



ERSGA Internal Document (*not legal opinion*)
White Paper: Special Funding Situation under GASB 68
– ERS, JRS, LRS, GMPF and PSERS Plans –

Synopsis

A special funding situation under GASB 68 occurs when a governmental employer is not solely responsible for the obligation related to the pension benefits it provides to its employees. The governmental employer is relieved of a portion of this obligation by another entity (often another government) that is responsible for all or a part of a governmental employer's pension obligation. For example, a state government may be legally responsible for making half of the required contributions to the retirement plan for teachers on behalf of the local school district. (*GASB 68 Fact Sheet*)

According to GASB 68, a special funding situation exists if an entity – a "nonemployer contributing entity"- is legally responsible for making contributions directly to a pension plan on behalf of a government and one or both of the following is true:

- a. The amount the "nonemployer contributing entity" is required to contribute is not based on events or circumstances unrelated to pensions (such as contributing a percentage of a specific revenue source).
- b. The "nonemployer contributing entity" is the only entity legally required to contribute to the plan.

Essentially, in a special funding situation, the "nonemployer contributing entity" has assumed all or a portion of a government employer's pension obligation. On the other hand, when a government employer is solely responsible for the obligation related to pension benefits it provides to its own employees, no special funding situation exists.

We have reviewed the funding for employee pensions under all of the defined benefit plans we administer, namely, ERS, JRS, LRS, GMPF and PSERS. Following are detailed descriptions of the nonemployer entity funding situations that exists in ERSGA's plans and analysis of whether a special funding situation exists.

As outlined below, LRS and GMPF do not represent special funding situations as there is not a nonemployer contributing entity involved (state of Georgia is the employer). However, ERS, JRS and PSERS do have special funding situations as defined by GASB 68.



Analysis by Plan and Nonemployee Contributing Entity

LRS – Single Employer – State of Georgia (General Assembly)

The Legislative Retirement System (LRS) was created in 1967 to provide pension and retirement benefits for state legislators. While all members of the legislature are elected to office, their employer is the General Assembly and thus by extension, the state of Georgia. Each year, the legislative branch receives an appropriation for the annual required contribution.

OCGA § 47-6-42 provides for state contributions:

“After April 13, 1979, the contributions of the state under this Code section to this system shall be determined by the board each year on the basis of the most recent actuarial valuation. The board shall certify to the legislative fiscal officer the amount of the state's contributions due to the system. The state's contributions shall be paid from funds appropriated to the legislative branch of government and shall be in an amount determined by the board to be necessary to cover the costs of financing and administering the system. The legislative fiscal officer is directed to pay to the board the contributions of the state together with an amount necessary to cover the required employer contributions for social security coverage.”

The funding for this plan comes from the state treasury and is paid directly to the plan for the benefit of the legislative branch of the state of Georgia. There is no nonemployer contributing entity and thus no special funding situation under this plan.

GMPF – Single Employer – State of Georgia

The Georgia Military Pension Fund (GMPF) was established on July 1, 2002 for members of the Georgia National Guard. Per its statute, the employer is the State of Georgia. OCGA § 47-24-1(4). Each year, the fund receives an appropriation from the Georgia General Assembly for its annual required contribution.

OCGA § 47-24-60 provides that state treasurer shall pay the employer contributions to the plan and that such contributions are irrevocable:

“The employer contributions toward the cost of the fund shall be as actuarially determined and approved by the board and, in making such determination, the adjutant general of the state shall supply the board with such information at such times and in such manner as the board shall specify by rules and regulations. The amounts determined as the employer contributions shall be certified to the Office of the State Treasurer at such times as the board shall specify by rules and regulations. It shall be the duty of the state treasurer to pay to the board, from funds appropriated or otherwise available to the fund, the amounts certified by the board. All employer contributions shall be irrevocable and may be used only for the exclusive benefit of members.”

The funding for the plan is clearly the responsibility of the state of Georgia as the employer. There is no other local government involvement and thus no special funding situation exists.



ERS – Department of Revenue (DOR) – Local Tax Commissioners and Employees

The DOR receives an annual appropriation from the Georgia General Assembly to be used to fund the employer contribution for county tax commissioners and employees. Tax commissioners and employees are considered state employees for purposes of membership and their offices are adjuncts of the DOR. OCGA § 47-2-292(a); Ga. Op. Atty. Gen. No.79-69, 1979 WL 20844

OCGA § 47-2-292(b) provides that DOR must make the employer contribution for these employees:

“The state revenue commissioner is authorized and directed to pay from the funds appropriated for the operation of the Department of Revenue, the employer contributions required by this chapter, upon receipt of an invoice from the retirement system.”

