Department of Finance and Administration

Legislative Impact Statement

Bill: SB232
Bill Subtitle: TO REQUIRE AUTOMATIC ENROLLMENT OF A NEW STATE EMPLOYEE IN A DEFERRED COMPENSATION PLAN; AND TO PROVIDE OPT-OUT PROVISIONS FOR A NEW STATE EMPLOYEE.

Basic Change :
Senator J. Key

SB232 will automatically enroll new employees after January 1, 2014 into the Deferred Compensation plan.

Revenue Impact :
None

Taxpayer Impact :
None

Resources Required :
Computer programming costs of $175,000 will be incurred. Reallocation of current staff within EBD to address questions about new process will be required.

Time Required :
None

Procedural Changes :
Operationally speaking, I think everything in the bill can be done. The enrollment of the employee at 3% as well as the adjustment up or down will be handled by ING as the plan administrator coordinating through the state agency payroll team for initial communication and enrollment. This is a very paper-heavy process at this time but could be automated to work with AASIS and file transfers. ING will also have to be the processing entity for the refunds within 90-day of employment. Larry Middleton is checking on the tax issue regarding refunds but he and I both think that it will have to run back through payroll as taxable compensation because it would have been a pre-tax deduction for state and federal. Modifying the plan document to incorporate the auto-enroll will not be a problem. Page 4 line 11 will generate much discussion between us and Stephen's team as to which investment option should be the default choice.

Other Comments :
Outside the operational environment, I don't know how well this will be received by the cities / counties that participate in the plan. This bill will impact them just like state employees. Additionally I don't know how it will be received by low income employees. But at least the employee can opt out of this if they don't want to fund 8% to retirement but rather just stop at the 5% APERS.

Legal Analysis :

This bill requires automatic enrollment in a deferred compensation plan for all state and local employees covered by the Arkansas Public Employees' Retirement System who begin employment, or who are reemployed, on or after January 1, 2014. Automatic enrollment is deemed a term of the employment contract with state and local government agencies. Employers are required to provide employees with written notice of the automatic enrollment, including: notice as to their right to opt out, the tax consequences of enrolling, and the amount of the employee's contribution.

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Under the bill, the amount of contribution to the deferred compensation plan is 3% of an employee's annual compensation unless an employee elects to contribute a different amount, not to be less than 1% of annual compensation. For those employees not making an election, DFA will be required to make determinations concerning whether the 3% contribution is allowed under the federal minimum wage law and Internal Revenue Code sections setting amounts of annual compensation that may be contributed to a deferred compensation plan. In the event DFA determines a 3% contribution is not permitted, DFA shall determine and set the permitted rate of contribution. If the employee fails to direct how the contribution should be invested, the contribution may be allocated to an investment option chosen by DFA, except that DFA shall not invest in a Roth deferred compensation plan unless directed by the employee under contract with DFA. DFA is required to promulgate rules to implement the law, maintain the deferred compensation plan's tax qualification status by the federal government, and to protect an employee's deferred compensation plan account. The broad delegation of authority under this bill could be perceived as an unlawful delegation.

The Federal Pension Protection Act of 2006 (PPA) paved the way for automatic enrollment in retirement plans. Under that act, Congress sought to facilitate the adoption of automatic enrollment features in 401(k), 403(b), and 457 plans by enacting a series of amendments to the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. Specifically, the PPA establishes rules under which these plans can provide that an employee will be automatically enrolled in the plan unless he affirmatively elects not to participate. Additionally, the PPA also amended ERISA to provide a safe harbor within which accounts of participants in retirement plans who fail to make investment elections can be default invested under the plan and still qualify as "self-directed" investments for purposes of ERISA.

The PPA created a qualified automatic contribution arrangement (QACA) for ERISA-covered deferred compensation plans. There are a number of requirements that a plan must have in place to be considered a QACA, such as: an election to have the employer make contributions to the plan on the employee's behalf when he fails to make an election; automatic contributions to the plan by the employer on behalf of the participant equal to a uniform percentage of compensation; satisfy the requirements of ERISA §404(c)(5) with respect to default investments; provide specific information in a notice to participants; apply a minimum and escalating percentage of automatic elective deferrals for each eligible employee who fails to elect otherwise; give participants the ability to opt-out or to make elective deferrals at a different level; provide minimum employer matching or non-elective contributions on behalf of each eligible non-highly compensated employee; comply with applicable code requirements that it restrict distributions; comply with applicable vesting requirements for employer matching or non-elective contributions; and comply with the Code's requirements for providing notification to participants about its default enrollment provisions.

A plurality of states allow involuntary deductions from pay when state or federal law permits or requires such deductions, but Arkansas law is silent concerning involuntary payroll deductions. The provisions of Ark. Code Ann. §19-4-1602 authorizing payroll deductions for retirement system contributions are silent as to whether this would include involuntary deductions for such purposes. However, the bill does provide opt-out and refund provisions.

The effective date is January 1, 2014.