Cost-of-Living Adjustments under the PERA Act

Investment And Pensions Oversight Committee

Senator George K. Muñoz, Chair
Representative Patricia Roybal Caballero, Vice-Chair

September 5, 2019

Dr. Jackie Kohlasch, Chair
John Melia, Vice-Chair
Wayne Propst, Executive Director

History of PERA Cost-of-Living Adjustment (COLA)

Year	Cost-of-Living Adjustment
1965	First COLA awarded effective July 1, 1965 2% per year on the base pension
1971	COLA increased to 2.3% less any amounts received in prior years of 2% adjustments
1973	Authorized COLAs of between 0.25% and 6% based on a member's date of retirement, effective July 1, 1973. Persons retired prior to July 1, 1971 received the full 6% adjustment.
1975	Authorized COLAs of 6% for all annuities, effective July 1, 1975. Increased minimum adjustment of $10 per month and imposed a maximum adjustment of $25 per month
1978	Authorized COLAs ranging from 3% to 10% with adjustment caps for one year only, based on the retirement dates of retirees
1979	Permanent COLA authorized tied to the Consumer Price Index, with a maximum adjustment limited to 2% per year, not compounded. 5-year deferral to receive COLA
1981	Ad hoc COLA of $1.00 per month for every year of service credit and $1.00 per month for every year retired, applicable to all members who were retired as of July 1, 1980
1982	Permanent COLA authorized tied to the Consumer Price Index, with a maximum adjustment limited to 3% per year, compounded. 2-year deferral period to receive COLA
1992	3% compounded annually with a 2-year deferral period for eligibility
2013	**2% compounded annually with graduated deferral period to receive COLA increasing from 2 to 7 years by July 1, 2016**

1998 Constitutional Amendment

- Effective November 8, 1998, the Constitution of New Mexico, Article XX, was amended to add a new Section 22 requiring that all assets of the public employees retirement system ("PERA") and the education retirement system ("ERB") be held in a trust fund for the exclusive benefit of the members, retirees and beneficiaries of the respective systems.

- The Constitutional Amendment requires the trustees for the retirement systems to contract with an independent actuary for the purpose of adopting actuarial assumptions for the system it administers.

- The Constitutional Amendment also contains a fiscal responsibility provision that ties into this requirement. Article 20, Section 22, in pertinent part, states: "***The legislature shall not enact any law that increases the benefits paid by the system in any manner or change the funding formula for a retirement plan unless adequate funding is provided***."

- Article 20, Section 22 expressly provides that nothing in it shall be construed to prohibit modifications to public employees and educational retirement plans that enhance or preserve actuarial soundness.

PERA

Legal Considerations Regarding Pension Solvency Legislation

- New Mexico public retirement plan members who meet minimum service requirements have a vested property right with due process protections under the New Mexico and United States Constitutions.

- Procedural due process requires notice of proposed changes and an opportunity for affected individuals to respond. Full legislative process generally complies with this requirement.

- Substantive due process protects individuals from a deprivation of property by the government that is arbitrary or irrational. Legislative changes will be upheld if they are rationally related to a legitimate state goal, such as actuarial soundness of a pension system.

2013: PERA Cost-of-Living Adjustment Changes

- Reduce annual compounding COLA rate from 3% to 2%.
- Suspend COLA for return-to-work retirees during period of reemployment.
- Preserved 2.5% COLA for disability retirees and annual pensions less than $25,000

Retirees effective July 1, 2013 and after:

- Seven full-calendar-year deferral period to receive COLA, implemented on graduated scale.

2014 Judicial and Magistrate Pension Reform

- Effective July 1, 2014, suspended the COLA for all retired judges, justices and magistrates for two years (2014-15).

- Established an independent COLA under the Judicial Retirement Act ("JRA") and the Magistrate Retirement Act ("MRA"). Retired judges and magistrates receive a 2% COLA only if the respective fund is at or greater than 100% funded and projected to continue to be at or above 100% for the next successive year. COLA suspensions may only continue for two consecutive fiscal years.

- Given their poor funding status, the Judicial and Magistrate retirement systems effectively award a 2% COLA every 3rd year.

PERA

Bartlett v. Cameron, 316 P. 3d, 889 (2013)

- In December 2013, the Supreme Court of New Mexico, rejected the claims of certain retired teachers, professors and other public education employees challenging the state constitutionality of Senate Bill 115 to the extent that it reduces the future amounts that all education retirees might receive as an annual COLA.
- The Court held that Article XX Section 22 of the State Constitution did not grant the retirees a right to an annual COLA based on the formula in effect on the date of their retirement. The court held that any future COLA to a retirement benefit is merely a year-to-year expectation that, until paid, does not create a property right under the State Constitution. Once paid, the COLA by statute becomes part of the retirement benefit and a property right subject to those constitutional protections.
- The Supreme Court's constitutional analysis is applicable to the COLA provided under the PERA retirement systems. This position is bolstered by the 2014 COLA reductions under the Judicial and Magistrate retirement systems.

Pierce v. State of New Mexico, 910 P.2d 288, 121 N.M. 212 (NMSA 1995)

- The *Pierce v. State of New Mexico*, 910 P.2d 288, 121 N.M. 212 (NMSA 1995) case considered a challenge by retirees under the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act and the Educational Retirement Act to legislation that repealed a longstanding income tax exemption for state retirement benefits. The New Mexico Supreme Court upheld the legislation, finding that these public pension plan acts do not grant retirees contractual rights. The Court further found that because the acts provided an absolute right to receive some form of pension benefits after earning five years of service credits, they created vested property rights, but that those rights did not include the specific right to receive pension benefits exempt from tax.

PERA