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INTERIM STUDY PROPOSAL 2019-073
As Engrossed: H3/14/19 H3/18/19

A Bill

State of Arkansas
92nd General Assembly
Regular Session, 2019

HOUSE BILL 1295

By: Representatives Warren, Capp, Coleman, Dalby, Deffenbaugh, Eubanks, M. Gray, G. Hodges,
Maddox, Scott, Slape, Wing
By: Senators B. Sample, Bledsoe, E. Cheatham, K. Hammer, K. Ingram, G. Leding

Filed with: Joint Committee on Public Retirement and Social Security Programs
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

*AN ACT TO ESTABLISH THE EVERY ARKANSAN RETIREMENT
PLAN OPPORTUNITY ACT; AND FOR OTHER PURPOSES.*

Subtitle

*TO ESTABLISH THE EVERY ARKANSAN
RETIREMENT PLAN OPPORTUNITY ACT.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code Title 11 is amended to add an additional
chapter to read as follows:*

CHAPTER 16

EVERY ARKANSAN RETIREMENT PLAN OPPORTUNITY

11-16-101. Title.

This chapter shall be known as the "Every Arkansan Retirement Plan
Opportunity Act".

11-16-102. Findings.

The General Assembly finds that:

(1) Many citizens in Arkansas do not have retirement savings or
have inadequate retirement savings;

1 (2) An estimated five hundred thirty thousand (530,000) workers,
2 including employees of an employer, independent contractors, and the self-
3 employed, do not have access to an employer-sponsored retirement plan or
4 program, or any other easy method of saving at work;

5 (3) It is the policy of this state to assist the Arkansas
6 private-sector workforce, including in particular middle income and lower
7 income working households, in voluntarily saving for retirement by
8 encouraging and making it easier for employers to adopt a retirement savings
9 plan for employees in Arkansas;

10 (4) Providing an additional adequate, portable, low-cost, and
11 consumer protective retirement savings option to Arkansas households will
12 ultimately:

13 (A) Enhance the retirement security of these households;

14 (B) Reduce substantial reliance on public assistance
15 programs offered by the state; and

16 (C) Reduce the potential burden on taxpayers in Arkansas
17 to finance the public assistance programs;

18 (5) The Arkansas 529 College Investing Plan demonstrates the
19 feasibility of a public-private partnership that outsources investment and
20 administration to assist the private citizens of Arkansas to save on a
21 voluntary and cost-efficient basis; and

22 (6) The General Assembly intends to establish an Every Arkansan
23 Retirement Plan Opportunity that will use the services of competent and
24 qualified private-sector entities that are selected by the Every Arkansan
25 Retirement Plan Opportunity Board to operate, administer, manage, and oversee
26 the plan on behalf of the plan participants.

27
28 11-16-103. Creation.

29 A multiple-employer voluntary retirement savings plan that shall be
30 known as the "Every Arkansan Retirement Plan Opportunity" is established.

31
32 11-16-104. Definitions.

33 As used in this chapter:

34 (1)(A) "Eligible employee" means an individual who:

35 (i) Is employed by a participating employer as an
36 employee who works at least one thousand (1,000) hours per year;

1 (ii) Earns a wage or other compensation that is
2 allocable to the State of Arkansas; and

3 (iii) Is at least eighteen (18) years of age.

4 (B) "Eligible employee" does not include an employee:

5 (i) Covered under the Railway Labor Act, 45 U.S.C. §
6 151 et seq.;

7 (ii) On whose behalf an employer makes a
8 contribution to a Taft-Hartley multiemployer pension trust fund; or

9 (iii) Of the federal government, a state government,
10 a county, a municipal corporation, or a state unit or instrumentality;

11 (2)(A) "Eligible employer" means a person or entity who is
12 engaged in a business, industry, profession, trade, or other enterprise in
13 Arkansas, whether for profit or nonprofit.

