]: "Except as otherwise provided by this section, no alteration, amendment or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment or repeal."

Key Opinions

BAKER V. OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, 718 P.2D 348 (1986)
Active members and retirees of firefighter and police unions sued the retirement plan administrators under Article II, Section 15 (Contracts Clause) and Article V, Section 54 of the Oklahoma Constitution for applying to them the Oklahoma Legislature's repeal of provisions that had previously allowed their future pension benefits to automatically increase or decrease in proportion to the salary fluctuation of active firefighters and police officers in service. A federal court certified two state-law pension rights questions to the Supreme Court of Oklahoma, which held that employees "who had retired or *could have retired* and become eligible for payment of pension benefits" have absolute contract rights in the plan terms as they existed at the time their rights vested (emphasis added). *Baker v. Oklahoma Firefighters Pension and Retirement System*, 718 P.2d 348 at 353. Once vested, an employee is "entitled to [the] terms of the statute in effect when the right to a pension vest[ed]." *Id.* at 350-51. By contrast, "no contract exists" before that point. *Id.* at 352.

TAYLOR V. STATE EDUCATION EMPLOYEES GROUP INSURANCE PROGRAM, 897 P.2D 275 (OK. 1995)
Members of the Teachers' Retirement System of Oklahoma (TRS) sought declaration that Section 29 of the State and Education Employees Group Insurance Act (the "Act") violated the Contract Clauses of the U.S. Constitution (Article 1, Section 10) and the Oklahoma Constitution (Article II, Section 15). The Act transferred $39.6 million from the TRS to the Education Employees Group Insurance Reserve Fund as part of expansion of the teachers health insurance program. The legislation funded the transfer by increasing the amount of revenues payable from tax on natural gas to the TRS annually by $50 million. The Oklahoma Supreme Court held that the legislature could modify the contract — even as to employees whose contract rights had vested — provided that (1) the modification was "necessary and reasonable"; (2) the disadvantages were "offset by new advantages"; and (3) the modifications would not impair "the actuarial soundness of the fund" or "detrimentally affect vested rights" (taken together, the court labeled this the "Oklahoma rule"). *Taylor v. State Education Employees Group Insurance Program*, 897 P.2d 275 at 279.

In applying the Oklahoma Rule to this case, the court reasoned that it was necessary and reasonable for the legislature to fund reserves for the teachers health plan from the TRS, a fund also established for teachers. *Id.* at 280. The transfer did not impair the actuarial soundness of the fund because the funds would be replenished by increased tax revenues from natural gas. *Id.* at 279. There was no impairment of vested rights because the legislature had neither increased contributions nor reduced benefits, and those in the retirement plan "received a reasonable *quid pro quo*" presumably by having health benefits available to them. *Id.* at 280.

FOR MORE INFORMATION

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