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JAN 17 2014

**BUREAU OF
LEGISLATIVE RESEARCH**

January 16, 2014

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, Fifth Floor
Little Rock, AR 72201

Re: APERS Regulation 203

Dear Ms Davis:

I am writing to submit two copies of the questionnaire and financial impact statement for APERS Regulation 203, along with a copy of the regulation itself, which was adopted by APERS's Board of Trustees. It was intended to become effective on February 1, 2012. I have also enclosed two extra copies for Matthew to transmit to the Retirement Subcommittee, should that be necessary.

It was published in the Arkansas Democrat-Gazette on December 9-11, 2012. It was transmitted electronically to John Davidson at the Secretary of State on today's date. The public comment period expired January 24, 2012. As of today's date, we have received no comment from the public about it. The public hearing on it was held at 10:00 a.m. on January 25, 2012 in the APERS Board of Directors conference room, which is located at the above address. No one appeared at that hearing.

Please let me know if you have further questions about this (682-7856). I would appreciate your advising me when this is put on the calendar for hearing. Thank you.

Cordially,



Frank J. Wills, III
General Counsel

FJW/wls
enclosure

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY ARK. PUBLIC EMPLOYEES RETIREMENT SYSTEM ("APERS")
DIVISION N/A
DIVISION DIRECTOR GAIL H. STONE
CONTACT PERSON FRANK J. WILLS ("Jay")
ADDRESS 124 W. CAPITOL AVE., LITTLE ROCK, AR 72201
PHONE NO. 501-682-7800 FAX NO. 501-682-7825 E-MAIL jay.wills@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

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- 1. What is the short title of this rule? Disability Retirement (Reg. 203)
 - 2. What is the subject of the proposed rule? Adding another way to establish disability
 - 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____
 - 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? _____
- When does the emergency rule expire? _____
- Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No N/A

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. 24-4-105(b)(1)

7. What is the purpose of this proposed rule? Why is it necessary? To add Railroad Retirement System (federal) as an additional source of disability determinations. Our members who worked under that system could not use Social Security system

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). _____ www.apers.org/docs/pubs/APERS_BR_2013.pdf

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: 1/25/2012
Time: 10:00 a.m.
Place: APERS Conference Room

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
1/24/2012

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
2/1/2012

12. Do you expect this rule to be controversial? Yes No
If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.
NONE

FINANCIAL IMPACT STATEMENT

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PLEASE ANSWER ALL QUESTIONS COMPLETELY

JAN 17 2014

DEPARTMENT APERS BUREAU OF LEGISLATIVE RESEARCH
DIVISION N/A
PERSON COMPLETING THIS STATEMENT FRANK J. WILLS
TELEPHONE NO. 501-682-7825 FAX NO. 501-682-7825 EMAIL: jay.wills@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Disability Retirement

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes [] No [X]
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence... Yes [X] No []
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes [X] No []

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost; N/A
(b) The reason for adoption of the more costly rule; N/A
(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and; N/A
(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain. N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation? N/A

Current Fiscal Year

Next Fiscal Year

General Revenue
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

General Revenue
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

Total _____

Total _____

(b) What is the additional cost of the state rule? *N/A*

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. *N/A*

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected. *N/A*

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose; *N/A*

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; *N/A*

(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and *N/A*

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule; *N/A*
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule; *N/A*
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and *N/A*
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
- (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives. *N/A*

APERS REGULATION 203 - DISABILITY RETIREMENT

SUMMARY OF AMENDMENT CHANGE TO REGULATION 203

The amendment to APERS Regulation 203, Disability Retirement, simply adds the Federal Railroad Retirement Disability determinations as an additional way that APERS members can establish that they have become disabled. APERS has always used Federal Social Security disability determinations in this fashion.

However, there are APERS members who previously worked under the Federal Railroad Retirement System, which has its own disability determination procedure. Social Security disability determinations are not available to those individuals. This amendment would address those individuals.

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REGULATION 203 - DISABILITY RETIREMENT

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Disability retirement for a member of PERS can be approved in one of two ways:

Before a member can be approved for disability retirement from PERS, he/she must first apply and be approved by either Social Security or by the Federal Railroad Retirement Board for disability benefits. If a member is approved for disability payments, then the member shall furnish proof to PERS of such approval and the member, who is otherwise eligible under State retirement law, will automatically be approved for PERS benefits retroactive to the date that benefits would have become payable under law.

Should the member not be approved for Social Security or for Railroad Retirement disability payments, the member, after having been denied Social Security or Railroad Retirement through the Administrative Law Judge appeal level, may appeal directly to the Board of Trustees. The member shall furnish physician (s) statements and other medical documentation, obtained at the member's expense, to the APERS Medical Review Board (MRB) for evaluation. The MRB shall be composed of physicians approved by the Board.

The results of the MRB evaluation shall be presented to the Board for final consideration. Members applying under Act 868 of 1999 shall submit copies of

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physician (s) statements and other medical documentation, obtained at the member's expense, to the MRB for evaluation. The results of the MRB evaluation will be presented to the Board of Trustees for final consideration.

