



# HOUSE BILL 487: Shorter Separation for Retired ADAs and APDs.

2025-2026 General Assembly

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<b>Committee:</b>	House Pensions and Retirement. If favorable, re-refer to Appropriations. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	April 9, 2025
<b>Introduced by:</b>	Reps. Carson Smith, Wheatley	<b>Prepared by:</b>	Jason Moran-Bates Committee Staff
<b>Analysis of:</b>	PCS to First Edition H487-CSBC-13		

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**OVERVIEW:** *The PCS to House Bill 487 would allow certain retired assistant district attorneys and retired assistant public defenders with at least five years' service in those roles to return to work for the judicial branch after being retired for two months. It would also require the State Treasurer to seek a private ruling letter from the IRS to determine whether this would jeopardize the status of the Teachers and State Employees' Retirement System (TSERS) as a qualified pension plan.*

**CURRENT LAW:** Under current law, TSERS members may return to work only after six months' separation from service.

**BILL ANALYSIS:** The PCS to House Bill 487 would allow retired assistant district attorneys and retired assistant public defenders who earned at least five years' membership service in those roles to return to work for the judicial branch after being retired for two months and make conforming changes through the TSERS statutes. It would also direct the State Treasurer to obtain a private letter ruling from the IRS to determine if the two-month return to service would jeopardize the status of TSERS as a qualified pension plan. The bill would allow the Retirement Systems Division (RSD) to increase receipts from TSERS's retirement assets to pay for the administration of the return-to-work provisions of the bill and appropriate \$100,000 from the General Fund to obtain the private ruling letter. The Administrative Office of the Courts and Director of Indigent Services must certify to RSD that a member is employed as an assistant district attorney or assistant public defender.

**EFFECTIVE DATE:** The appropriations provisions would be effective July 1, 2025; the remainder of the bill would be effective January 1, 2027. If the result of the private letter ruling request is anything other than a favorable ruling, the act will be repealed.

**BACKGROUND:** A private letter ruling is a statement from the IRS that a provision of a retirement plan does not conflict with federal requirements.

TSERS is a qualified pension plan under section 401(a) of the Internal Revenue Code. In order to maintain this status, TSERS cannot allow an employee election that amounts to a cash or deferred arrangement. Under IRS ruling and caselaw, this means there must be a "bona fide termination of employment," and the employee-employer relationship must be completely severed before paying retirement benefits. According to previous guidance received by the Retirement Systems Division from the IRS, whether there has been a bona fide termination of employment is based on the facts of the specific situation, but a significant factor would be that the employee made an independent decision to terminate the employer-employee relationship without any reemployment arrangements. If a distribution from TSERS is made to

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an employee when there is not a bona fide termination of employment, the IRS could eliminate TSERS's status as a qualified pension plan.

In the past, TSERS has ensured that there is a bona fide termination of employment by requiring six months' separation of service before reemployment. Because many TSERS members are teachers who routinely have 2-3 months' separation of service each summer, previous IRS guidance has suggested that six months' separation is enough to demonstrate a bona fide termination of employment while a shorter term may not constitute a bona fide termination of employment. The bill would direct the State Treasurer to seek a private letter ruling from the IRS on whether the two-month retirement for assistant district attorneys and assistant public defenders constitutes a bona fide termination of employment.