

## **ANALYSIS OF BILLS OUTSIDE OF THE LEGISLATIVE PACKAGE OF THE ATRS BOARD OF TRUSTEES**

THE BILLS LISTED BELOW ARE BILLS THAT ARE NOT A PART OF THE 17 BILLS IN THE ATRS BOARD PACKAGE

- 1. HOUSE BILL 1040. BY REPRESENTATIVE ENGLISH. AN ACT TO PREVENT RETIRED MEMBERS OF A STATE RETIREMENT SYSTEM FROM RETURNING TO WORK FOR THE STATE FOLLOWING RETIREMENT EXCEPT UNDER CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES.**

**Executive Summary: Eliminates return to work by an ATRS retiree at any position at a public employer covered by a public retirement system, unless retirement benefits are forfeited during employment.**

Staff's comments on the impact of the bill:

This bill appears to prohibit any new retiree or current retiree (except for a member retiring between January and June 2011) from returning to work or continuing to work at an ATRS employer **or** any public employer in a position covered by **any public retirement system**.

**It should be noted that the bill as written would allow any public retiree to become an employee at a college or public employer offering an alternate retirement plan and have no forfeiture of benefits or impact by the bill. This is due to positions at colleges and alternate plan eligible employers having positions not designated as positions covered by a public retirement system.**

Staff reads the bill to mean that all current ATRS retirees who are reemployed by an ATRS employer or any employer that uses APERS, Highway Department, State Police, Judicial, or LOPFI would be prohibited from continuing in employment absent waiving retirement benefits. Staff believes that having a contract in place would not change the bill's impact. All affected retired members would be required to waive benefits to continue working.

In addition, it appears that the income stream ATRS has received from rehired retirees since 2009 would, for the most part, immediately dry up, leaving ATRS

with a greater actuarial unfunded liability than previously existed. ATRS staff is convinced that very few retirees would continue working and waive retirement benefits. (There may be offsetting actuarial gains by future members not retiring until later, ultimately, the net gain or loss is undetermined at this time and would be difficult to sort out.)

Note: The contribution on retirees paid by ATRS employers reduces the ATRS unfunded liabilities, ten dollars for every ten dollars of contributions. A contribution on an active member reduces the ATRS unfunded liabilities four dollars per every ten dollars, since six dollars must be used to cover the cost of additional benefits earned by the active member. This means the \$12 million employer contribution received on rehired retirees the last fiscal year is worth the equivalent of \$30 million on active members.

Additionally, it may be important for the Department of Education to provide any input on the impact that would be felt in public schools if a significant number of the 3,800 retirees working in schools now left those positions before July 1, 2011.

The exception to the prohibition on returning or continuing to work is if the member commences receiving benefits between January 2011 and June 2011. It appears members retiring in this time frame are exempt from the law. Further, it would not apply to any member who agrees to forfeit retirement benefits as a condition of the new or continued employment. The bill also repeals the right to rescind retirement in the Arkansas Teacher Retirement System. The Board has made a decision to repeal rescission of retirement already (see HB1135).

ATRS may need to add staff to monitor this since if a member returns to work for one day or receives any compensation from a public employer covered by one of the 5 public retirement plans, then ATRS will need to immediately eliminate the benefit and collect any benefits paid after the employment. This means ATRS will need to have access to not only its current employer base, but also to the records of all public retirement system employers. These other retirement systems will also need to coordinate with ATRS employers.

**Cost Concern:** Since this bill would provide a window of exemption for those retiring between January 2011 and June 2011, ATRS staff believes that this could create a stampede of retirements for members eligible to retire, who otherwise would delay retirement. Staff's interpretation of the bill is that members, who retire in that six (6) month window, are not subject to the forfeiture

of benefit requirements set forth in the bill. The forfeiture of benefits appears to only apply to all retirees retiring before January 2011 and after June 2011. This could lead to several thousand unanticipated retirements and create an enormous drain on the system and its assets by creating a very large unanticipated liability for ATRS.

2. **HOUSE BILL 1119. BY REPRESENTATIVE PENNARTZ. AN ACT TO PREVENT STATE EMPLOYEES CONVICTED OF THEFT OF PROPERTY AGAINST THE EMPLOYER FROM DRAWING STATE RETIREMENT BENEFITS BASED ON THE MONTHS IN WHICH THE THEFT OCCURRED; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.**

**Executive Summary: Prevents ATRS retirees convicted of theft from receiving retirement benefits calculated on employer contributions in specific months in which the theft was occurring.**

The intent of this bill is to strip a member of employer funded retirement benefits earned during any month in which the member was involved in theft of property, services or money from the ATRS employer. The bill specifically provides if a theft is proven against a member while they were active, then the portion of the annuity based on **employer contributions**, shall be recalculated to exclude the months in which the theft of property occurred, beginning with thefts occurring on or after July 1, 2011.

