

February 22, 2011

Mr. George Hopkins
Executive Director
Arkansas Teacher Retirement System
1400 West Third Street
Little Rock, Arkansas 72201

Re: House Bill 1262

Dear George:

You have asked us for an analysis of House Bill (HB) 1262.

The first three sections of the Bill relate to the Arkansas Public Employees Retirement System (APERS), and not to ATRS.

Section 4 of the Bill amends 24-7-502 related to termination of active membership in ATRS. This section provides the following.

- Defines the term “full time” to mean employment requiring 20 or more hours per week.
- Preserves the present definition of termination of active membership (180 days) for individuals who are members of ATRS on July 2, 2009 and before July 1, 2011.
- Appears to repeal the definition of termination of active membership for anyone not meeting the above conditions.

Section 4 also adds a new subsection (e) to 24-7-502 that relates to people who retire on or after July 1, 2011 or to people who enter TDROP on or after July 1, 2011. This subsection provides that

- People who are reemployed by a different public retirement system (is this intended to mean “in a position covered by a public retirement system”?) cannot earn additional service credit.
- People who are reemployed by ATRS (is this intended to mean “in a position covered by the Arkansas Teacher Retirement System”) cannot earn additional service credit if they are reemployed more than 6 months after retirement. By virtue of omission, it appears that such individuals can earn additional service credit if they are reemployed within the first 6 months following retirement.
- People who have participated in TDROP (with a participation date on or after July 1, 2011) shall never acquire additional service credit.
- A person who is reemployed by an employer covered by the system more than 6 months after retirement (or after ceasing participation in TDROP) shall cease receiving benefit payments until the reemployment is terminated (but will not be reinstated as an active member). We think, but cannot be certain, that this provision is intended to apply to people who are reemployed on a “full time” basis, as redefined by this bill.
- In the case of an individual who returns to covered employment within 6 months of retirement, the retirement shall be cancelled, and the individual shall be reinstated as an active member (but no repayment of benefits is required) effective the first day of the month following the date of reemployment. We think, but cannot be certain, that this provision is

intended to apply to people who are reemployed on a “full time” basis, as redefined by this bill.

- A reinstated retiree must work at least two additional years in order to be eligible for a recalculated retirement benefit. We think, but cannot be certain, that this provision is intended to apply to people who are reemployed on a “full time” basis, as redefined by this bill.
- A reemployed retiree who is reemployed on a less than “full time” basis within 6 months of retirement can receive compensation without penalty up to the amount permitted by the federal Social Security Act.
- A person described above is subject to a 25% benefit suspension if there are any earnings above the amount permitted by the Social Security Act. It is unclear whether this is intended to be a \$1 for \$4 offset or that 25% of the retirement benefit is forfeited if even \$1 above the limit is earned.
- If an employer covered by the system employs an individual who will not earn service credit due to the above provisions, the employer shall pay the amortized rate for the retiree to the system. It is not clear whether this is intended to mean the full employer contribution rate, or something else.
- In the case of a reemployed retiree who returns to work and accrues additional service credit, the benefit *shall* be recomputed using a split formula. In other words, the benefit formula in effect at the time of the first retirement, and the benefit formula applicable at the time of the second retirement are to be applied separately to the relevant amounts of service credit earned. Apparently, it is intended that a single final average compensation is to be used. This paragraph, because it doesn’t make reference to a two year accrual requirement, could be viewed as contradicting an earlier paragraph that says that two additional years of service credit must be earned before a re-computation is done.
- Defines the “retirement date” as the date the member terminated covered employment and became eligible to receive benefits or entered TDROP and not the date the member ceased participation in APERS. It is not clear if this section is intending to refer to the APERS system or if this is a typographical error.

Section 5 of the bill amends 24-7-708 related to employment of retired members by covered employers. In the initial part of the section the bill revises the lettering/numbering scheme, and then introduces a new subsection (b). The new subsection applies to people who retire or enter TDROP on or after July 1, 2011, and who were not employed in an elected position. Subparagraph (a) is not limited to people who retired or entered TDROP prior to that date, so this would imply that, both (a) and (b) simultaneously apply to everyone who retires or enters TDROP on or after July 1, 2011 (which may not be intended). The new subsection (b) provides that, in the case of people hired back on a full time (20 hours) basis:

- The retirement benefit is to be cancelled
- People rehired within the first six months following retirement are reinstated to active status (but the bill does not seem to require repayment of benefits)
- People who are rehired 6 months or more following retirement, or who have been in TDROP are not reinstated to active status.

