

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 71 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 142

4
5 By: Senators J. Jeffress, Faris
6 By: Representatives Sullivan, Childers

For An Act To Be Entitled

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9
10 AN ACT TO AMEND REFERENCES TO THE INTERNAL
11 REVENUE CODE IN ARKANSAS TEACHER RETIREMENT LAW
12 FOR CLARITY AND CONSISTENCY; AND FOR OTHER
13 PURPOSES.

Subtitle

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16 AN ACT TO AMEND REFERENCES TO THE
17 INTERNAL REVENUE CODE IN ARKANSAS
18 TEACHER RETIREMENT LAW FOR CLARITY AND
19 CONSISTENCY.

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 SECTION 1. Arkansas Code § 24-7-202 is amended to read as follows:
25 24-7-202. Definitions.

26 As used in this act, unless the context otherwise requires:

27 (1) "Accumulated contributions" means the total of all amounts
28 contributed by a member and standing to his or her credit in his or her
29 individual account in the members' deposit account, together with regular
30 interest credited thereon;

31 (2) "Active member" means any member rendering service which is
32 covered by the system;

33 (3) "Actuarial equivalent" means a benefit of equal reserve
34 value;

35 (4) "Annuity" means an annual amount payable by the system in



1 equal monthly installments throughout the life of a person or for a temporary
 2 period;

3 (5) "Beneficiary" means any person who is receiving or is
 4 designated to receive a system benefit by reason of the system membership of
 5 another person;

6 (6) "Benefit program" means a schedule of benefits or benefit
 7 formulas from which the amounts of system benefits can be determined;

8 (7) "Board" means the Board of Trustees of the Arkansas Teacher
 9 Retirement System;

10 (8) "Child of a member" means either a natural child of the
 11 member, a child that has been made a child of the member by applicable court
 12 action before the death of the member, or a child under the permanent care of
 13 the member at the time of the latter's death, which permanent care status
 14 shall be determined by evidence satisfactory to the board;

15 ~~(9) "Code" means the federal Internal Revenue Code of 1986, as~~
 16 ~~amended, as it existed on January 1, 2001;~~

17 ~~(10)~~(9) "Credited service" means service which is creditable as
 18 service by the system;

19 ~~(11)~~(10) "Employee" means any person employed by a school in a
 20 regular or special position;

21 ~~(12)~~(11) "Employer" means any school, habilitative services
 22 corporation, or other educational agency participating in the system;

23 ~~(13)~~(12) "Employment with a school" means, beginning July 1,
 24 1993:

25 (A) Employment with any of the following institutions or
 26 agencies:

- 27 (i) Arkansas School for the Blind;
- 28 (ii) Arkansas School for the Deaf;
- 29 (iii) Arkansas Activities Association;
- 30 (iv) A local school board;
- 31 (v) Chief county school officers;
- 32 (vi) The State Board of Education;
- 33 (vii) Regional education cooperatives;
- 34 (viii) The state Surplus Property Program; and
- 35 (ix) The Arkansas Teacher Retirement System;

36 (B) Employment in a position with any of the following

1 organizations:

2 (i) Juvenile training schools;

3 (ii) The Arkansas Educational Television Commission;

4 and

5 (iii) Area vocational-technical schools, except
6 those employees of area vocational schools and the Department of Workforce
7 Education who have elected to participate in an alternate retirement plan
8 established by §§ 24-7-901 and 24-7-903 - 24-7-908;

9 (C) Employment by the Arkansas Rehabilitation Services or
10 the Division of State Services for the Blind, except those employees who have
11 elected to participate in the noncontributory plan of the Arkansas Public
12 Employees' Retirement System;

13 (D) Employment in a position with an educationally related
14 agency if the employee is or has been a member of the Arkansas Teacher
15 Retirement System for a minimum of five (5) years and elects to become or
16 remain a member of the system. The employment shall be related to the
17 training of public school employees or school board members, or teaching
18 public school students, or in adult education programs. The employment shall
19 not be related in any manner to private schools. Such an agency shall be
20 approved according to rules and regulations established by the board, shall
21 be considered an employer under subdivision ~~(12)~~(11) of this section, and
22 shall be responsible for all required employer contributions;

23 (E) Employment in an enterprise privatized by a public
24 school district. If a public school district should privatize any of its
25 services, any individual who is or was employed by the school district in one
26 (1) of those services and who is or has been a member of the Arkansas Teacher
27 Retirement System may elect to remain a member if the board determines
28 pursuant to rules and regulations adopted by the board that the participation
29 of these employees in the system will not in any way impair any legal status
30 of the system, including, but not limited to, its status as a governmental
31 plan pursuant to the federal Internal Revenue Code and the Employee
32 Retirement Income Security Act of 1974, or have a substantial adverse impact
33 on the actuarial soundness of the system and if the private provider assumes
34 all responsibility for the required employer contributions and any fees for
35 obtaining Internal Revenue rulings or Employee Retirement Income Security Act
36 of 1974 opinions; and