ATRS, unlike APERS, does not provide benefit calculations on a monthly basis. Rather, ATRS uses quarters based upon the total number of days necessary for a full year of service and prorates accordingly. Therefore, even if an employee was committing thefts in several months, they may still receive a full year of service. Secondly, ATRS records are not broken down by month to determine the contributions paid by an ATRS employer since the employer reports are quarterly. In addition, the bill provides that the only employer contributions are excluded in the benefit calculation for those months. ATRS staff is unsure whether the member would be given credit for the days. The bill requires ATRS to recalculate the benefit based upon a contributory member's contribution for months that thefts were occurring. ATRS has no mechanism for a benefit calculation based only upon a member contribution.

In addition, the forensic determination of the facts involved by ATRS staff reviewing legal pleadings, criminal case transcripts, and other documents, does not guarantee that ATRS will have enough facts to determine what months or

quarters the theft occurred. From an ATRS standpoint, the ultimate cost of reducing benefits for these members may be more than offset by the administrative cost of calculations, research, and appeals that often accompany a staff attempt to make fact determinations from court records. It is often difficult to obtain court records, transcripts of testimony, and exhibits. Significant staff time and costs can be involved in tracking such records down and paying a court reporter to transcribe hearings and trials when no appeal occurs. Unless a judge makes a particular finding of what months or quarters the theft may have occurred, ATRS is left with a fact finding mission that can be costly and administratively difficult, if not impossible. ATRS may need to add staff since ATRS requested no new positions in the current biennium. ATRS may not always obtain timely reports of criminal convictions and the bill does not require a report to ATRS of convictions.

**3. HOUSE BILL 1162. BY REPRESENTATIVE NICKELS. AN ACT TO EXTEND THE AMOUNT OF TIME ALLOWED FOR THE FILING OF LEGISLATION AFFECTING ANY SUPPORTED RETIREMENT SYSTEM OR PENSION PLAN; AND FOR OTHER PURPOSES.**

**Executive Summary: The bill extends the deadline to file legislation affecting any retirement system or pension plan from the first 15 days of the Session to the first 30 days.**

Currently, retirement bills must be filed within the first fifteen (15) days of a session. This bill would extend the deadline to file a retirement bill to the first thirty (30) days of a session. This is an issue about how the legislature conducts its own business. ATRS can work with the legislative time lines regardless of how they remain or may be changed.

**4. HOUSE BILL 1186. BY REPRESENTATIVE ENGLISH. AN ACT TO INCREASE THE AMOUNT OF TIME A RETIREE DRAWING BENEFITS MUST WAIT BEFORE BEING REHIRED BY A COVERED EMPLOYER; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.**

**Executive Summary: This bill increases the termination/separation period for most ATRS retirees to one year. It appears to apply retroactively to July 2, 2009. This repeals the current separation periods of ATRS that ranges from 180 days to 30 days for members under age 65 and requires one year. The bill applies a one-year separation for members over age 65 who currently have no separation requirement.**

**It should be noted that the bill as written would allow ATRS retirees to become an employee at a college or public employer offering an alternate retirement plan and have no termination separation period. This is due to positions at colleges and alternate plan eligible employers having positions not designated as positions covered by a public retirement system.**

Staff's belief concerning the impact of the bill:

This bill appears to intend to establish a one-year separation period for most retirees of ATRS returning to work at most ATRS employers after the effective date of the law on July 1, 2011.

- a. If a member has 38 years of service, the termination period is one (1) year.
- b. ATRS staff also believes the intent of the bill is to apply to all new retirees on or after July 1, 2011, although that is not clearly set forth in the bill.
- c. Further, the bill eliminates the current ATRS enforcement mechanism for failure to retire, which is the member forfeits all benefits paid with the member being required to re-retire. The bill only requires a suspension of retirement benefits until the member retires again. The bill does not require forfeiture of benefits received prior to the termination violation detected.

