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**DECEMBER 15, 2021**

**SUMMARY OF PROPOSED RULE AMENDMENT**

**ATRS RULE 4 – ELECTION OF BOARD OF TRUSTEES**

**I. PURPOSE**

To amend ATRS Rule 4 – Election of Board of Trustees (Rule 4) in accordance with legislation enacted during the Regular Session, 2021, and to redraft current provisions for clarity and to correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate. The amendments to Rule 4 are necessary for the proper operation and administration of the Arkansas Teacher Retirement System.

**II. BACKGROUND AND DISCUSSION**

A.C.A. § 24-7-301 provides that the Board of Trustees of the Arkansas Teacher Retirement System is responsible for the general administration and proper operation of the Arkansas Teacher Retirement System and for implementing the Arkansas Teacher Retirement System Act, A.C.A. § 24-7-201 et seq.

A.C.A. § 24-7-305(b) gives the Board of Trustees of the Arkansas Teacher Retirement System the authority to promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System. Acts 2021, No. 595, A.C.A. § 25-15-216(b), requires the Arkansas Teacher Retirement System to promulgate rules pursuant to the provisions of each act identified by the Bureau of Legislative Research as requiring the promulgation of one (1) or more rules.

Rule 4 currently provides that at least one (1) of the administrators serving as an active administrator trustee must be employed by a participating employer as an Arkansas school superintendent or educational cooperative director. Before the passage of Acts 2021, No. 279, A.C.A. § 24-7-301 required two (2) active member trustees to be employed in a position requiring an administrator's license and one (1) of the two (2) active member trustees to be an administrator. Acts 2021, No. 279 amended A.C.A. § 24-7-301(2)(C)(i) to require one (1) of the two (2) active member trustees to be a superintendent or an educational cooperative director.

Rule 4 refers to "participating employer" when "employer" or "covered employer" as defined in A.C.A. § 24-7-202(17) is intended. Rule 4 is being amended to use the term "employer" or "covered employer" instead of "participating employer" as appropriate. Corresponding amendments were made in Acts 2021, No. 279 and Acts 2021, No. 279.

Rule 4 is being amended to redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.



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### III. KEY POINTS

Rule 4 is being amended to:

- Clarify that one (1) of the two (2) active member trustees on the Board of Trustees of the Arkansas Teacher Retirement System who are required to be employed in a position requiring an administrator's license shall be a superintendent or an educational cooperative director;
- Amend "participating employer" to "employer" or "covered employer";
- *Amend or add language recommended through public comment that:*
  - *Clarifies the Arkansas congressional district boundaries that will be used to determine candidate and voter eligibility;*
  - *Appropriately references "active administrator trustee positions" where necessary;*
  - *Appropriately references "requiring an administrator's license" where necessary;*
  - *Clarifies that one (1) of the two (2) administrator trustee positions must be a superintendent or educational cooperative director;*
  - *Addresses campaign materials that appear to claim the endorsement of the Arkansas Teacher Retirement System or the Board of Trustees of the Arkansas Teacher Retirement System; and*
  - *Clarifies that the Board of Trustees of the Arkansas Teacher Retirement System must declare a vacancy upon the resignation or death of a trustee; and*
- Redraft current provisions for clarity and correct nonsubstantive issues such as formatting, renumbering, grammar, and spelling as appropriate.



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**Public Comments**  
**Proposed Rule 4 – Election of Board of Trustees**

**1. Page 4, Section (IV)(a)(1)**

- a. **ATR Staff Comment:** Should the following language be added as a subdivision of Section (IV)(a)(1)?
- i. *“The Arkansas congressional district boundaries as defined on the first day of the fiscal year in which an election for an active member trustee position occurs shall be used to determine:*
1. *Whether a person is qualified to become a candidate for an active member trustee position; and*
2. *The eligibility of a member to vote in an election for an active member trustee position.”*
- b. **Response:** Yes. This proposed language derives from an action adopted by the Board of Trustees of the Arkansas Teacher Retirement System (Board) by resolution 2021-67 on December 6, 2021. This change has been made.