1 (F)(i) Employment in positions with educational nonprofit
 2 corporations associated with the Community Providers Association in Arkansas
 3 if the nonprofit corporation has elected to participate in the Arkansas
 4 Teacher Retirement System, and if the board determines pursuant to rules and
 5 regulations adopted by the board that their participation will not in any way
 6 impair any legal status of the system, including, but not limited to, its
 7 status as a governmental plan pursuant to the federal Internal Revenue Code
 8 and the Employee Retirement Income Security Act of 1974, or have a
 9 substantial adverse impact on the actuarial soundness of the system.

10 (ii) The employment shall be related to the training
 11 of public school employees or school board members, or teaching public school
 12 students, or in adult education programs.

13 (iii) The employment shall not be related in any
 14 manner to private schools.

15 (iv) Each nonprofit corporation shall be approved
 16 according to rules and regulations established by the board, shall be
 17 considered an employer under subdivision ~~(12)~~(11) of this section, and shall
 18 be responsible for all required employer contributions and any fees for
 19 obtaining Internal Revenue rulings or Employee Retirement Income Security Act
 20 of 1974 opinions;

21 ~~(14)~~(13)(A)(i) "Final average salary" means, for a member who
 22 retires after June 30, 1997, the average of the annual salaries paid him or
 23 her during the period of not less than three (3) years nor more than five (5)
 24 years of credited service producing the highest annual average with the exact
 25 time period to be determined in accordance with the rules and regulations of
 26 the Board of Trustees of the Arkansas Teacher Retirement System as is
 27 actuarially appropriate for the system, subject to the provisions of
 28 subdivision ~~(23)~~(24)(A) of this section.

29 (ii) Prior to reducing the time period used to
 30 determine final average salary, the board shall file relevant information
 31 concerning the actuarial appropriateness of the action with the Joint Interim
 32 Committee on Public Retirement and Social Security Programs, and the action
 33 shall be reviewed by the committee.

34 (B) Should a member have less than the minimum of three
 35 (3) years of credited service, "final average salary" means the annual
 36 average of salaries paid him or her during his or her total years of credited

1 service, subject to the provisions of subdivision ~~(23)~~(24)(A) of this
2 section;

3 ~~(15)~~(14) "Inactive member" means any former active member who is
4 no longer rendering service which is covered by the system and who is not a
5 retirant;

6 ~~(16)~~(15) "Interest" means the rate or rates per annum,
7 compounded annually, as the board shall adopt from time to time, that will be
8 charged for the purchase of service credit or to repay a refund, but the rate
9 shall equal no less than the system's current assumed interest rate
10 assumption;

11 (16) "Internal Revenue Code" means the federal Internal Revenue
12 Code of 1986, as amended, as it existed on January 1, 2005, except as
13 provided in § 24-7-406(c)(1)(A)(ii);

14 (17) "Member" means any person included in the membership of the
15 system;

16 (18) "Nonteacher" means any employee except a teacher;

17 (19) "Normal retirement age" means sixty-five (65) years of age;

18 (20) "Regular interest" means the rate or rates per annum,
19 compounded annually, that the board shall adopt from time to time, that will
20 be used to compute interest on members' contributions;

21 (21) "Reserve" means the present value of all payments to be
22 made on account of any system benefit based upon such reasonable tables of
23 experience and regular interest as the board shall adopt from time to time;

24 (22) "Retirant" means a former member receiving a system annuity
25 by reason of having been a member;

26 (23) "Retires" means the beginning of annuity payments to a
27 retirant;

28 (24)(A)(i) "Salary" means the remuneration paid an employee in a
29 position covered by the system and on which the employer withholds federal
30 income tax.

31 (ii) Provided, however, compensation in excess of
32 the limitations set forth in section 401(a)(17) of the Internal Revenue Code
33 shall be disregarded. The limitation on compensation for eligible employees
34 shall not be less than the amount which was allowed to be taken into account
35 under the system as in effect on July 1, 1993. For this purpose, an eligible
36 employee is an individual who was a member of the system before the first

1 plan year beginning after December 31, 1995.

2 (iii) However, when a member retires, the current
3 year's salary used in the computation of retirement benefits shall not exceed
4 one hundred ten percent (110%) of the previous year's salary, unless the
5 increase is a direct result of a promotion, change in position, incremental
6 increase provided in the school district salary schedule, or an increase in
7 school revenues.

8 (B) Should a portion of an employee's remuneration be paid
9 other than in cash, the cash value of the remuneration shall be established
10 by the system in an amount not to exceed the amount the employee is required
11 to report for federal income tax purposes.

