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Senate Bill 150

(As Engrossed February 14, 2023)
Actuarial Cost Study prepared for
Joint Committee on Public Retirement and Social Security Programs
of the Arkansas 93rd General Assembly

Provisions of the Bill

Senate Bill 150 affects the Arkansas public retirement systems as defined in §24-1-301(a). This is the public retirement systems including the alternate plans used by higher education. The bill sets out rules for the forfeiture of retirement benefits when a retirement plan member is convicted or pleads guilty to "committing a public trust crime while holding office in this state." A public trust crime is defined in the bill to be a crime prohibited under the Arkansas Constitution, Article 5, §9. It appears to us "holding office" would mean anyone, elected or employed, that could commit a public trust crime.

Fiscal Impact

It is difficult to directly calculate the savings associated with the provisions of Senate Bill 150. There have not been many cases of members being convicted of crimes while holding office. There would be additional administrative expense to administer these provisions. It is our opinion that Senate Bill 150 would create a very small savings to any system from which benefits are forfeited.

Senate Bill 150 provides for the return of contributions to the member, beneficiary, or estate of a member in this situation. It also provides that if the conviction is reversed judicially then regular payments may be reinstated. But there is no provision to return any contributions refunded to pay for those benefits. Very roughly, about one-fourth of the funding for benefits comes from employee contributions. This would create a small cost issue to the systems but is an inconsistency that we believe should be addressed.

Concerns

Federal retirement law has a provision that would clearly prohibit the actions proposed in this bill. But that section of federal law, IRC 401(a)(13), does not apply to governmental plans. There are several federal law concepts that do apply to a qualified governmental plan. Two of these are definitely determinable benefits and exclusive benefit rule which are discussed below.

Definitely Determinable – "A pension plan within the meaning of section 401(a) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement. Retirement benefits generally are measured by, and based on, such factors as years of service and compensation received by the employees." The regulation to this law further states, "in the case of a defined benefit pension plan, the benefits on behalf of each participant are determined in accordance with a stipulated formula that is not subject to the discretion of the employer, the requirements of Section 1.401-1(b)(1)(i) are satisfied." Under Senate Bill 150, the state of Arkansas would be the employer and through its judiciary also be the determiner of whether a person received a benefit, thus causing an apparent conflict with this IRS regulation.

Exclusive Benefit - A trust is a medium under which the retirement plan assets are accumulated. The employer or employees, or both, contribute to the trust, which forms part of the retirement plan. The assets are held in the trust until distributed to the employees or their beneficiaries according to the plan's provisions. The trust must be maintained for the **exclusive benefit** of the employees and their beneficiaries. It appears problematic for the state to collect and hold funds where one of the beneficiaries of those funds would be the fund itself or the state.

Constitutional Contract Clause – This concern deserves consideration, but it is also the most difficult to find agreement upon. Every state has different interpretations of the U.S. Constitution and how it interacts with their own state's contract clause. There are only two Arkansas Supreme Court cases that address these issues to any extent (Jones v. Cheney (1973) and Pyle v. Webb (also 1973)). The one thing that appears to have agreement on all sides is this: when a member has met the qualifications for a benefit and has signed his paperwork to begin receiving a benefit, a contract exists and that base retirement benefit cannot be altered. I would be concerned about how this would be construed by a court if a teacher earning and receiving a benefit from ATRS is then elected to the legislature and commits a felony and the provisions of this bill attempts to reduce or end their ATRS benefit.

Alternate Plans – The alternate plans sponsored by the higher education institutes in Arkansas are qualified under section 403(b) of the IRS code. The 403(b) regulations state that when a person is vested that their benefit is "non-forfeitable". The passage of Senate Bill 150 could cause a tax qualification issue for the alternate plans.

Current Practices

Based on discussions with the various systems, these type issues can be addressed with current tools. There are several situations where, as part of the plea and sentencing with the courts, a part or all of the retirement benefit is sent to a special account from which restitution or fines are paid.

Conclusion

In my opinion, there are tools in place to address the issues outlined in Senate Bill 150 without exposing the systems to qualification or legal risks.

Sincerely,

Jody Carreiro

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Actuary

Additional Disclosures on file with BLR