**2. Page 5, Section (IV)(b)(2)(A)**

- a. **BLR Comment:** Should the reference be to “*active administrator trustee positions*”?
- b. **Response:** Yes. This change has been made.

**3. Page 5, Section (IV)(b)(2)(A)(ii)**

- a. **ATR Staff Comment:** As a person can be a licensed administrator, but not be employed in a position that “*requires*” them to have an administrator’s license, to avoid confusion, should “*licensed administrator*” in Section (IV)(b)(2)(A)(ii) instead reflect the law in Ark. Code Ann. § 24-7-301(2)(C)(i) and say “*requiring an administrator’s license*”?
- b. **Response:** Yes. The appropriate change has been made.

**4. Page 5, Section (IV)(b)(2)(A)(ii)**

- a. **BLR Comment:** As written, the proposed rule appears to require that to be qualified for candidacy for an active administrator trustee position that one must be an administrator and be employed as a school superintendent or an educational cooperative director; however, Ark. Code Ann. §24-7-301(2)(C)(i), as amended by Act 279 of 2021, § 6, appears to provide that only one of the two



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administrator trustee positions “*shall be a superintendent or educational cooperative director.*” Is there a reason the rule appears to differ from the statute?

- b. **Response:** The Arkansas Teacher Retirement System (ATRS) agrees with the commentator’s reading of Ark. Code Ann. §24-7-301(2)(C)(i), as amended by Acts 2021, No. 279, § 6. The appropriate change has been made.

**5. Page 9, Section (V)(d)(1) and (2)**

- a. **ATRS Staff Comment:** In order to clarify that the ATRS will not send the mailing addresses of members of the system directly to a candidate and to address campaign materials that appear to claim the endorsement of ATRS or the Board, should Section (V)(d)(1) and (2) read as follows:

- i. *“1. A candidate’s message shall not include information that:*
- A. *Would constitute defamation of another candidate; or*
  - B. *Claims or appears to claim the endorsement of ATRS or the Board.*
2. *At the request of a candidate, ATRS shall provide a list of the mailing addresses of each eligible voter to the election vendor for the distribution of the candidate’s campaign materials.”*

- b. **Response:** Yes. This change has been made.

**6. Page 14, Section (IX)(d)(3)(C)**

- a. **ATRS Staff Comment:** As a trustee who dies or resigns is unlikely to attend three (3) or more Board meetings, should Section (IX)(d)(3)(C) be revised to read, “Resignation or death of a trustee.”?
- b. **Response:** ATRS agrees that it is unlikely for a trustee who dies or resigns to attend three (3) or more Board meetings. The appropriate changes have been made.

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## **ATRS Rule RULE 4** **ELECTION OF BOARD OF TRUSTEES**

A.C.A. Arkansas Code §§ 24-7-301, 24-7-302, and 24-7-305

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### **I. Definitions<sup>1</sup>**

a. "Active member" for the purposes of eligibility for an active member trustee position and voting for an active member trustee position means:

1. An active member as defined in Arkansas Code § 24-7-202; or

2. A member who:

A. Participates in the Teacher Deferred Retirement Option Plan (T-DROP);

B. Is employed by a covered employer; and

C. Receives T-DROP plan deposits;

b. "Administrator" for the purposes of eligibility for an administrator trustee position and voting for an administrator trustee position means a person who:

1. Has a current administrator's license; and

2. Is either:

A. An employee of a covered employer who is employed in one (1) of the following positions:

i. Public school superintendent, assistant superintendent, principal, or vice-principal;

ii. Higher education president, chancellor, or director; or

iii. Director, president, or vice president of a community college, vocational or technical school, or educational cooperative; or

B. A classified or unclassified employee who is:

i. An employee of an education-related agency that participates in ATRS; and

ii. Employed in a GS13 grade position, its equivalent, or above.

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<sup>1</sup> A term that is not defined in these ATRS Rules shall have the same meaning as provided in Arkansas Code § 24-7-202.

