

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

A Bill

SENATE BILL 126

5 By: Senator J. Key
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE RIGHT OF AN ARKANSAS TEACHER
9 RETIREMENT SYSTEM MEMBER TO REMAIN AN ACTIVE MEMBER
10 WHEN EMPLOYED BY AN INSTITUTION OF HIGHER EDUCATION;
11 TO ENABLE INSTITUTIONS OF HIGHER EDUCATION TO RECRUIT
12 EXPERIENCED PUBLIC SCHOOL EMPLOYEES BY ALLOWING THE
13 EMPLOYER TO ENROLL VESTED MEMBERS OF THE ARKANSAS
14 TEACHER RETIREMENT SYSTEM AFTER JULY 1, 2011; TO
15 PROVIDE ACCURATE VERIFICATION AND REPORTING
16 REQUIREMENTS; TO DECLARE AN EMERGENCY; AND FOR OTHER
17 PURPOSES.
18

Subtitle

19
20
21 TO ESTABLISH THE RIGHT OF AN ARKANSAS
22 TEACHER RETIREMENT SYSTEM MEMBER TO
23 REMAIN AN ACTIVE MEMBER WHEN EMPLOYED BY
24 AN INSTITUTION OF HIGHER EDUCATION; TO
25 DECLARE AN EMERGENCY.
26

27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code Title 24, Chapter 7, is amended to add an
31 additional subchapter to read as follows:

32 Subchapter 16 – Arkansas Teacher Retirement System – Optional
33 Participation by Employees of Institutions of Higher Education.
34

35 24-7-1601. Legislative history, findings, and intent.

36 (a) It is found and determined by the General Assembly that:



1 (1) The establishment of the Post-Secondary Education Plan is a
2 historical component of retirement legislation that seeks to develop a more
3 equitable retirement system for members of the Arkansas Teacher Retirement
4 System; and

5 (2) Confusion about the intent of the General Assembly
6 concerning the coverage of employees of state-supported universities,
7 colleges, junior colleges, and vocational-technical schools, the Arkansas
8 Higher Education Coordinating Board, the Arkansas Board of Workforce
9 Education and Career Opportunities, and any other entity offering both the
10 Arkansas Teacher Retirement System retirement plan and an alternate
11 retirement plan create uncertainty in the administration of law, and
12 legislative clarification of the law is needed.

13 (b)(1) Historically, the Arkansas Teacher Retirement System has been
14 mandated by the General Assembly to provide retirement benefits for an
15 employee of a public school, public educational agency, or any other eligible
16 employer included for coverage in the Arkansas Teacher Retirement System.

17 (2) Originally, the Arkansas Teacher Retirement System was
18 designed to provide retirement benefits to certified teachers and
19 administrators in the public schools. However, the coverage has gradually
20 been extended to all employees of the public schools and to other public
21 entities that support educational activities in Arkansas.

22 (3) Beginning with legislation in 1967 and continuing through
23 the early 1980s, the General Assembly created a right for certain colleges,
24 vocational-technical schools, and the Arkansas Higher Education Coordinating
25 Board to establish and maintain an alternate retirement plan for its
26 employees and perform all the functions reasonably appropriate in the
27 retirement plan's administration.

28 (4) The general intent of the early legislation was to allow
29 those institutions of higher education employers to offer their employees the
30 option to participate in an alternative retirement plan, the Arkansas Teacher
31 Retirement System retirement plan, or the Arkansas Public Employees'
32 Retirement System retirement plan.

33 (5) The law was designed to encourage recruitment of public
34 school teachers and administrators into post-secondary positions by allowing
35 them to continue in the Arkansas Teacher Retirement System and to encourage
36 recruitment of private and out-of-state educators by the use of the alternate

1 retirement plan that is offered nationwide.

2 (c)(1) The Arkansas Teacher Retirement System requested an Attorney
3 General's opinion for legal clarification, as the laws have been amended over
4 time making the wording difficult to interpret.

5 (2) All public school employees are mandatory members of the
6 Arkansas Teacher Retirement System as a condition of employment. The
7 uncertainty is with employees of institutions of higher education employers,
8 specifically:

9 (A) Whether an institution of higher education employer
10 can exclude a part-time employee from participation in the Arkansas Teacher
11 Retirement System and thereby be exempt from reporting salary and remitting
12 member or employer contributions for its part-time employees; and

13 (B) Whether a retired Arkansas Teacher Retirement System
14 member can be enrolled in the institution of higher education employer's
15 alternate retirement plan with or without separation while simultaneously
16 drawing retirement benefits from the Arkansas Teacher Retirement System.