14 (B) "Eligible employer" does not include:

15 (i) The federal government, a state, a county, a
16 municipal corporation, or a state unit or instrumentality; or

17 (ii)(a) An employer that maintains or has maintained
18 within the most current preceding two (2) years a Specified Tax-Favored
19 Retirement Plan for its employees.

20 (b) An employer is not an eligible employer if
21 the employer:

22 (1) Maintains a specified tax-favored
23 retirement plan for a portion of a calendar year that ends on or after the
24 effective date of this act; or

25 (2) Adopts a specified tax-favored
26 retirement plan that is effective for the remaining portion of the calendar
27 year in which the employer did not maintain a specified tax-favored
28 retirement plan;

29 (3) "Participant" means an eligible employee or other individual
30 who has a balance credited to his or her account under the Every Arkansan
31 Retirement Plan Opportunity;

32 (4) "Participating employer" means an eligible employer that is
33 participating in the Every Arkansan Retirement Plan Opportunity;

34 (5) "Self-employed" means an individual who:

35 (A) Is self-employed;

1 (B) Has self-employed income or other compensation from
2 self-employment that is allocable to the State; and

3 (C) Is at least eighteen (18) years of age;

4 (6) "Specified tax-favored retirement plan" means a retirement
5 plan that is tax-qualified under or is described in and satisfies the
6 requirements of 26 U.S.C. §§ 401, 403(b), 408(k), or 408(p);

7 (7) "Total fees and expenses" means all fees, costs, and
8 expenses, including without limitation administrative expenses, investment
9 expenses, investment advice expenses, accounting costs, actuarial costs,
10 legal costs, marketing expenses, education expenses, trading costs, insurance
11 annuitization costs, and other miscellaneous costs; and

12 (8) "Trust" means the trust in which the assets of the plan are
13 maintained.

14
15 11-16-105. Every Arkansan Retirement Plan Opportunity – Plan
16 requirements.

17 (a) The Every Arkansan Retirement Plan Opportunity shall be treated as
18 single plan under Title 1 of the Employee Retirement Income Security Act of
19 1974, 29 C.F.R. § 2509 et seq., and as described in 26 U.S.C. §§ 401(a),
20 401(k), and 413(c).

21 (b) The Every Arkansan Retirement Plan Opportunity shall:

22 (1) Be overseen by the Every Arkansan Retirement Plan
23 Opportunity Board and its designees;

24 (2) Be set forth in a document that prescribes the terms and
25 conditions of the Every Arkansan Retirement Plan Opportunity;

26 (3) Be designed and implement in a manner that is consistent
27 with applicable federal and state law;

28 (4) Be professionally managed and administered by one (1) or
29 more trustees, fiduciaries, custodians, third-party administrators,
30 investment managers, record keepers, and any other service providers;

31 (5) Be available on a voluntary basis to eligible employers and
32 eligible self-employed individuals;

33 (6) After written notice, automatically enroll an eligible
34 employee who elects to participate in the Every Arkansan Retirement Plan
35 Opportunity unless the eligible employee opts out of the Every Arkansan
36 Retirement Plan Opportunity;

1 (7) Enroll a self-employed individual who elects to participate
2 in the Every Arkansan Retirement Plan Opportunity;

3 (8) Provide a plan participant with the option to terminate his
4 or her participation in the Every Arkansan Retirement Plan Opportunity at any
5 time;

6 (9) Permit voluntary pre-tax or Roth 401k deferrals by an
7 employee;

8 (10) Allow voluntary employer contributions;

9 (11) Require an eligible employee to automatically contribute
10 five percent (5%) of his or her salary to the Every Arkansan Retirement Plan
11 Opportunity unless the eligible employee elects to:

12 (A) Opt out of the Every Arkansan Retirement Plan
13 Opportunity; or

14 (B) Contribute a higher or lower percentage rate of his or
15 her salary to the Every Arkansan Retirement Plan Opportunity;

16 (12) Provide for the possible increase of the contribution rate
17 paid by a participant in the Every Arkansan Retirement Plan Opportunity;