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c. "Licensure" for the purposes of eligibility for a licensed trustee position or voting for a licensed trustee position means a person who is:

1. Not an administrator; and

2. Either employed in:

A. A position requiring state teaching licensure; or

B. An education institution GS09-GS12 grade position or its equivalent; and

d. "Nonlicensed" for the purposes of eligibility for a nonlicensed trustee position and voting for a nonlicensed trustee position means a person who is:

1. Employed in a position with a covered employer that does not require state teaching licensure;

2. Employed in a position with an education-related agency in a position that:

A. Does not require state teaching licensure; and

B. Is no higher than a GS08 grade position or its equivalent; and

3. Not an administrator as that term is defined in Arkansas Code § 24-7-202 and this ATRS Rule 4.

## II. Board of Trustees of the Arkansas Teacher Retirement System

a. The general administration and proper operation of ATRS ~~the Arkansas Teacher Retirement System (ATRS)~~ is vested in the ~~Board of Trustees~~ Board of Trustees of the Arkansas Teacher Retirement System (Board).

b. ~~that consists~~ The Board shall consist of eleven (11) elected members and four (4) ex officio members.

c. Pursuant to A.C.A. ~~Arkansas Code~~ § 24-7-301, the Board shall adopt rules and regulations regarding the election of ~~trustees and trustee vacancies~~ a trustee and a vacancy on the Board.

## I. ~~General Rules for Candidacy and Voting in Trustee Elections~~

## III. Candidacy and Voting in Trustee Elections — Generally

A. ~~For purposes of eligibility for an active member trustee position and voting, "active members" shall mean active members as defined in A.C.A. § 24-7-202 and members participating in T-DROP, if employed by a participating employer and receiving T-DROP plan deposits.~~

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## B.a. Candidates

1. If a candidate for a trustee position on the Board is employed in more than one (1) position with a participating employer(s) covered employer, the candidate's eligibility shall be determined based on their the candidate's primary position for which they receive the candidate receives the greater percentage of covered salary.

~~C. For purposes of eligibility for an administrator trustee position or voting for that position, "administrator" shall mean a public school superintendent, assistant superintendent, principal, or vice principal; a higher education president, chancellor or director; or a community college, vocational/technical or educational cooperative director, president, or vice president, who is employed by a participating employer; OR any employee of an education related agency participating in ATRS that is employed in a position grade GS13 or above or its equivalent, including unclassified employees.~~

~~D. For purposes of eligibility for a licensed trustee position or voting for that position, "licensure" shall mean a person employed in a position requiring state teaching licensure or an education institution grade GS09-GS12 or its equivalent and who is not an administrator.~~

~~E. For purposes of eligibility for a nonlicensed trustee position and voting for that position, "nonlicensed" shall mean a member employed in a position with a participating employer that does not require state licensure including employment in an educationally related agency in a position grade GS08 or below or its equivalent. Nonlicensed shall not include any position that is defined as an administrator or that requires licensure.~~

## F.b. Eligibility to Vote

1. Only members are authorized to of ATRS shall vote in a trustee election.

2. Guardians, attorneys-in-fact, or others may shall not vote on behalf of a member.

~~G. Terms not defined in these rules shall have the meaning set forth in A.C.A. § 24-7-202 et. seq.~~

H.3. An employee working for ATRS is not eligible ineligible to be:

A. ~~elected~~ Elected to the board Board;

B. ~~appointed~~ Appointed to the board Board; or

C. ~~be a candidate to be elected or appointed to the board~~ A candidate

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for election or appointment to the Board.

