

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.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: S2/10/09 S2/18/09 S3/4/09

# A Bill

SENATE BILL 231

5 By: Senator J. Jeffress  
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## For An Act To Be Entitled

9 AN ACT TO AMEND THE DEFINITIONS OF SALARY AND  
10 INTEREST TO EXCLUDE NONRECURRING PAYMENTS FROM  
11 THE CALCULATION OF FINAL AVERAGE SALARY IN THE  
12 ARKANSAS TEACHER RETIREMENT SYSTEM ACT; AND FOR  
13 OTHER PURPOSES.  
14

## Subtitle

15 TO AMEND THE DEFINITIONS OF SALARY AND  
16 INTEREST IN THE ARKANSAS TEACHER  
17 RETIREMENT SYSTEM ACT TO EXCLUDE  
18 NONRECURRING PAYMENTS FROM THE  
19 CALCULATION OF FINAL AVERAGE SALARY.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 24-7-202(15) - (27) concerning definitions  
26 of salary and interest under the Arkansas Teacher Retirement System, is  
27 amended to read as follows:

28 (15)(A)(i) "Final average salary" means, ~~for a member who~~  
29 ~~retires after June 30, 1997,~~ the average of the ~~annual salaries~~ remuneration  
30 paid to him or her a member by a participating employer during the period the  
31 fiscal year ending June 30 of not less than three (3) years nor more than  
32 five (5) years of credited service producing the highest annual average ~~with~~  
33 ~~the exact time period to be~~ determined in accordance with the rules and  
34 regulations of the board as is actuarially appropriate for the Arkansas  
35 Teacher Retirement System, ~~subject to the provisions of subdivision (27)(A)~~  
36 ~~of this section.;~~



1 (ii) ~~Prior to~~ Before reducing the time period used  
2 to determine final average salary, the board shall file relevant information  
3 concerning the actuarial appropriateness of the action with the Joint Interim  
4 Committee on Public Retirement and Social Security Programs, and the action  
5 shall be reviewed by the committee.

6 (B) ~~Should a member have~~ If a member has less than the  
7 minimum of three (3) years of credited service, "final average salary" means  
8 the annual average of salaries paid to him or her during his or her total  
9 years of credited service, subject to the provisions of subdivision (27)(A)  
10 of this section.

11 (16) "Inactive member" means ~~any former active~~ a formerly active  
12 member who is:

13 (A) No longer rendering service that is covered by the  
14 Arkansas Teacher Retirement System; and

15 (B) Not a retirant;

16 (17) "Interest" means the rate or rates per annum, compounded  
17 annually, as the board shall adopt from time to time, that will be charged  
18 for the purchase of service credit or to repay a refund, or repayment of  
19 benefits, but the rate shall equal no less than the Arkansas Teacher  
20 Retirement System's current assumed interest rate assumption;

21 (18) "Internal Revenue Code" means the federal Internal Revenue  
22 Code of 1986, as amended, as it existed on January 1, ~~2007~~2009;

23 (19) "Member" means any person included in the membership of the  
24 Arkansas Teacher Retirement System;

25 (20) "Nonteacher" means any member except a teacher;

26 (21) "Normal retirement age" means sixty-five (65) years of age;

27 (22) "Reciprocal service" means credited service rendered under  
28 a reciprocal system as defined by § 24-2-401;

29 (23) "Regular interest" means the rate or rates per annum,  
30 compounded annually, which the board shall adopt from time to time, that will  
31 be used to compute interest on members' contributions;

32 (24) "Reserve" means the present value of all payments to be  
33 made on account of any Arkansas Teacher Retirement System benefit based upon  
34 such reasonable tables of experience and regular interest as the board shall  
35 adopt from time to time;

36 (25) "Retirant" means a ~~former~~ member receiving an Arkansas

1 Teacher Retirement System annuity;

2 (26) "Retires" means that a member ceases to be active and is  
3 eligible to receive retirement benefits from the Arkansas Teacher Retirement  
4 System;

5 (27)(A)(i) "Salary" means the remuneration paid to ~~an employee a~~  
6 member employed in a position covered by the Arkansas Teacher Retirement  
7 System ~~and~~ on which the employer withholds federal income tax.

8 (ii)(a) However, compensation in excess of the  
9 limitations set forth in section 401(a)(17) of the Internal Revenue Code of  
10 1986 shall be disregarded.

11 (b) The limitation on compensation for  
12 eligible employees shall not be less than the amount that was allowed to be  
13 taken into account under the Arkansas Teacher Retirement System as in effect  
14 on July 1, 1993. For this purpose, an eligible employee is an individual who  
15 was a member of the Arkansas Teacher Retirement System before the first plan  
16 year beginning after December 31, 1995.