18 (13) Provide for the direct deposit of contributions into
19 investments under the Every Arkansan Retirement Plan Opportunity;

20 (14) In a manner that is consistent with the Employee Retirement
21 Income Security Act of 1974, 29 C.F.R. § 2509 et seq., and other federal law,
22 provide for the automatic investment of a participant's contributions if the
23 participant does not elect a particular investment option;

24 (15) Provide quarterly reports on the status of each
25 participant's account to the participant;

26 (16) When necessary and feasible, use existing employer and
27 public infrastructure to facilitate contributions, recordkeeping, and
28 outreach and use polled or collective investment arrangements;

29 (17) Provide that each participant who is one hundred (100%)
30 percent vested in the Every Arkansan Retirement Plan Opportunity owns the
31 contributions to or earnings on the amounts contributed to his or her account
32 under the Every Arkansan Retirement Plan Opportunity;

33 (18) Provide that the state and employers do not have a
34 proprietary interest in the contributions owned by a participant or in the
35 earnings on the amounts contributed that are owned by a participant;

1 (19) Make provisions for participation in the Every Arkansan
2 Retirement Plan Opportunity by an individual who is self-employed;

3 (20) After the three-year start-up period of the Every Arkansan
4 Retirement Plan Opportunity that begins with the initial implementation of
5 the plan, keep fees and expenses below three-fourths of one percent (0.75%)
6 of the total assets of the Every Arkansan Retirement Plan Opportunity;

7 (21) Establish rules and procedures that govern the distribution
8 of funds in the Every Arkansan Retirement Plan Opportunity Administrative
9 Trust and promote the portability of benefits; and

10 (22) Encourage the choice of an employer to adopt a specified
11 tax-favored retirement plan, including the Every Arkansan Retirement Plan
12 Opportunity.

13
14 11-16-106. Every Arkansan Retirement Plan Opportunity Board – Creation
15 – Members.

16 (a) The Every Arkansan Retirement Plan Opportunity Board is
17 established in the Office of the Treasurer of State.

18 (b) The board shall consist of the following members:

19 (1)(A) The Treasurer of State or his or her designee.

20 (B) The Treasurer of State or his or her designee shall be
21 the plan administrator;

22 (2) An individual who is appointed by the Treasurer of State and
23 has skill, knowledge, and experience in the field of retirement savings and
24 investment;

25 (3) An individual who is appointed by the Treasurer of State and
26 has skill, knowledge, and experience in small business;

27 (4) The Director of the Department of Finance and Administration
28 or his or her designee;

29 (5) The Executive Director of the Arkansas Public Employees’
30 Retirement System or his or her designee;

31 (6) A retired individual who shall represent the interest of
32 retirees and is appointed by the Speaker of the House of Representatives; and

33 (7) A retired individual who shall represent the interest of
34 retirees and is appointed by the President Pro Tempore of the Senate.

35 (c)(1) A member of the board who is appointed by the Treasurer of
36 State, President Pro Tempore of the Senate, or the Speaker of the House of

1 Representatives shall serve as a member of the board at the pleasure of the
2 appointing authority.

3 (2) A member of the board may be reappointed.

4 (3)(A) The appropriate appointing authority shall appoint an
5 appropriate representative to fill a vacancy on the board within thirty (30)
6 days of the date on which the vacancy occurs.

7 (B) An appointment to fill a vacancy on the board is
8 immediately effective.

9 (d) A majority of the voting members of the board constitutes a quorum
10 for the transaction of business before the board.

11 (e)(1) Each member of the board that is a voting member of the board
12 shall have one (1) vote on each question before the board.

13 (2) At least four (4) concurring votes shall be necessary for a
14 decision by the board at a meeting where all members of the board are
15 present.

16 (3) At least three (3) concurring votes shall be necessary for a
17 decision by the board at a meeting where a quorum of the members of the board
18 are present.

19 (f) The Treasurer of State or his or her designee shall serve as chair
20 of the board.

21 (g) The members of the board shall serve without compensation.