After retirement on disability, the member will be reviewed by Social Security or Railroad Retirement if receiving benefits from ~~that~~ either agency, and the member will have to furnish APERS with a copy of the Social Security or Railroad Retirement findings.

In those instances where a disability retirant is working, determination as to whether remuneration is substantially gainful, as referenced A.C.A. 24-3-208, shall be based on guidelines used by the Social Security Administration for the SSDI program.

Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING

ARK PUBLIC EMPLOYEE RETIREMENT
124 W CAPITOL
LITTLE ROCK AR 72201

REMIT TO:
ARKANSAS DEMOCRAT-GAZETTE, INC.
P.O. BOX 2221
LITTLE ROCK, AR 72203

ATTN: Jay Wallis

DATE : 12/11/12 INVOICE #: 2798548
ACCT #: L1270438 P.O. #:

BILLING QUESTIONS CALL 378-3812

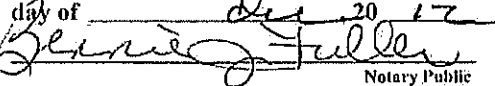
STATE OF ARKANSAS, }
COUNTY OF PULASKI, } ss.

I, Elizabeth Myers do solemnly swear that I am the Legal Billing Clerk of the Arkansas Democrat - Gazette, a daily newspaper printed and published in said County, State of Arkansas; that I was so related to this publication at and during the publication of the annexed legal advertisement in the matter of:

rulemaking
pending in the Court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County; that said newspaper had been regularly printed and published in said County, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

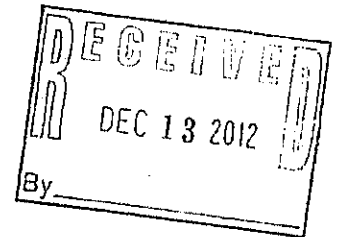
DATE	DAY	LINAGE	RATE	DATE	DAY	LINAGE	RATE
12/09	Sun	133	1.45				
12/10	Mon	133	1.25				
12/11	Tue	133	1.25				

TOTAL COST ----- 525.35
Billing Ad #: 71705761

Subscribed and sworn to me this 11
day of Dec 20 12

Notary Public

OFFICIAL SEAL - # 12381354
BENNIE J. FULLER
NOTARY PUBLIC - ARKANSAS
PULASKI COUNTY
MY COMMISSION EXPIRES: 3-21-2021

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Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING

THIS PAGE USED FOR ADDITIONAL AD COPY SPACE AS NEEDED.
PAGE MAY BE BLANK

Notice of Rulemaking
Please take notice that the Board of Trustees of the Arkansas Public Employees Retirement System, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201 has voted to amend the following regulation:

APERS REGULATION 203 - DISABILITY RETIREMENT. The proposed amendment allows disability determinations made by the Federal Railroad Retirement Board to be used as are the disability determinations made by the Social Security Administration.

REGULATION 203 - 1957 (as amended November 20 12) DISABILITY RETIREMENT.

Disability retirement for a member of PERS can be approved in one of two ways:

Before a member can be approved for disability retirement from PERS, he/she must first apply and be approved by either Social Security or by the Federal Railroad Retirement Board for disability benefits. If a member is approved for disability payments, then the member shall furnish proof to PERS of such approval and the member, who is otherwise eligible under State retirement law, will automatically be approved for PERS benefits retroactive to the date that benefits would have become payable under law.

Should the member not be approved for Social Security or for Railroad Retirement disability payments, the member, after having been denied Social Security or Railroad Retirement through the Administrative Law Judge appeal level, may appeal directly to the Board of Trustees. The member shall furnish physician (s) statements and other medical documentation, obtained at the member's expense, to the APERS Medical Review Board (MRB) for evaluation. The MRB shall be composed of physicians approved by the Board. The results of the MRB evaluation shall be presented to the Board for final consideration.

Members applying under Act 388 of 1990 shall submit copies of physician (s) statements and other medical documentation, obtained at the member's expense, to the MRB for evaluation. The results of the MRB evaluation will be presented to the Board of Trustees for final consideration.

After retirement on disability, the member will be reviewed by Social Security or Railroad Retirement if receiving benefits from either agency, and the member will have to furnish APERS with a copy of the Social Security or Railroad Retirement findings.

In those instances where a disability retirement is working, determination as to whether remuneration is substantially gainful, as referenced A.C.A. 24-3-208, shall be based on guidelines used by the Social Security Administration for the SSDI program.

Copies of this proposed amendment are available for inspection and copying during normal business hours, 7:30 a.m. to 4:30 p.m., at APERS's principal offices, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201 and written public comment concerning these regulations may be addressed to Frank S. Willy, III, Arkansas Public Employees Retirement System, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201. The public hearing on these rules will hold on Friday, January 25, 2012 at 10:00 a.m. in the fourth floor conference room in APERS's main office, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201.

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