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# Senate Bill 151

Actuarial Cost Study prepared for
Joint Committee on Public Retirement and Social Security Programs
of the Arkansas 95th General Assembly

## Provisions of the Bill

Senate Bill 151 affects the Arkansas public retirement systems as defined in §24-1-301(a). This is the public retirement systems excluding the alternate plans (see page 2, lines 20-24) 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. The bill limits the extent of the reach by defining those holding "public office" to those who are elected to that office..

## Fiscal Impact

It is difficult to directly calculate the savings associated with the provisions of Senate Bill 151. There have not been many cases of members being convicted of crimes while holding office. There would be additional administrative expenses to administer these provisions. It is our opinion that Senate Bill 151 would produce small savings to any system from which benefits are forfeited.

Senate Bill 151 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 or judgement is reversed judicially then regular payments may be reinstated. The reinstatement would occur after the accumulated contributions with interest are returned to the system.

## Other Considerations

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 151, 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 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** – It is our understanding, although we are not attorneys and this is not a legal opinion, that the Arkansas constitutional contract clause as interpreted by Landers v. Stone (2016) would allow a forfeiture as described in this bill to occur. Our point is a policy consideration for the committee. If a teacher who has retired from ATRS and is elected to the legislature where they commit a crime described in this bill, that person would forfeit their ATRS retirement as well as the APERS benefit.

## Current Practices

Based on discussions with the various systems, these types of issues (as well as issues not involving elected officials) can be addressed with current tools. There are several situations where, as part of the plea and sentencing with the courts, the member directs a portion, or all, of the retirement benefit to be deposited in an 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 151 more efficiently.

Sincerely,

Jody Carreiro

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Actuary