

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

HOUSE BILL 1147

5 By: Representative Carnine  
6

## For An Act To Be Entitled

8 AN ACT TO LIMIT THE NUMBER OF YEARS THAT THE ARKANSAS  
9 TEACHER RETIREMENT SYSTEM, A BENEFIT PARTICIPANT, OR  
10 AN EMPLOYER MAY LOOK BACK WHEN ADJUSTING RECORDS,  
11 CORRECTING OVERPAYMENTS, CORRECTING UNDERPAYMENTS,  
12 CORRECTING CONTRIBUTION CALCULATIONS, OR CORRECTING  
13 BENEFIT CALCULATIONS TO THE SYSTEM; TO DECLARE AN  
14 EMERGENCY; AND FOR OTHER PURPOSES.  
15

## Subtitle

16  
17  
18 TO LIMIT THE NUMBER OF YEARS THAT THE  
19 ARKANSAS TEACHER RETIREMENT SYSTEM,  
20 BENEFIT PARTICIPANTS, OR EMPLOYERS MAY  
21 LOOK BACK WHEN ADJUSTING OBLIGATIONS  
22 BETWEEN THE SYSTEM; TO DECLARE AN  
23 EMERGENCY.  
24

25  
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
27

28 SECTION 1. Arkansas Code § 24-7-202, concerning definitions used in  
29 the Arkansas Teacher Retirement System Act, is amended to add additional  
30 subdivisions to read as follows:

31 (37)(A) "Benefit participant" means a person or entity that receives  
32 or may receive any kind of benefit, annuity, or other payment from the system  
33 due to a member's participation in the system.

34 (B) "Benefit participant" includes without limitation:

35 (i) A member;

36 (ii) A spouse or a member;



- 1                    (iii) A survivor;
- 2                    (iv) A residual beneficiary;
- 3                    (v) A death beneficiary;
- 4                    (vi) A former spouse of a member; and
- 5                    (vii) The estate of a member; and

6                    (38) "Look-back period" means a period of time that includes the  
 7 current fiscal year and the four (4) fiscal years immediately preceding the  
 8 current fiscal year.

9

10                    SECTION 2. Arkansas Code § 24-7-205 is amended to read as follows:

11                    ~~24-7-205. Collection of overpayments and underpayments by the system~~  
 12 Correction of errors.

13                    ~~(a)(1) Should any~~ If a change, omission, or error in the records of  
 14 the Arkansas Teacher Retirement System result results in a member, a  
 15 ~~retirant, an annuitant, a beneficiary, or an alternate payee receiving~~  
 16 ~~benefits or other distributions from the Arkansas Teacher Retirement System~~  
 17 benefit participant, employer, or the system having received an overpayment  
 18 or underpayment of any obligation, liability, contribution, or other right to  
 19 payment more or less than ~~he or she~~ what would have been entitled to receive  
 20 ~~had paid or received if~~ the records had been correct, the system or its  
 21 designee shall correct the ~~error record~~ and, as far as practicable, shall  
 22 adjust the ~~benefit, annuity, or refund payable to the person, his or her~~  
 23 ~~beneficiary, or his or her estate in the manner that the actuarial equivalent~~  
 24 ~~of the benefit to which the person was correctly entitled shall be paid~~  
 25 obligation, liability, contribution, or other right to payment.

26                    (2) A refund payable to a benefit participant shall be paid  
 27 based on the corrected record.

28                    (3) The system may withhold an amount owed to the system from a  
 29 benefit participant to correct an overpayment made to the benefit  
 30 participant.

31                    ~~(b)(1) If a person who is a member, a retirant, an annuitant, a~~  
 32 ~~beneficiary, or an alternate payee under a qualified domestic relations order~~  
 33 ~~under § 9-18-101 et seq.~~ benefit participant is paid any benefit or other  
 34 distribution by the system to which the ~~person~~ benefit participant is not  
 35 entitled; or the benefit participant or employer has an unpaid obligation to  
 36 the system, the system or its designee, under rules adopted by the Board of

1 Trustees of the Arkansas Teacher Retirement System, may:

2 (A) Withhold the amount due from any benefit or payment  
3 due the ~~person, his or her beneficiary, or his or her estate~~ benefit  
4 participant; or

5 (B) Collect the amount in any other manner provided by  
6 law.

7 (2) Withheld amounts shall be used to effect repayment until the  
8 total amount withheld equals all amounts payable by the ~~person~~ benefit  
9 participant to the system.

10 (3)(A) Before making an adjustment of benefits or pursuing any  
11 other collection action under this section, the system or its designee shall  
12 provide notice to the ~~person who will receive the adjustment~~ benefit  
13 participant or employer.

14 (B) The notice shall describe the process for disputing an  
15 adjustment of benefits.

16 (4) ~~The~~ Except for member contributions, the board or its  
17 designee may waive adjustment or repayment due to the system, including  
18 interest, if:

19 (A) The ~~overpayment~~ error was not the result of the  
20 ~~retirant's or the beneficiary's~~ benefit participant's or employer's  
21 intentional nondisclosure, fraud, misrepresentation, or other fault; and

22 (B) The board or its designee finds in his or her or its  
23 sole discretion that recovery of the ~~overpayment could be~~ amount owed to the  
24 system will result in a manifest injustice.

25 ~~(c)(1) If the system calculates an amount to be owed to the system by~~  
26 ~~a member and, after notification to the member of the amount owed, determines~~  
27 ~~that the amount calculated is an error that would cause the member to owe a~~  
28 ~~greater amount than the original amount calculated by the system, the system~~  
29 ~~may waive all or part of the interest calculation amount in error under rules~~  
30 ~~adopted by the board.~~

31 ~~(2) In adopting rules under subdivision (c)(1) of this section,~~  
32 ~~the board shall only allow a waiver if:~~

33 ~~(A) The error is not the result of the member's~~  
34 ~~nondisclosure, fraud, misrepresentation, or other fault; and~~

35 ~~(B) Recovery of the amount owed to the system will result~~  
36 ~~in a manifest injustice to the member.~~ A determination, review,

1 administrative action, cause of action, request to enforce, change, or modify  
2 an obligation, duty, benefit calculation, designation, refund, contribution,  
3 service credit or other right arising under this subchapter shall not be  
4 valid unless commenced within the look-back period unless the system  
5 determines that the justification to commence the process is due to  
6 intentional nondisclosure, fraud, misrepresentation, or criminal act.

7  
8 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
9 General Assembly of the State of Arkansas that certain provisions of the  
10 Arkansas Teacher Retirement System statutes are in urgent need of revision to  
11 bring them into conformance with sound public pension policy; that finality  
12 of decisions and calculations after four (4) fiscal years are needed to  
13 better allocate system resources; that this revision is of great importance  
14 to benefit participants and employers of the Arkansas Teacher Retirement  
15 System and to other citizens of the State of Arkansas; and that this act is  
16 necessary in order to maintain an orderly system of benefits for the members  
17 of the Arkansas Teacher Retirement System. Therefore, an emergency is  
18 declared to exist and this act being necessary for the preservation of the  
19 public peace, health, and safety shall become effective July 1, 2011.