DOR’s paying of the employer contribution for these local county employees is a reduction in the local government’s pension obligation for tax office employees. Such an employer contribution is payment by one government (state) for another government (county). Thus, a special funding situation exists as the GASB 68 definition of a special funding situation would be satisfied:

- A “nonemployer contributing entity” - is legally responsible for making contributions directly to a pension plan on behalf of a government – see OCGA §47-2-292(b)
- The amount the “nonemployer contributing entity” is required to contribute is solely for pension benefits – per OCGA §47-2-292(b), employer contribution is based solely on invoice from retirement system.
- The “nonemployer contributing entity” is the only entity legally required to contribute to the plan – see OCGA §47-2-292(b)

The issue turns on whether county tax commissioners and employees being considered state employees for purposes of ERS membership *shifts* the burden for their benefits from the county to the State of Georgia. Because county tax commissioners and employees are for purposes of GASB 68 considered county employees regardless of plan membership eligibility, a special funding situation exists.



ERS – Councils – State Courts and Prosecuting Attorneys – State Court employees and Solicitor Office Staff

The council of State Courts (CSC) and Prosecuting Attorneys' Council (PAC) receive annual appropriations from the Georgia General Assembly (State of Georgia) for employer contributions required by State Court Employees in Bibb, Chatham and DeKalb Counties. State Court employees include court reporters, secretaries, bailiffs, clerks, investigators, solicitor staff and the like. Similar to local tax officials discussed above, these county employees are considered state employees for purposes of membership and the State Courts are considered adjuncts of the Superior Courts. OCGA § 47-2-290(a).

OCGA § 47-2-290(a) provides that the Council of State Courts and the Prosecuting Attorneys Council must make the contribution for these employees:

“ The Council of State Court Judges of Georgia is authorized and directed to pay from the funds appropriated or otherwise available the employer contribution required by this chapter for judges and employees of the state courts, which contribution shall be paid by The Council of State Court Judges of Georgia, upon receipt of an invoice from the retirement system. The Prosecuting Attorneys' Council of the State of Georgia is authorized and directed to pay from the funds appropriated or otherwise available the employer contribution required by this chapter for solicitors-general of the state courts, which contribution shall be paid by the Prosecuting Attorneys' Council of the State of Georgia, upon receipt of an invoice from the retirement system. “

County judicial employees are not state employees. Therefore, the statute and process above would be considered a special funding situation for the Counties of Bibb, Chatham and DeKalb. The statute above satisfies GASB 68:

- A “nonemployer contributing entity”- is legally responsible for making contributions directly to a pension plan on behalf of a government – see OCGA §47-2-290(a)
- The amount the “nonemployer contributing entity” is required to contribute is solely for pension benefits – per OCGA §47-2-290(a), employer contribution is based solely on pension obligation due for state court employees and solicitor office staff. The invoice is generated by the retirement system.
- The nonemployer contributing entity is the only entity legally required to contribute to the plan – see OCGA §47-2-292(a) – both CSC and PAC are legally required to contribute. However, the CSC is required to pay for state court employees excluding solicitor office staff. The PAC is responsible for the solicitor office staff.



JRS – Councils: State Courts and Prosecuting Attorneys – State Court Judges and Solicitors

The CSC and the PAC also receive an annual appropriation from the Georgia General Assembly (State of Georgia) for employer contributions required by State Court Judges and Solicitors working in counties around the State. As noted under ERS, the State Courts are considered adjuncts of the Superior Courts and the law requires the state to make the employer contribution on their behalf. OCGA §47-23-81(b)(2).

OCGA §47-23-81(b)(2) provides as follows:

(2) “The Council of State Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay into the fund provided for by this chapter monthly employer contributions, including contributions to fund any creditable service authorized by this chapter. Such amounts are to be determined by the board and, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits under this chapter. The Council of State Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay from the funds appropriated or otherwise available any required employer contribution for social security coverage on such members. “

ERS OCGA §47-2-290(a) and JRS OCGA§ 47-23-81(b)(2) are similar statutes that require employer contributions to be paid by CSC and PAC. The arguments that could be made as to the designation of these employees as state or county employees are also similar. As noted above, these are county employees and a special funding situation exists for the same reasons as under the ERS plan for PAC and CSC.

JRS – Council: Juvenile Courts – Juvenile Court Judges

The Council of Juvenile Courts (CJC) receives an annual appropriation from the Georgia General Assembly (State of Georgia) for employer contributions required by Juvenile Court Judges working in counties around the State. The Juvenile Courts are considered adjuncts of the Superior Courts and for purposes of membership, the Juvenile Court judges are considered state employees. OCGA §47-23-82(b)(2).

OCGA §47-23-82(b)(2) provides as follows:

(2)” The Council of Juvenile Court Judges is authorized and directed to pay into the fund provided for by this chapter monthly employer contributions, including contributions to fund any creditable service authorized by this chapter. Such amounts are to be determined by the board and, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits under this chapter. “

This statute requires that the Council of Juvenile Courts makes the required employer contribution to the JRS. The Council of Juvenile Courts serves as a pass-through entity for the State of Georgia. As noted above, whether the contribution by the State for Juvenile Court Judges is considered a special funding situation, (i.e., the State making a contribution as a “nonemployer contributing entity” for the



benefit of local counties), turns on the designation of Juvenile Court Judges as state or county employees. Because Juvenile Court Judges are county employees, a special funding situation exists under GASB 68 for the reasons noted.

