



Commission on Government Forecasting and Accountability

PENSION IMPACT NOTE *103RD General Assembly*

BILL NO: **HB 5798**

May 22, 2024

SPONSOR: Wilhour

SYSTEM: General Provisions Article (All Systems)

FISCAL IMPACT

The fiscal impact of HB 5798 is not currently known as the number of future Tier 2 pensions at risk of violating federal Safe Harbor regulations is not known. To determine the fiscal impact, an actuarial study would be needed. To the extent that a retirement system must pay out Tier 2 benefits that would be greater than those required under the current Tier 2 schedule of benefits, there would be an indeterminate increase in actuarial liabilities to the applicable pension fund.

SUBJECT MATTER: HB 5798 amends the General Provisions Article of the Illinois Pension Code. The bill requires pension systems regulated under the Article to rectify any Tier 2 pension payouts that do not meet the federal Safe Harbor regulations. Tier 2 pensioners whose annuities are non-compliant with Safe Harbor would receive the amount that would have been paid out through Social Security plus one dollar.

COMMENT: Under federal law, employers who seek an exemption from paying FICA taxes must offer retirement benefits to employees that are comparable or better than the benefits provided through the Old-Age portion of Social Security. This provision is known as "Safe Harbor." Because of the divergence between the Social Security wage base (currently \$160,200) and the current Tier 2 salary cap (\$119,892), retirement systems that are not coordinated with Social Security, such as TRS and SURS, may begin to fail the Safe Harbor test in the coming years.

According to SURS' external actuary, the first member expected to fail the safe harbor regulations will be eligible to retire in FY 2025. Additional failures are projected to occur in the 2030s. TRS knows neither when the first member is expected to fail safe harbor regulations

nor how many members' pension payouts are expected to fail safe harbor regulations. Federal law permits testing at the employer level (i.e., the applicable school district or university) to determine compliance with the Safe Harbor provision.

HB 5798 seeks to rectify any violations of the Safe Harbor regulations by calculating the value of a Tier 2 pensioner's hypothetical Social Security benefit vis-à-vis the benefit from the applicable retirement system, and then paying the pensioner the value of the hypothetical Social Security benefit plus one dollar. Under the bill, the determination of the hypothetical Social Security benefit would be made annually and the pension benefit payout would be adjusted annually.

For example, if a Tier 2 pensioner whose DB pension benefit amount failed the Safe Harbor standard was to receive \$45,000 per year through the applicable pension system but would have received \$50,000 per year through Social Security, HB 5798 provides that the pensioner would receive \$50,001 from the applicable pension system. Thus, the intent of the bill is to provide a mechanism that ensures that each individual Tier 2 pensioner would receive a benefit level that would be compliant with the Safe Harbor standard.

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