

Senate Bill 169

(As Engrossed March 9, 2015)

Actuarial Cost Study prepared for
Joint Committee on Public Retirement and Social Security Programs
of the Arkansas 90th General Assembly

Provisions of the Bill

Senate Bill 169 affects the Arkansas Public Employees Retirement System (“APERS”).

Senate Bill 169 adds Section §24-4-213 to the chapter of code that governs APERS. The bill would require Arkansas Municipal League (AML) and the Association of Arkansas Counties (AAC) to comply with three areas of law typically applicable to state agencies. If they did not comply with these items they would be excluded from participation in APERS. Senate Bill 169 details how active and vested terminated employees would be paid (or refunded) from the retirement system; after this payment, the affected employees’ service credits would be deleted.

Fiscal Impact

If AML or AAC were found not to be eligible APERS employers under Senate Bill 169, the bill provides a mechanism to pay out the participants of these entities from plan assets. The nonvested members would receive a refund of contribution. The vested active and vested terminated members would receive “the present dollar value of their actuarially accrued benefit”. A rough estimate shows that the value of the amounts paid out would be more than the proportional plan assets. This difference would be a loss to the system that would result in a slight increase to the contribution rate for all remaining employers. Since the two entities have about 200-300 of the 45,000 active members in APERS, this increase would have a magnitude in the range of 0.01% - 0.02% of payroll.

History of Regulation

Internal Revenue Code §414(d) defines a governmental plan as one established and maintained for its employees by the U.S. Government, the states, political subdivisions of states, or any agency or instrumentality of these governments. The issue has been and remains to be the definition of an agency or instrumentality of a government. We currently have implication of this definition from some older Revenue Rulings and Private Letter Rulings of the IRS. The IRS has shown that they would like to coalesce these items into a single regulation. In 2011, an Advanced Notice of Proposed Rulemaking containing a draft of proposed regulations was released. Although this has remained on the IRS calendar for action each year since, it has yet to begin the formal proposed regulation process. After that process is completed, the IRS has announced that it expects that the

new regulation would not be effective until after final publication and a period of time for state and local governments to make any necessary changes.

This remains an important topic to monitor, but without final guidance from the IRS, the efficacy of the proposed changes of Senate Bill 169 cannot yet be assessed.

Governmental Agency or Instrumentality

This section of our analysis provides additional background similar to that provided in our introductory presentation to the committee. We have advised the committee in previous sessions to be careful in allowing membership in Arkansas retirement systems to organizations that may not be considered agencies or instrumentalities of government. We do know some factors to consider from IRS Private Letter Rulings. We do not know what weight these factors will be given until we have an actual regulation. These factors are not a list of requirements that are considered all together or not at all, they are factors to be weighed together for an overall picture. These determining factors for an entity include, but are not limited to, whether:

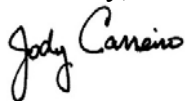
1. It is established by statute;
2. The participant members are state or local governments;
3. Its functions concern matters traditionally reserved to federal, state, or local governments;
4. Its funding is derived from tax dollars or government appropriations;
5. Its Board of Directors consists of individuals either directly or indirectly elected or appointed by government; or
6. The employees of the organization are considered to be employees of the governmental unit for other purposes.

Other

The provisions of House Bill 169 provide for the payout of participants if an entity is no longer a part of APERS. This payout is consistent with the value of their service. But, it should be clarified that this type of payout would not conflict with the contracts clause of the Arkansas Constitution.

The committee should considered whether there may be other entities that may have more significant problems with the evolving definition of a governmental agency or instrumentality that are a part of APERS or ATRS. A more general approach to the issue may be in order.

Sincerely,



Jody Carreiro, EA, ASA, MAAA
Actuary