### **Concerns**

ATRS staff believes the bill needs some redrafting to clarify the bill's application. **ATRS staff believes the enforcement mechanism in this bill jeopardizes the tax-qualified status of ATRS. ATRS has followed the IRS requirement of full corrective action if ATRS finds a violation of the IRS separation requirements.** In this instance, the bill weakens the ATRS separation requirement by allowing a member to keep all benefits paid from the time of retirement until the violation is discovered with only a suspension of benefits during the short amount of time it takes to re-retire. ATRS makes a member return all benefits and advantages obtained during the failed retirement. Legal advice to ATRS is that this bill endangers the ATRS tax qualified status in that it does not allow ATRS to take complete corrective action required by IRS standards. The bill also appears to **retroactively** apply the new separation period to members who terminated after July 2, 2009. Without clarifying language, this could place many members who retired and returned to work under a shorter separation into immediate non-compliance with the longer separation period.

5. **HOUSE BILL 1216. BY REPRESENTATIVE KERR. AN ACT TO DEFINE "TERMINATE" AS THAT TERM APPLIES TO ELIGIBILITY FOR RETIREMENT UNDER THE ARKANSAS TEACHER RETIREMENT SYSTEM; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.**

**Executive Summary: The bill establishes a new definition of terminate to apply to retirement at ATRS.**

This bill defines "terminate" for ATRS within the Arkansas Code. The ATRS Board previously defined terminate in policy. The definition of termination in the policy was carefully reviewed by legal staff to ensure that the ATRS definition of termination met the IRS requirements while, at the same time, taking into consideration the unique aspects of ATRS employers and members. The ATRS definition of terminate is much more detailed than the definition in House Bill 1216. Based upon ATRS staff review, it appears that in some instances House Bill 1216 may allow certain actions to occur before or during the termination period that could jeopardize the tax qualified status of ATRS.

**It should be noted that the bill as written would allow any ATRS retiree to become an employee at a college or public employer offering an alternate retirement plan and not be subject to the new definition of terminate. This is due to positions at colleges and alternate plan eligible employers having positions not designated as positions covered by a public retirement system.**

The bill requires that the member cease performing any services, except in transition and to have not obtained a position with **another ATRS employer**. The bill as written does not prevent negotiations, applications, and potentially other kinds of arrangements short of "obtaining a position." In addition, ATRS has consistently informed members and employers that a recent retiree is not prohibited from returning to their ATRS employer or any ATRS employer to provide volunteer work, as long as that volunteer work is not intended nor has the appearance of maintaining an opening of a position during the member's separation. For instance, a teacher cannot volunteer and teach a class during their separation period to prevent the school from hiring a new teacher. However, a teacher retiree is allowed to volunteer to assist in the library, help plant shrubs on the campus, help with fund raising at school organizations, act as a chaperon or assist in extracurricular activities such as tutoring, coaching, debate, or other activities as long as that volunteering was not associated with keeping a position open for the member to reenter. House Bill 1216, as written,

would allow a member to provide transition assistance only for their old position and would prohibit any volunteer work.

ATRS has been very strict in policing terminations from ATRS employers. ATRS has not allowed any retiree to return to work or enter into a contract and not be required to re-retire and forfeit benefits. ATRS takes three to five enforcement actions per month on failure to terminate and remain terminated. For as little as one day of substitute teaching, ATRS has required members to re-retire and lose months of retirement benefits which had to be repaid to ATRS. Even in instances where an ATRS employer provided inaccurate advice, ATRS still found a violation and required re-retirement and forfeiture of benefits. ATRS had this strict enforcement before the discovery of the "elected official" issue.

ATRS has communicated the requirements of termination to ATRS employers and members and continues to do so. To change from the current definition of termination to a new one that is more restrictive in some areas, and less restrictive in others, could lead to confusion and more "train wrecks" for members. ATRS staff anticipates that some members may use previous information provided by staff and violate the new definition of terminate. To protect the tax-qualified status of ATRS, any approved definition will be strictly construed and enforced.

**6. HOUSE BILL 1262. BY REPRESENTATIVE ENGLISH. AN ACT CONCERNING THE REEMPLOYMENT OF MEMBERS OF THE ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE ARKANSAS TEACHER RETIREMENT SYSTEM; AND FOR OTHER PURPOSES.**

**Executive Summary: The bill is complex and sets forth how retirement benefits are affected for various groups of ATRS retirees that return to work.**

This bill prohibits a retiree of any public retirement system from earning service credit and vesting with another public retirement system. Currently, a retiree of one public system can retire from that system and begin a new membership with a different public retirement system. Example: a janitor at a public school can retire from ATRS and subsequently be employed by a county as a janitor as a new member of APERS. This bill would prohibit that.