## **II-IV. Qualifications and Voter Eligibility for Elected Trustee Positions**

~~There shall be four (4) active member trustees each of whom will represent one of the four congressional districts in Arkansas.~~

### **A.a. Active Member Trustee Position Nos. 1-4 — Congressional Districts** **Active Member Trustee Positions 1-4 — Congressional Districts**

#### **1. Generally**

**A. The Arkansas congressional district boundaries as defined on the first day of the fiscal year in which an election for an active member trustee position occurs shall be used to determine:**

**i. Whether a person is qualified to become a candidate for an active member trustee position; and**

**ii. The eligibility of a member to vote in an election for active member trustee position.**

**B. There shall be four (4) active member trustees.**

**C. Each active member trustee shall represent one (1) of the four (4) congressional districts in Arkansas.**

#### **1.2. Qualifications for Candidacy:**

**A. A person is qualified to become a candidate for active member trustee positions 1-4 if he or she is:**

**i. ~~a. Active~~ An active member with a minimum of five (5) years of actual service;**

**ii. ~~b.~~ Employed by a participating covered employer located in the congressional district for which he/she he or she is seeking election; and**

**iii. ~~c.~~ Employed in a position requiring state teaching licensure or the equivalent under these rules this ATRS Rule 4.**

#### **2.3. Eligible Voters for Trustee Position Nos. 1-4 Eligibility to Vote**

**A. A member is eligible to vote in an election for active member trustee positions 1-4 if he or she is:**

**i. ~~Active members~~ An active member, regardless of credited service;**

**ii. ~~employed~~ Employed by covered employers a covered**

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employer located in the respective congressional districts; and

~~iii. who are otherwise~~ Otherwise eligible to be a candidate under this subsection ATRS Rule 4.

## ~~B.b. Active Administrator Trustee Position Nos. 5-6~~ Active Administrator Trustee Positions 5-6

~~There shall be two (2) active member trustees each of whom must be employed as an administrator as defined in these rules.~~

### 1. Generally

A. There shall be two (2) active member trustee each of whom shall be employed as an administrator as defined in this ATRS Rule 4.

### 4.2. Qualifications for Candidacy:

A. A person is qualified to become a candidate for active administrator trustee positions 5-6 if he or she is:

~~i. a. Active~~ An active member with a minimum of five (5) years of actual service; and

~~ii. b. Employed in a position requiring an administrator's license.~~

a. As provided in A.C.A. § 24-7-301, at least Pursuant to Arkansas § 24-7-301, at least one (1) of the administrators serving as an active administrator trustee must shall be employed by a participating covered employer as an Arkansas a school superintendent or an educational cooperative director.

b. c. If an election is being held for either position and the other administrator position is not held by a superintendent or educational cooperative director, candidates for the open position must be a superintendent or educational cooperative director and the notice of election shall so state that requirement. If there is an open administrator active member trustee position and the other administrator active member trustee position is held by a person who is not a superintendent or an educational cooperative director, a candidate for the open administrator active member trustee position shall be a superintendent or an educational cooperative director and the notice of election shall state that a candidate for the open

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administrator active member trustee position is required to be a superintendent or an educational cooperative director.

~~d. Candidates for Position No. 5 and Position No. 6 shall be licensed administrators employed by a participating employer.~~

## ~~2.3. Eligible Voters for Trustee Position Nos. 5-6~~ Eligibility to Vote

~~A. Eligible voters for Position Nos. 5 and 6 shall be active members, regardless of credited service, employed as licensed administrators active members employed in positions requiring an administrator's license.~~ A member is eligible to vote in an election for administrator active member trustee positions 5-6 if he or she is:

- i. An active member, regardless of credited service; and
- ii. Employed as a licensed administrator in a position requiring an administrator's license

## ~~C.c. Nonlicensed Trustee Position No. 7~~ Nonlicensed Trustee Position 7

### 1. Qualifications for Candidacy:

~~A. A person is qualified to become a candidate for nonlicensed trustee position 7 if he or she is:~~

- ~~i. a. Active~~ An active member with a minimum of five (5) years of actual service; and
- ~~ii. b. Employed in a position not requiring state licensure.~~

### 2. ~~Eligible Voters for Trustee Position No. 7~~ Eligibility to Vote

~~Eligible voters for Position No. 7 shall be all active members, regardless of credited service, who are employed by participating employers in nonlicensed positions as defined these rules.~~

A. A member is eligible to vote in an election for nonlicensed trustee position 7 if he or she is:

- i. An active member, regardless of credited service; and
- ii. Employed by a covered employer in a nonlicensed position.