- People who are rehired within the first 6 months and who re-retire within two years do not get a recalculated benefit. They get the benefit they were originally getting (It is not clear whether they are forfeiting any 3% cola's that they otherwise would have received. They also get a refund of contributions made during employment.
- If, on the other hand, a person re-retires two or more years following the reemployment, the person is paid the original benefit. It is not clear whether they are forfeiting any 3% cola's that would have accrued. They also get a benefit based on the additional service credit and the benefit formula in effect at the time of the second retirement.

In the case of a person who returns to employment on a less than full time basis, subsection (b) provides that

- The person may earn up to the amount permitted by the federal Social Security Act without penalty.
- If a person earns more than the amount permitted by the Social Security Act, 25% of the retirement benefit is to be suspended. It is unclear whether this is intended to be a \$1 for \$4 offset or that 25% of the retirement benefit is forfeited if even \$1 above the limit is earned.
- The retiree and the participating employer must maintain records of the amounts earned and must report monthly to ATRS.
- The retiree and the participating employer must both notify ATRS if the retiree earns more than the amount permitted by the Social Security Act.

This bill appears to eliminate statutory provisions that require the repayment of benefits by people who return to work within 180 days. Consequently, it adds cost to the system. There are a number of the places where the bill is ambiguous, or, at best, the meaning is unclear to us. For that reason we are not able to attach an accurate cost estimate to this bill.

A review of this bill for compliance with state or federal law is beyond the scope of our assignment. However there are a few items we wish to bring to the attention of policy makers.

1. The bill will allow people to retire, start a benefit, and return to work without establishing a bona fide separation from service. This would appear to us to conflict with the Normal Retirement Age portion of the Pension Protection Act. It is possible therefore that the bill would put the plan's tax qualified status at risk. Losing the plan's tax qualified status would be a very serious problem for ATRS. This is a matter for Counsel.
2. It is possible that the redefinition of the term "full time" could have implications on other employee benefits that might go beyond the intent of the bill. Counsel should also review this matter.
3. We are also concerned about the cliff nature of the definition of full time. It is not clear to us how that will be administered.
4. We are concerned about the cliff nature of the application of the Social Security earnings limitation. A single dollar of "excess" earnings could cost a person thousands of dollars in benefits. We are uncertain if such a provision might constitute an unfair labor practice.. This is a matter for Counsel.

5. In our analysis, we isolated one section where one provision of the bill appears to contradict another. There are other sections where we are unsure of the intended meaning. We have noted same in our analysis. This too is a matter for Counsel.

Finally we will comment that ATRS will need to develop enforcement and monitoring mechanisms for the changes proposed in the bill. At a minimum ATRS will need to develop a procedure to receive, store, and retrieve the data that reemployed retirees and their employers will submit to ATRS. Forms will need to be designed, perhaps an internet reporting system will be needed. If the bill becomes law, we will be please to work with you to help develop such mechanisms. It may be necessary for you to add to staff or to develop computer reporting systems to administer the provisions of this bill. We cannot estimate those costs.

We hope this analysis meets your needs.


Our analysis relates only to the plan changes described in this correspondence. In the event that other plan changes are being considered, it is very important to remember that the results of separate actuarial analyses cannot generally be added together to produce a total. The total can be considerably greater than the sum of the parts due to the interaction of various plan provisions with each other, and with the assumptions that must be used.

The undersigned are Members of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

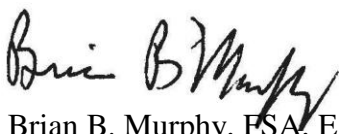
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Sincerely,



Judith A. Kermans, EA, MAAA, FCA



Brian B. Murphy, FSA, EA, MAAA, FCA

JAK\BBM:bd