

March 7, 2011

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

**Re: House Bill 1186**

Dear George:

You have asked us for an analysis of House Bill (HB) 1186.

The first section of the Bill relates to the Arkansas Public Employees Retirement System (APERS), and not to ATRS.

Section 2 of the Bill amends Section 24-7-502(a) related to termination of active membership in ATRS to specify one set of conditions for eligibility for termination but to require various waiting periods before being considered terminated from covered employment for purposes of retirement eligibility and eligibility to return to work.

Section 2 of the bill creates new section 24-7-502(a)(2)(A) which provides that a retiree with 38 or more years of combined total service on or after July 1, 2011 shall not be terminated for retirement purposes if within one year the person returns to work with an employer covered by ATRS, unless such person has attained normal retirement age. The waiting period formerly applicable to people with 38 or more years of service was 30 days.

Section 2 of the bill then modifies current section 24-7-502(a)(2)(B) to specify that an individual with 38 or more years of service for the period July 2, 2009 to June 30, 2011 shall not be terminated for retirement purposes if such person returns to covered employment within 180 days of retirement, unless such person has attained normal retirement age. By default, this section, as amended, also eliminates the previous 180 day waiting period that had been required for individuals with less than 38 years of service. Since nothing else in the bill establishes a waiting period for these people, the new language would imply that individuals with less than 38 years of combined service could retire and return to work the next day.

Section 2 of the bill also modifies former section 24-7-502(a)(2)(B) into section 24-7-502(a)(2)(C). New subsection C provides that individuals with more than 38 years of service prior to July 1, 2009 shall not be terminated from employment if they return to work within 30 days of retirement, unless they have attained normal retirement age.

Finally, HB 1186 also modifies Section 24-7-502(a)(3) to ‘suspend’ pension benefits rather than ‘forfeit’ them if a member fails to meet the termination requirements under the section until such time as the member is in compliance with the requirements. In such cases, the individual shall be reinstated as an active member following the date of reemployment by a covered employer, but will not have to repay benefits than had been received prior to returning to work.

We have many concerns regarding this bill. First, the complete removal of the waiting period for retirees with less than 38 years of service undoes significant changes that were enacted in previous legislative sessions. These changes were designed to ensure that the system complies with the normal retirement age rules of the Pension Protection Act. Without a significant waiting period between retirement and return to work, it may be difficult to argue that a bona fide separation from service has occurred. This could cause individuals to be subject to excise taxes, and could risk the plan’s tax qualified status with the Internal Revenue Service. This would be a matter for Counsel to review.

Second, the Bill completely eliminates repayment of benefits for individuals who fail the termination test. This lack of repayment is a direct cost to ATRS.

Third, adoption of the Bill could lead to abusive practices that would also increase ATRS costs. Eligible individuals with less than 38 years of service (who are below normal retirement age) could “retire” at the end of each school year and return to work in the fall with virtually no adverse effects. These individuals would receive pension payments during the summer and would not be required to refund them to ATRS once they returned to work in the fall. We estimate, based on current data, that such payments could be one million dollars or more per year.

Fourth, the bill makes retroactive changes to the waiting period that could cause individuals who satisfied the termination test at the time they returned to work to now fail the test. Counsel should review this issue to determine the legality of such an ex post facto change in the statute.

In summary, we feel that HB 1186 will add costs to the operation of ATRS and open the system up to abusive practices. 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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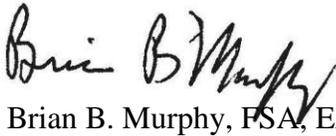
Each taxpayer should seek advice based on the individual's circumstances from an independent tax advisor.

This communication shall not be construed to provide tax advice, legal advice or investment advice.

Sincerely,



Judith A. Kermans, EA, MAAA, FCA



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

JAK\BBM:bd