## ~~D.d. Minority Trustee Position No. 8~~ Minority Trustee Position 8

### 1. Generally

A. There shall be one (1) member trustee of a minority racial ethnic group.

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## 4.2. Qualifications for Candidacy:

A. A person is qualified to become a candidate for minority trustee position 8 if he or she is:

i. ~~a.~~ An active or retiree member of ATRS with a minimum of five (5) years of actual service; ~~and~~

ii. ~~b.~~ Member ~~A member~~ of a minority racial or ethnic group.

## 2.3. Eligible Voters for Trustee Position No. 8 Eligibility to Vote

A. A member is eligible to vote in an election for minority trustee position 8 if he or she is:

i. ~~a.~~ All active members ~~An active member~~, regardless of credited service; ~~or~~

ii. ~~b.~~ Retiree members ~~Retiree~~.

## E.e. Retired Member Trustees (At-Large) -- Position Nos. 9-11 Retired Member Trustee (At-Large) Positions 9-11

### 1. Generally

A. There shall be three (3) retired member trustees who shall be "retirees" or "retirant" ~~retirees~~ as defined under A.C.A. ~~Arkansas Code~~ § 24-7-202.

## 4.2. Qualifications for Candidacy:

A. A person is qualified to become a candidate for retired member trustee positions 9-11 if he or she is a:

i. ~~a.~~ Retiree member of ATRS; ~~and~~

ii. ~~b.~~ Resident of the State of Arkansas.

## 2.3. Eligible Voters for Trustee Position Nos. 9-11 Eligibility to Vote

A. ~~All retirees of ATRS, regardless of present employment status or residency.~~ ~~A retiree, regardless of present employment status or residency is eligible to vote in an election for retired member trustee positions 9-11.~~

## III.V. Rules on Elected Trustee Nominations

### A.a. Scheduling and Notice of Regular Election

1. ATRS may publish electronically a public notice required by this ATRS Rule 4.

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2. During December in a year in which an elected trustee position is subject to election or ~~to fill a vacancy in a special election~~, a special election is required to fill a vacancy, ATRS shall publish public notice of an upcoming trustee position election in a statewide newspaper for at least five (5) consecutive days.
3. The notice ~~will also~~ shall be sent to ~~such persons or groups that have requested a~~ each person of group that requests notice of Trustee ~~vacancies~~ a trustee vacancy.
4. The notice shall ~~also~~ be posted on the ~~ATRS~~ ATRS' website from December until the closing of the nomination period.

## B.b. Candidate Petitions and Verification of Member Signatures

1. For all elected positions, a candidate ~~must~~ shall submit a petition signed legibly by at least twenty-five (25) ATRS members who are eligible to vote for the trustee position for which the ~~member~~ candidate is seeking nomination.
2. The petition ~~must~~ shall include the last four (4) digits of each signatory's Social Security number for verification of the member's eligibility to vote for the position.

~~C.~~

3. The original petitions for nomination ~~must~~ shall be submitted to the ATRS Executive Director no later than January 10.
4. Actual delivery ~~must~~ of the original petitions for nomination shall be made by January 10, regardless of postmark date or other methods to attempt delivery.

~~D.~~

5. Upon receipt of a petition, ATRS ~~will~~ shall confirm its receipt of the petition and shall verify the eligibility of the candidate for the trustee position under ~~A.C.A.~~ Arkansas Code § 24-7-301.
6. ATRS ~~will~~ shall verify ~~the member's signatures signing the petition as eligible voters~~ each signature of each member who signs the petition as an eligible voter.

~~E.~~ The candidates submitting a petition for nomination will receive notice by ATRS if the petition is accepted and will receive a list of other members who were certified to participate in the election for the trustee position for which they seek nomination.