22
23 11-16-107. Every Arkansan Retirement Plan Opportunity Board – Powers,
24 authority, and duties.

25 (a) The Every Arkansan Retirement Plan Opportunity Board:

26 (1) Shall be the sponsor of the Every Arkansan Retirement Plan
27 Opportunity under the Employee Retirement Income Security Act of 1974, 29
28 C.F.R. § 2509 et seq.;

29 (2) Shall develop and implement the Every Arkansan Retirement
30 Plan Opportunity; and

31 (3) May conduct market, legal, and feasibility research for the
32 purpose of developing and implementing the plan.

33 (b) The members of the board shall be fiduciaries of the plan under
34 the Employee Retirement Income Security Act of 1974, 29 C.F.R. § 2509 et
35 seq., and shall have the power, authority, and duty to:

36 (1) Establish, implement, and maintain the plan;

1 (2) Design, establish, and operate the plan and any trust,
2 account or arrangement established under the plan to align with the best
3 practices for retirement saving;

4 (3) Arrange for the collective, common, and pooled investment of
5 assets;

6 (4) Develop and disseminate educational information;

7 (5) Adopt rules and regulations that are necessary for the
8 implementation, administration, and operation of the plan;

9 (6) Ensure that the plan complies with the Internal Revenue
10 Code, 26 U.S.C. § 401 et seq., the Employee Retirement Income Security Act of
11 1974, 29 C.F.R. § 2509 et seq., and any other applicable federal or state
12 law;

13 (7) Ensure that the plan satisfies the criteria for favorable
14 federal and state tax-qualified treatment;

15 (8) Discharge the duties of the board with respect to plan
16 solely in the interest of the plan participants;

17 (9) Maintain, invest, and reinvest the funds contributed into
18 the plan consistent with the investment restrictions established by the board
19 and the standard of care described in the prudent investor rule under § 24-2-
20 610;

21 (10) In its discretion, increase or decrease the initial
22 automatic default contribution rate to be paid by an eligible employee who
23 elects to participate in the plan;

24 (11)(A) In its discretion, increase the contribution rate of
25 each plan participant by no more than one percent (1%) of the annual salary
26 and wages of the participant for each additional year the participant is
27 employed or participating in the plan up to a maximum of ten percent (10%).

28 (B) An increase of the contribution rate of each plan
29 participant shall apply to a participant by default or if the participant
30 elects to increase his or her contribution; and

31 (12) Make and enter into a contract, agreement, or arrangement
32 and to retain, employ, and contract for the services of financial
33 institutions, depositories, consultants, broker dealers, investment advisors
34 or managers, third-party plan administrators, and research, technical, and
35 other services necessary or desirable for carrying out the purposes of the
36 plan.

1 (c) A board member, plan administrator, and any other staff of the
2 board shall not:

3 (1) Directly or indirectly have an interest in the making of an
4 investment under the plan or in gains or profits that accrue from an
5 investment under the plan;

6 (2) Borrow any plan related funds or deposits, or use plan
7 related funds or deposits in a manner that benefits:

8 (A) The board member, plan administrator, or a staff
9 member of the board; or

10 (B) An agent or partner of the board member, plan
11 administrator, or staff member of the board; or

12 (3) Become an endorser, surety, or obligor on an investment made
13 under the plan.

14
15 11-16-108. Limitation on liability

16 (a) The Every Arkansan Retirement Plan Opportunity, the Every Arkansan
17 Retirement Plan Opportunity Board and each of its members, and the state
18 shall not:

19 (1) Insure any account or guarantee any rate of return or any
20 interest rate on any contribution; or

21 (2) Be liable for any loss incurred by any person as a result of
22 participating in the plan.

23 (b) An eligible employer, a participating employer, or other employer
24 is not criminally or civilly liable for:

25 (1) The decision of an employee to participate or opt out of the
26 plan;

27 (2) The decision of an employee to select an investment;

28 (3) An investment decision made by a participant or by the
29 board;

30 (4) The design or performance of the plan; or

31 (5) Any benefit paid to a participant in the plan.