**It should be noted that the bill as written would allow ATRS retirees to become an employee at a college or public employer offering an alternate retirement plan without the bill's provisions having any application to their employment. This is due to positions at colleges and alternate plan eligible**

**employers having positions not designated as positions covered by a public retirement system.**

This bill, like earlier bill, House Bill 1040, has retroactive application of a 180-day termination period to July 2, 2009. The bill appears to retroactively apply a longer termination period even if ATRS allowed a shorter period due to the member reaching age 65, with no separation or having thirty-eight (38) or more years of credited service with thirty (30) days' separation.

The bill prohibits a retiree who is reemployed, after a six-month separation period, from receiving retirement benefits until employment in **any position covered by a public retirement system** has ended. This means the ATRS retiree could not receive ATRS retirement benefits once employed in a position covered by ATRS, APERS, LOPFI, State Police, Judicial Retirement, or Highway Department Retirement.

The bill defines full time employment as employment "requiring" twenty (20) or more hours of work per week.

The bill provides on page 9, line 26, that a retiree who is re-employed on a full time basis within six (6) months of the retirement date by an ATRS employer is subject to the following:

- a. The system cancels additional monthly benefits and returns the retiree to active status and accrues additional service credit if the member works two additional years. (This reestablishes an in-service distribution issue that elimination of rescission will solve since ATRS will deduct member contributions from contributory members that must be refunded if the member does not work for two additional years.)

Staff Note: Again, this creates problems with the tax qualified status of ATRS, in that, it does not require a member returning to work within six (6) months of retirement to repay to ATRS all retirement benefits obtained, even if the member was subject to a 180 day separation period. The in-service distribution dilemma noted in the paragraph above also impacts the tax qualification status of ATRS. It also gives a member a six-month individual window to rescind retirement. ATRS has proposed eliminating rescission of retirement due to accounting difficulties created by rescission.

- b. The bill also requires ATRS to recalculate benefits if the retiree is reinstated to active status and works an additional two (2) years.

Staff Concerns: This provides that a retiree who becomes active again has to work two (2) years to have benefits recalculated. The bill does not specify two fiscal years, but two years from reemployment, which could create major difficulty in benefit calculations. For instance, a member could go back to work in April of 2012, and the operative two (2) years would be from April 2012 to April 2014. That would include time in three (3) fiscal years that would have to be tied together to recalculate a retirement benefit, which is different from how ATRS calculates benefits for all other active members. In addition, if the member returning to work in active status does not work a full two (2) years, federal law requires ATRS or the ARS employer to return member contributions to that member which will place a significant burden on ATRS employers.

The bill provides on page 10, line 15, that a retiree may return to work at an ATRS employer if employed less than full time (less than twenty (20) hours per week required) and continue working without becoming active or losing retirement benefits if earnings remain below a limitation amount established by the bill. The limitation in the bill is the Social Security earnings limitation. If the member exceeds that limitation, by any amount, the member loses 25% of their ATRS benefits payable in that calendar year.

Staff Note: The bill appears to allow part-time employment during the separation period. The IRS does not allow employment during a required separation period. The bill also requires ATRS to apply a **calendar year** earnings limitation across fiscal years causing a difficulty in closing financial books at year-end and increasing staffing needs to administer.

### **Conclusion**

Staff is uncertain of the final impact of the bill. The staff's expectation is as follows:

All members of ATRS may return to work within six (6) months of retirement despite the required separation period. If a member returns to part time service, they may earn, without limitation, up to the amount allowed by Social Security in a calendar year. If the member exceeds that amount in a calendar year, the member's benefit is reduced by one-fourth for that calendar year. For members who become employed in a full time position as defined in the bill, the retiree

ceases receiving ATRS benefits, keeps all benefits paid, and becomes active again. If they remain active for two years from the time of reemployment, ATRS will recalculate their benefit. In addition, the bill places self-reporting requirements on employers and employees. Previous attempts at self-reporting in the ATRS law have proven to be ineffective, placing members at risk of forfeitures and difficulty when the issue is discovered.

The bill does not fully address what happens if a person begins as a part-time employee and becomes a full-time employee or begins as a full-time employee and becomes a part-time employee. If a change did occur, ATRS would typically not know until months later. This delay could create both underpayment of contributions and overpayment of benefits. The definition of full time employment means **requiring twenty (20) or more hours of work per week**. If a bus driver works nine (9) months, the weekly total may be less than twenty (20) hours per week on average. But, there may be weeks in which the bus driver works much more than twenty (20) hours per week. Does working more than twenty (20) hours in any week make the bus driver a full time employee? What if a member has a position that does not require more than twenty (20) hours of work per week but the member actually works more than that? The provisions in the bill will likely lead to confusion and argument as to the bill's application.