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Testimony in Support of Senate Bill 706
Law Enforcement Officers' Pension System - Reemployment as Sheriff

Senate Budget and Tax Committee
February 22, 2024
8:30 A.M.

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Director of Legislative Affairs
State Retirement Agency

The Board of Trustees for the State Retirement and Pension System wishes to express its support for Senate Bill 706, State Retirement and Pension System - Transfers of Service. Senate Bill 706 is legislation sponsored by the Joint Committee on Pensions at the request of the Board.

Current provisions of the State Personnel and Pensions Article require that members of most of the several systems, including the Law Enforcement Officers' Pension System (LEOPS), separate from all employment with the State or other participating employers in order to commence receiving benefits. Additionally, most retirees of the System are prohibited from accepting any employment with the State or other participating employers within 45 days of retirement. As a member prepares to retire from the State or a participating employer of the System, the State Retirement Agency (Agency) counselors, the member's retirement coordinators, and the language of the retirement application all make it very clear that under no circumstances should the member's decision to retire be conditioned upon an offer of reemployment. More specifically, each of these resources (Agency counselors, retirement coordinators, and the retirement application) inform a member going through the retirement process that no offers of reemployment should even be discussed by the member and a participating employer of the State prior to retirement. Finally, the retirement application that members are required to complete and sign includes an acknowledgement by the member that the member understands these restrictions and a certification that the member has had no discussions about reemployment with any employer that participates in the System.

These reemployment restrictions are predicated on Internal Revenue Service (IRS) rulings and Internal Revenue Code (IRC) provisions that address retirement and reemployment after retirement. These provisions generally provide that a member of a qualified plan may not begin receiving a retirement allowance until termination of employment. Additionally, a member of LEOPS who has not had a bona fide separation from employment would be subject to a significant early withdrawal tax penalty on all distributions made from LEOPS before age 59 ½. While the IRS has not specifically defined what constitutes a bona fide separation from service, a temporary cessation of pay alone is not sufficient, particularly where there is no actual intent on the part of the member to resign from their position and completely sever all employment relationships with a participating employer. In a private letter ruling issued by the IRS, it concluded that employees who retire in order to qualify for a benefit, with the understanding that they are not separating from service with the employer, are not legitimately retired. The IRS advised that when a bona fide separation from service has not occurred, an individual's "retirement" would violate § 401(a) of the IRC and would result in disqualification of the the plan.

Many county sheriffs are members of the LEOPS. Unlike the Employees' Pension System, retirees of LEOPS are not subject to an earnings limitation if they return to work for the employer from which they retired. Over the past year, the Agency has been made aware of instances regarding county sheriffs running for reelection who retired from the LEOPS on November 1, 2022, shortly before their likely reelection, but at least 45 days before they would potentially be sworn in for their next term. Once sworn in, these reelected sheriffs, in addition to receiving a normal service retirement from LEOPS, again began receiving their full sheriff's salary. In these instances, the reelected sheriffs were running unopposed. As a result, it was extremely likely that these individuals would be reemployed by the same employer from which they retired, which could raise serious questions about whether there was actual intent on the part of the retiree to resign from their position and discontinue any employment relationship with their employer. If the IRS were to conclude, based on its analysis of the applicable facts and circumstances, that these officers were receiving a distribution of benefits without having experienced a bona fide separation from employment, this could raise serious issues for both the LEOPS and the official.

To address this issue, Senate Bill 706 would require the Board of Trustees for System to temporarily suspend the retirement benefit of a retiree of the LEOPS who is elected as a sheriff within five years after retirement. Upon permanently terminating employment as sheriff, the Board shall reinstate the retiree's retirement allowance, including the accumulated cost–of–living adjustments from the date the allowance was temporarily suspended.

We appreciate being given this opportunity to express our support to the Budget and Tax Committee for this legislation and would request a favorable report on Senate Bill 706.