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## 7. ATRS shall:

- a. Notify each candidate who submits a petition for nomination if his or her petition is accepted; and
- b. Provide the candidate with a list of other members who were certified to participate in the election for the trustee position for which the nomination is sought.

## F.c. Ballots

1. Prior to ballots being mailed, ATRS or its designee will conduct a random drawing for ballot position. ATRS or its designee shall conduct a random drawing for a ballot position before ballots are mailed.
2. At least two (2) independent witnesses shall be present to certify the drawing of the ballot position.
3. Candidates will be notified of the order in which they will be listed on the ballot. ATRS shall notify each candidate of the order in which the candidate will be listed on the ballot.

## G.d. Campaign Materials

1. Upon the request of a candidate, ATRS will shall provide a list of the mailing addresses of each eligible voters voter for the distribution of a the candidate's campaign materials. A candidate's message shall not include information that:
  - A. Would constitute defamation of another candidate; or
  - B. Claims or appears to claim the endorsement of ATRS or the Board.
2. The candidate's message shall not contain information that would constitute defamation of another candidate. At the request of a candidate, ATRS shall provide a list of the mailing addresses of each eligible voter to the election vendor for the distribution of the candidate's campaign materials.
3. Campaign materials will shall be mailed by the election vendor from its the election vendor's place of business.
4. All postage for such campaign materials shall be the candidate's sole expense paid for by the candidate distributing the campaign materials.

## IV.VI Rules on Trustee Elections

### A.a. Election Vendor

1. ATRS shall employ an independent election vendor to conduct the

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trustee elections.

~~B. If any position receives only one nomination and the position is not contested, the Board at its next regular or special meeting may certify the nomination and declare the candidate duly elected as a trustee prior to the commencement of the trustee's term.~~

## b. Ballots

~~1. C. ATRS shall publish ballots that shall be submitted to the election vendor for mailing on March 15 to the member's address of record.~~

ATRS shall publish ballots and submit the published ballots to the election vendor by March 15 for mailing to the address of record for each member who is eligible to vote in the election.

~~2. D. Completed ballots must be received by the election vendor on or before April 15 to be counted.~~ A completed ballot shall be counted if it is received by the election vendor on or before April 15.

~~3. The election vendor shall only count such~~ count only ~~ballots that are correctly completed.~~

## c. Uncontested Elections

1. If any position receives only one (1) nomination and the position is uncontested, the Board at its next regular or special meeting may certify the nomination and declare the candidate duly elected as a trustee before the trustee's term begins.

## E-d. Run-off Elections

~~1. Results for positions not subject to a run-off election shall be certified to ATRS by April 20.~~ The election vendor shall certify to ATRS, by April 20, the election results for a position that is not subject to a run-off election.

~~F. If upon certification of the outcome of a trustee election by the vendor, if no candidate receives at least 50% of the votes cast by eligible voters, a runoff election will be held between the two (2) candidates receiving the highest number of votes for the position. The run-off ballots will be mailed by the election vendor to eligible voters on or before May 1.~~

2. A run-off election shall be held between the two (2) candidates who receive the highest number of votes for a trustee position if:

A. The election vendor certifies the outcome of the trustee election;  
and

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B. A single candidate does not receive at least fifty percent (50%) of the votes cast by eligible voters.

3. The election vendor shall mail run-off ballots to each member who is eligible to vote in the election on or before May 1.

4. ~~G. Completed ballots for a run-off election must be received by the election vendor on or before June 1 to be counted.~~ Completed ballots for a run-off election that are received by the election vendor after June 1 shall not be counted.

5. ~~H. Upon the completion of the run-off election, results shall be certified by the election vendor to ATRS by June 5.~~ The election vendor shall certify the results of a run-off election to ATRS by June 5

## I.-e. Election Result Challenge

1. ~~Any candidate included on the ballot may submit a challenge to the election vendor's certified results for an elected trustee position by submitting a written challenge to the ATRS Executive Director.~~ A candidate who is included on the ballot may challenge the election vendor's certified results for an elected trustee position by submitting a written challenge to the ATRS Executive Director within five (5) calendar days of the date on which the election results are certified by the election vendor.