12 (C)(i) In determining salary, employer pick-up
13 contributions, cafeteria plans as defined in § 21-5-901, and employee
14 contributions to tax-sheltered annuities shall be included.

15 (ii) Provided, however, a member may establish
16 salary earned under a purchase service contract with a covered employer by
17 paying employee and employer contributions plus interest.

18 (D) Money which is in lieu of remuneration and which is
19 used by an employer to purchase a qualified tax-sheltered annuity or a life
20 insurance policy for an employee shall be considered as salary for system
21 purposes.

22 (E) An employee who is receiving remuneration under both a
23 regular contract and a purchased contract or under both a regular contract
24 and a contract won through litigation shall have only the greater of the two
25 (2) amounts considered as salary for system purposes.

26 (F) Should an employee make a charitable donation or
27 return any part of his or her salary to his or her employer, the amount of
28 his or her recurring remuneration otherwise usable as salary shall be reduced
29 by such amount or amounts to arrive at his or her salary for system purposes.

30 (G) In case of any dispute concerning an employee's salary
31 for system purposes, the system shall have the power to settle the dispute;

32 (25) "School" means any public school under the control of
33 school authorities of the state and supported wholly or partially by state
34 moneys;

35 (26) "Service" means employment rendered as an employee;

36 (27) "Social security" means the federal social security old

1 age, survivors and disability insurance program;

2 (28) "State" means the State of Arkansas;

3 (29) "System" means the Arkansas Teacher Retirement System;

4 (30)(A) "Teacher" means, beginning July 1, 1989, any person
5 employed by a school for the purpose of giving instructions and whose
6 employment requires state certification.

7 (B) In any case of question as to who is a teacher, the
8 board shall have the final power to decide the question; and

9 (31) "Trustee" means a member of the board.

10
11 SECTION 2. Arkansas Code § 24-7-210(a), concerning operation of the
12 Arkansas Teacher Retirement System consistent with the federal Internal
13 Revenue Code, is amended to read as follows:

14 (a) The Executive Director of the Arkansas Teacher Retirement System
15 is authorized and directed to operate the Arkansas Teacher Retirement System
16 and interpret any provisions of § 24-7-101 et seq. consistent with the
17 requirements under the ~~federal~~ Internal Revenue Code ~~of 1986, as amended, as~~
18 ~~it existed on January 1, 2001,~~ and applicable United States Treasury
19 regulations necessary to permit the system to be operated as a "qualified
20 trust" under section 401(a) of the code.

21
22 SECTION 3. Arkansas Code § 24-7-730(b)(2)(D), concerning benefit
23 distribution compliance, is amended to read as follows:

24 (D) Notwithstanding the provisions of this subchapter, all
25 distributions of benefits under the system shall comply with the requirements
26 of section 401(a)(9) of the ~~federal~~ Internal Revenue Code ~~as it existed on~~
27 ~~January 1, 2001,~~ and the regulations thereunder, including United States
28 Treasury Regulation § 1.401(a)(9)-2, and those provisions shall override any
29 distribution options in this chapter that are inconsistent with section
30 401(a)(9).

31
32 SECTION 4. Arkansas Code § 24-7-733 is amended to read as follows:
33 24-7-733. Limitation on benefits.

34 (a) Notwithstanding the provisions of this subchapter, benefits paid
35 under the Arkansas Teacher Retirement System shall not exceed the limitations
36 of section 415 of the ~~federal~~ Internal Revenue Code ~~as it existed on January~~

1 ~~1, 2001,~~ that are applicable to governmental retirement plans, including, but
2 not limited to, the dollar limitations in section 415(b)(1)(A).

3 (b) "Compensation" for purposes of determining section 415 compliance
4 shall be defined as set forth in United States Treasury Regulation § 1.415-
5 2(d)(2) as it existed on January 1, 2001, and shall include any elective
6 deferrals as defined in section 402(g)(3) of the ~~federal~~ Internal Revenue
7 Code ~~as it existed on January 1, 2001,~~ and any amount which is contributed or
8 deferred by a member's employer at the election of the member and which is
9 not includable in the gross income of the member by reasons of sections 125
10 or 457 of the ~~federal~~ Internal Revenue Code ~~as it existed on January 1, 2001.~~

11
12 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
13 General Assembly of the State of Arkansas that the applicability of the
14 Internal Revenue Code is unclear in current Arkansas Teacher Retirement
15 Systems laws; that this act is necessary to clarify the issue and ensure
16 consistent and correct application of Arkansas Teacher Retirement System
17 provisions; and that the most effective time to make changes to the
18 retirement system is at the beginning of the state's fiscal year. Therefore,
19 an emergency is declared to exist and this act being immediately necessary
20 for the preservation of the public peace, health, and safety shall become
21 effective on July 1, 2005.

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24 APPROVED: 2/07/2005
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