The significance of the special funding situation and the responsibilities of the employer and “nonemployer contributing entity” are discussed later in this document.

PSERS – State of Georgia

The general assembly makes an annual appropriation to cover the employer contribution to PSERS on behalf of local school employees (bus drivers, cafeteria workers and maintenance staff). The annual employer contribution required by statute is actuarially determined and paid directly to PSERS by the State Treasurer. OCGA §§47-4-29(a) and 60(b)

OCGA §47-4-29(a) provides as follows:

- (a) The General Assembly shall make appropriations to the retirement system sufficient to provide for the employer contributions required by subsection (b) of Code Section 47-4-60 and to otherwise carry out this chapter.

OCGA §47-4-60(b) provides as follows:

- (b) “The employer contributions toward the cost of the retirement system shall be as actuarially determined and approved by the board; and, in making such determination, each local unit of administration shall supply the board with such information at such times and in such manner as the board shall specify by rules and regulations. The amounts determined as the employer contributions shall be certified to the state treasurer at such times as the board shall specify by rules and regulations. It shall be the duty of the state treasurer to pay to the board, from funds appropriated or otherwise available to the retirement system, the amounts so certified by the board. All employer contributions shall be irrevocable and may be used only for the exclusive benefit of members or their beneficiaries.”

As discussed under ERS and JRS, GASB 68 defines a special funding situation as follows: a “nonemployer contributing entity” that is legally responsible for making contributions directly to a pension plan on behalf of a governmental employer and one of the following is true:

- a. The amount the “nonemployer contributing entity” is required to contribute is not based on events or circumstances unrelated to pensions (such as contributing a percentage of a specific revenue source)
- b. The “nonemployer contributing entity” is the only entity legally required to contribute to the plan.

For PSERS employers and the State of Georgia, both elements of the GASB 68 rule are satisfied. In addition, there is no ambiguity regarding the designation of public school employees as state or local



employees. In addition, the statute does not designate local county schools as adjuncts to any agency of the state. These are clearly local employees.

The State of Georgia is the only entity legally required to fund the plan and the amount of the appropriation is based solely on events or circumstances related to pensions. Therefore, a special funding situation does exist for the PSERS plan.

Significance of Special Funding Situation

As a result of the special funding situation that exists with the PSERS plan and if a special funding situation is determined to exist under ERS and JRS, local employers and the State of Georgia must report their obligations for the defined benefit pension plan in accordance with GASB 68.

Local Employers Must (*list not exhaustive, please refer to GASB 68 for complete employer reporting responsibilities*):

- Recognize the full amounts of pension expense
- Recognize as revenue the share of the contributions made by the “nonemployer contributing entity” to the plan
- Recognize the amounts of net pension liability and pension related deferrals net of the portion assumed by the nonemployer contributing entity (State of Georgia)
- Disclose in the notes the full amount of their net pension liability and pension related deferrals prior to assumption by the “nonemployer contributing entity”

State of Georgia Must:

- Recognize in the financial statements its proportionate share of the other entities net pension liability and pension-related deferrals, separately from the amounts for its own employees
- Recognize in the financial statements its proportionate share of the other entities’ pension expense but labeled similarly to its *other aid to counties and school districts*, rather than as pension expense.



Conclusion

The state of Georgia is the single employer for the Georgia Military Pension Fund (GMPF) and the Legislative Retirement System (LRS). There are no nonemployer contributing entities involved in funding either plan. Thus, no special funding situation exists in these two plans.

Whether a special funding situations exist for governmental employers covered by the Employees' Retirement System (ERS), specifically, the Department of Revenue (DOR) employer contributions for local tax officials and the State Court/Prosecuting Attorneys' Councils for state court employees) or the Judge' Retirement System (JRS), specifically, the Councils of State Courts, Juvenile Courts or Prosecuting Attorneys for state court and juvenile court judges, and solicitors) turned on how covered employees are designated – county or state employees. Because these employees are designated as county employees, special funding situations exist for ERS and JRS. The county governmental employer's pension obligation is clearly reduced by the employer contribution to the plan by the "nonemployer contributing entity" (State of Georgia).

A special funding situation also exists for governmental employers covered by the Public School Employees Retirement System (PSERS). There is no ambiguity as to whether the employees are local or state employees. The employees are local. As required under GASB 68, the State ("nonemployer contributing entity") is the only entity legally required to contribute to the plan for local school cafeteria workers, bus drivers, and maintenance staff and the amount the "nonemployer contributing entity" is required to contribute is based only on events or circumstances related to pensions.