2. ~~A challenge must be received within five (5) calendar days of the certification of the elections results for the position at issue.~~ A written challenge to the election vendor's certified results for an election shall not be considered if it is submitted more than (5) calendar days after the date on which the election results are certified by the election vendor.

3. If a candidate challenges the election results, the election process will ~~will~~ shall be suspended for the same number of days that the resolution of the challenge requires, and the remaining election schedule will ~~will~~ shall be adjusted accordingly.

~~J.4. Upon receipt of a challenge, the ATRS Board will hold a special meeting to consider the challenge.~~ After a written challenge to a certified election result is received by ATRS, the Board shall hold a special meeting to consider the challenge.

5. The ATRS Executive Director will ~~will~~ shall issue an ATRS recommendation to the Board along with the administrative record relating to the certified election results of the position being challenged.

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## f. Election Schedule — Official Dates

1. ~~K.~~ For any fixed date in the election schedule that falls on a holiday or a weekend, the official date shall become the next business day.

## g. Beginning of Elected Trustee Terms

1. ~~L.~~ Upon completion of an election, all elected trustee terms, except for special elections, shall begin on July 1 following the election.

## **V.VII. Board Procedures to Fill Unexpired Terms for Elected Trustees**

### a. Notice

ATRS staff shall notify the Board of all ~~resignations and vacancies by other causes in any Trustee~~ a resignation or vacancy by other cause in a trustee position as soon as possible after ATRS staff has knowledge of the resignation or vacancy by other cause.

### b. Board Action Upon Receiving Vacancy Notice

1. The Board shall take appropriate action authorized by law to fill the vacancy.
2. ~~The Board may by majority vote appoint~~ Board, by majority vote, may appoint a trustee until the next ATRS election.

### c. Scheduling and Notice of Special Election

1. ~~In the event the Board by majority vote determines that the vacancy should be filled by a special election, then a special election shall be scheduled as follows:~~ A special election to fill a trustee position caused by resignation or vacancy by other cause shall be scheduled and held if the Board, by majority vote, determines that the vacancy should be filled by a special election.
2. If an elected trustee position is declared vacant by the Board and ~~is to be~~ the Board determines that the vacancy should be filled by a special election ~~then, in accordance with this rule, ATRS shall:~~
  - A. ~~publish~~ Publish notice as set out in Section III.A. that a special election ~~will~~ shall be held; and
  - B. ~~will announce~~ Announce the schedule for the special election;
3. ~~which will include the~~ The schedule for the special election shall include the following:
  - 1) ~~A.~~ The date the vacancy occurred and position being vacated;
  - 2) ~~B.~~ The time period for circulating petitions for nominating

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signatures;

3) ~~C.~~ The deadline for filing petitions with ATRS;

4) ~~D.~~ The date ATRS will verify the validity of petitions;

5) ~~E.~~ The date ballots will be sent to eligible voters;

6) ~~F.~~ The election date; and

7) ~~G.~~ The date the term shall begin.

4. ATRS may follow or use as a guideline the rules concerning the publishing of public notice in this ATRS Rule 4 VII for publishing notice during a special election.

## **VI.VIII. Term of Elected Trustee Office and Vacancies**

### **A.a. Duration of Term**

1. The term of office of each elected trustee shall be six (6) years unless the trustee is elected in a special election.

2. A trustee who is elected in a special election shall serve for the remainder of the six-year term of the vacating trustee.

3. A trustee who is appointed to the Board shall serve until the next system election that is held to fill the trustee position to which the trustee was appointed.

4. ~~B.~~ Each trustee shall continue to serve as trustee until ~~their~~ his or her term expires unless ~~they resign~~ he or she resigns or is otherwise ineligible under ~~these rules~~ this ATRS Rule 4.

5. ~~C.~~ In a year in which a six (6) year six-year term of a trustee expires, the position shall be filled under the regular election schedule in this rule.