17 (c) However, compensation in excess of the  
18 limitations set forth in Section 401(a)(17) of the Internal Revenue Code of  
19 1986 shall be disregarded.

20 ~~(iii)(a) However, in computing retirement benefits,~~  
21 ~~no salary paid in one (1) of the years which is utilized in the computation~~  
22 ~~of the member's final average salary shall exceed one hundred ten percent~~  
23 ~~(110%) of the salary earned in the year preceding that year used in the~~  
24 ~~computation, unless the increase is a direct result of:~~

25 ~~(a) A promotion;~~

26 ~~(b) A change in position;~~

27 ~~(c) An incremental increase provided in the school district salary~~  
28 ~~schedule; or~~

29 ~~(d) An increase in school revenues.~~ A full service year of salary  
30 used in calculating a member's final average salary for retirement benefits  
31 shall not exceed the greater of:

32 (1) One hundred and twenty percent  
33 (120%) of the next highest salary used in the calculation; or

34 (2) Five thousand dollars (\$5000).

35 (b) If three (3) complete years of service are  
36 not available for use in the calculation of a member's final average salary

1 for retirement benefits, the board may promulgate rules and regulations to  
2 establish a fair base year for a member's final average salary for purposes  
3 of comparison under this subdivision (27)(A)(iii)(a) of this section.

4 (iv) If a member's salary includes remuneration paid  
5 other than in cash, the cash value of the remuneration is considered in the  
6 amount the employer is required to report for federal income tax purposes.

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

11 ~~(C)(B)(i)~~ In determining salary, employer pick-up contributions,  
12 cafeteria plans as defined in § 21-5-901, and employee contributions to tax-  
13 sheltered annuities ~~qualified retirement plans, including without limitation~~  
14 qualified annuities and deferred compensation plans, shall be included.

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

18 (iii) Employment contracts purchased by a covered  
19 employee or won through litigation that results in either a consent  
20 agreement, judgment, or decree may be counted as salary upon payment of all  
21 required member and employer contributions, including interest, to the  
22 system.

23 (iv) A member who receives remuneration under a  
24 regular contract and a purchased contract or under both a regular contract and  
25 a contract won through litigation shall have the greater of two (2) amounts  
26 considered as salary for the purposes of determining the final average salary  
27 of the member.

28 (v) A retirement annuity may be based on service  
29 credit covered by the purchased contract.

30 (vi) A contributory employee's contributions and an  
31 employer's contributions are required on covered salary including  
32 contributions that are paid concurrently with other remuneration for another  
33 covered employer or used in calculating member benefits.

34 ~~(D) Money that is in lieu of remuneration and is used by~~  
35 ~~an employer to purchase a qualified tax sheltered annuity or a life insurance~~  
36 ~~policy for an employee shall be considered as salary for Arkansas Teacher~~

1 ~~Retirement System purposes.~~

2 ~~(E)(C)~~ An employee A member who is receiving remuneration  
3 under both a regular contract and a purchased contract or under both a  
4 regular contract and a contract won through litigation, consent agreement,  
5 judgment, or decree shall have only the greater of the two (2) amounts  
6 considered as salary for Arkansas Teacher Retirement System purposes.

7 (D) A member's contributions if contributory, and an  
8 employer's contributions are required on covered salary, including salary  
9 that is paid concurrently with other remuneration from another covered  
10 employer, even if the salary is not used in calculating member benefits.

11 (E) Retirement annuities may be based on service credit  
12 covered by the purchased contract.

13 ~~(F)~~ ~~Should an employee make a charitable donation or~~  
14 ~~return any part of his or her salary to his or her employer, the amount of~~  
15 ~~his or her recurring remuneration otherwise usable as salary shall be reduced~~  
16 ~~by such an amount or amounts to arrive at his or her salary for Arkansas~~  
17 ~~Teacher Retirement System purposes.~~

18 ~~(G)(F)~~ In case of any dispute concerning an employee's  
19 salary for Arkansas Teacher Retirement System purposes, the Arkansas Teacher  
20 Retirement System shall have the power to may settle the dispute;

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22 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
23 General Assembly of the State of Arkansas that certain provisions of the  
24 Arkansas Teacher Retirement System Act are badly in need of revision and  
25 updating to bring them into conformance with sound public pension policy;  
26 that such revision and updating is of great importance to members of the  
27 Arkansas Teacher Retirement System and to other citizens of the State of  
28 Arkansas; and that this act is immediately necessary in order to maintain an  
29 orderly system of benefits for the members of the Arkansas Teacher Retirement  
30 System. Therefore, an emergency is declared to exist and this act being  
31 necessary for the preservation of the public peace, health, and safety shall  
32 become effective on July 1, 2009.

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34 /s/ J. Jeffress  
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