32 (c)(1) The debts, contracts and obligations of the plan or the board
33 are not the debts, contracts, and obligations of the state.

34 (2) Neither the faith and credit or the taxing power of the
35 state is pledged directly or indirectly to the payment of the debts,
36 contracts, and obligations of the plan or board.

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11-16-109. Audits and annual reports.

(a) The Every Arkansan Retirement Plan Opportunity Board shall maintain an accurate account of the activities, operations, receipts, and expenditures of the board, the Every Arkansan Retirement Plan Opportunity, and the trust for the plan.

(b) An annual full audit of the books and accounts of the board shall:

(1) Be conducted by a certified public accountant; and
(2) Include without limitation direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other person who is not a state employee for the administration of the plan.

(c) For the purpose of the audit, an auditor:

(1) Shall have access to the properties and records of the plan and board; and
(2) May prescribe accounting methods and the rendering of periodic reports in relation to projects undertaken by the plan.

(d) By August 1 of each year, the board shall submit to the Joint Interim Committee on Public Retirement and Social Security Programs a public report on the operation of the plan, trust, and activities of the board that includes:

(1) An audited financial report that is prepared in accordance with generally accepted accounting practices and details the activities, operations, receipts and expenditures of the plan and board during the preceding calendar year;
(2) A summary of the benefits provided by the plan;
(3) The number of plan participants;
(4) The names of each participating employer;
(5) The contribution formulas and amounts of contributions made by each plan participant and participating employer;
(6) The withdrawals, account balances, investments, investment returns, and fees and expenses associated with the investments and the administration of the plan;
(7) Projected activities of the plan for the current calendar year; and

1 (8) Any other information regarding the plan and its operations
2 that the board might determine to provide.

3
4 11-16-110. Creation of the Every Arkansan Retirement Plan Opportunity
5 Administrative Trust.

6 (a) There is created the Every Arkansan Retirement Plan Opportunity
7 Administrative Trust.

8 (b) The co-trustees of the trust shall be the:

9 (1) Director of the Department of Finance and Administration;

10 (2) Executive Director of the Arkansas Public Employees'
11 Retirement System; and

12 (3) Treasurer of State.

13 (c)(1) The Every Arkansan Retirement Plan Opportunity may collect
14 application, account, or administrative fees to defray the cost of the plan.

15 (2) Fees collected under subdivision (c)(1) of this section
16 shall be deposited into the trust.

17 (3) The Every Arkansan Retirement Plan Opportunity Board shall
18 approve application, account, or administrative fees that may be collected
19 under this subsection.

20
21 SECTION 2. DO NOT CODIFY. Initial appointment – Every Arkansan
22 Retirement Plan Opportunity Board.

23 The Treasurer of State, President Pro Tempore of the Senate, and the
24 Speaker of the House of Representatives shall make the first appointments of
25 members to the Every Arkansan Retirement Plan Opportunity Board within one
26 hundred eighty (180) days of the effective date of this act.

27
28 SECTION 3. DO NOT CODIFY. Every Arkansan Retirement Plan Opportunity
29 – Initial contributions.

30 (a)(1) The Every Arkansan Retirement Plan Opportunity Board shall
31 establish the Every Arkansan Retirement Plan Opportunity so that an
32 individual may begin making contributions to the plan no later than one (1)
33 year after the effective date of this act.

34 (2) An individual shall not be permitted to contribute to the
35 plan before the effective date of this act.

1 (b)(1) The board may phase in the plan so that the ability to
2 contribute first applies on different dates for different classes of
3 individuals, including employees of employers of different sizes or types and
4 individuals who are not employees.

5 (2) The schedule for a phased-in implementation of the plan
6 shall be substantially completed within one hundred and eighty (180) days of
7 the effective date of this act.

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9

/s/Warren

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12 Referred requested by the Arkansas House of Representatives

13 Prepared by: JNL/VJF

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