~~D. A trustee elected to fill an unexpired term in a special election will serve for the remainder of the six (6) year term of the vacating trustee.~~

## **VII.IX. Rules on Elected Trustee Vacancies**

### **A.a. Ineligibility of Active Member Trustee**

1. An active member trustee shall be ineligible to serve ~~after becoming inactive or retiring.~~ if he or she:

~~B. An active member trustee shall be ineligible to serve if~~

A. Becomes inactive;

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B. Retires; or

C. he or she changes Changes his or her employment category during his or her term of office and the employment category is a requirement of the trustee position, i.e., ~~an administrator becomes a classroom teacher.~~

## C.b. Ineligibility of Retiree Member Trustee

1. A retiree member trustee shall be ineligible to serve after becoming an active member.

## D.d. Trustee Absence from Board Meetings

1. A trustee vacancy ~~can~~ may occur if the a trustee is absent from meetings.
- 4.2. The Board of Trustees or its designee will shall notify the Board member trustee after the trustee's second consecutive absence.
2. A vacancy will shall occur if the Board votes to declare a position vacant due to one (1) or more of the following:
  - a.A. A trustee is absent for three (3) consecutive regular Board meetings and the absences are not excused unexcused by the Board.
    - i. An absence that is excused by a majority of the members of the Board shall not be counted towards a vacancy.
    - ii. Attendance on either day of a two-day Board meeting is sufficient to meet the attendance requirement for that meeting;
  - b.B. A trustee is ineligible due to a change in status under A.C.A. Arkansas Code § 24-7-302 resulting in three (3) consecutive absences at regular Board meetings prior to before the expiration of the trustee's term; or
  - c.C. Resignation or death of a trustee which will create creating three (3) or more consecutive absences at regular Board meetings prior to before the expiration of the trustee's term.
3. The Board shall vote to declare, by resolution, a position vacant if:
  - A. A trustee has three (3) consecutive unexcused absences from regular meetings of the Board.
    - i. An absence that is excused by a majority of the members of the Board shall not be counted towards a vacancy.

# MARK UP

*ii. Attendance on either day of a two-day meeting of the Board is sufficient to meet the attendance requirement for the two-day meeting of the Board;*

*B. A trustee becomes ineligible to serve on the Board due to a change in status under Arkansas Code § 24-7-302 that results in the trustee being absent from three (3) consecutive regular meetings of the Board before the expiration of the trustee's term; or*

*C. A trustee resigns or dies.*

4. If the Board declares a vacancy by resolution ~~under the section above as provided under this ATRS Rule 4 IX~~, the Board may vote to hold a special election to fill an unexpired term ~~under~~ using the ~~Board~~ Board's procedures to fill unexpired terms for elected trustees.

5. If the Board does not certify a vacancy by resolution under this section ATRS Rule 4 IX, the vacancy ~~will~~ shall be filled, using approved election procedures for the position, during the next annual ATRS election held ~~upon~~ after the expiration of an ~~the~~ the elected trustee's term, ~~utilizing approved election procedures for that position.~~

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## HISTORY

Approved:	May 10, 2000	4-2
Amended:	April 26, 2007	4-1
	February 11, 2008	4-1, 4-2
	December 18, 2009	4-1, 4-2
	July 1, 2011	4-2 (Emergency)
Adopted:	August 8, 2011	4-2
Effective:	November 11, 2011	4-2
Approved by Board:	October 5, 2015	4-1
Amended:	February 1, 2016	4-1
Effective:	February 10, 2016	4-1
Effective:	August 5, 2019	

## FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System

DIVISION \_\_\_\_\_

PERSON COMPLETING THIS STATEMENT Jennifer Liwo

TELEPHONE NO. (501) 682-1517

FAX NO. (501) 682-2359

EMAIL: jenniferl@artts.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

ATRS Rule 4 - Election of Board of Trustees

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;

N/A

- b) The reason for adoption of the more costly rule;

N/A

- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

N/A

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$ 0.00

Total \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$ 0.00

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☐ N/A

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.