17 (3) The Attorney General's Opinion No. 2009-164, dated March 16,
18 2010, concludes that the current laws related to the Arkansas Teacher
19 Retirement System are difficult to understand, as the intent of the General
20 Assembly is not clear, and legislative clarification is required.

21 (d) Therefore, the General Assembly finds that this subchapter is
22 necessary to:

23 (1) Protect the retirement benefits for employees of the public
24 school system;

25 (2) Provide fair treatment and clear intent with respect to
26 part-time employees and full-time employees of institutions of higher
27 education employers;

28 (3) Clarify the obligations of the Arkansas Teacher Retirement
29 System with respect to its members who become employed by an institution of
30 higher education employer; and

31 (4) Set forth requirements that supersede any prior legislation
32 relating to employees of institutions of higher education.

33
34 24-7-1602. Definitions.

35 As used in this subchapter:

36 (1) "Alternative retirement plan" means an optional retirement plan

1 based on the purchase of contracts providing retirement and death benefits
2 for a benefits-eligible employee of a post-secondary or higher education
3 employer;

4 (2) "Benefits-eligible " means a class of employees, determined at the
5 discretion of a post-secondary or higher education employer, eligible to
6 participate in the Arkansas Teacher Retirement System, an alternate plan, or
7 the Arkansas Public Employees' Retirement System;

8 (3) "Nonmandatory employer" means any public employer that was
9 authorized to enroll new employees into the Arkansas Teacher Retirement
10 System or alternate retirement plan before July 1, 2011;

11 (4) "PSHE employer" means a post-secondary or higher education
12 employer;

13 (A) With employees that may be hired without becoming mandatory
14 members of the Arkansas Teacher Retirement System; and

15 (B) That offers the Arkansas Teacher Retirement System as a
16 retirement plan on or after July 1, 2011.

17 (5) "PSHE plan" means the plan establishing the right of a new
18 employee of a PSHE employer to participate in the Arkansas Teacher Retirement
19 System on or after July 1, 2011.

20
21 24-7-1603. Provisions of subchapter controlling.

22 (a)(1) This subchapter controls any inconsistent provision of any
23 other law regarding the enrollment and coverage of an employee of a PSHE
24 employer in either the Arkansas Teacher Retirement System retirement plan or
25 an alternative retirement plan that is offered by a PSHE employer.

26 (2) This subchapter is enacted to supersede and specifically
27 control any inconsistent provisions under § 24-7-801 et seq., § 24-7-901 et
28 seq., and § 24-7-1001 et seq.

29 (b) The Arkansas Teacher Retirement System retirement plan is
30 administered under the provisions of the Arkansas Teacher Retirement System
31 Act.

32
33 24-7-1604. Coverage for employees enrolled in the Arkansas Teacher
34 Retirement System before July 1, 2011.

35 (a) Beginning July 1, 2011, all current employees of a nonmandatory
36 employer that are current members of the Arkansas Teacher Retirement System

1 may continue membership and continue to accrue service credit in the system
2 without any change in participation in the system if:

3 (1) The employee is:

4 (A) Part-time and the employee continues to provide
5 services in each fiscal year at approximately the same level of service; or

6 (B) Full-time and the employee continues to provide
7 services in each fiscal year;

8 (2) The nonmandatory employer chooses to continue reporting
9 service to the system for the employee;

10 (3) The nonmandatory employer determines that the employee will
11 contribute at least part time services in subsequent months of the fiscal
12 year if services are not rendered throughout the fiscal year;

13 (4) The nonmandatory employer remits contributions to the system
14 on behalf of the employee during the fiscal year beginning July 1, 2011; and
15 each fiscal year thereafter; and

16 (5) The employee's service with the nonmandatory employer is not
17 terminated.

18 (b) The nonmandatory employer shall remit employer contributions under
19 § 24-7-401 et seq. for an employee under this section and shall be subject to
20 the rights and obligations of an employer under the Arkansas Teacher
21 Retirement System Act.

22 (c) The employee under this section shall remit employee contributions
23 under § 24-7-406 et seq. and shall be subject to the rights and obligations
24 of an employee under the Arkansas Teacher Retirement System Act.

25 (d) The nonmandatory employer shall provide information in a format
26 requested by the system to allow the system to monitor and track all
27 employees who participate in the system.

28
29 24-7-1605. Optional participation by institution of higher education
30 employers on or after July 1, 2011.

31 (a)(1) A PSHE employer shall adopt and record a policy or designation
32 that identifies which positions at the PSHE employer's institution of higher
33 education are benefits-eligible for retirement benefits.

34 (2) A new employee of a PSHE employer may participate in the
35 PSHE plan if the employee:

36 (A) Is benefits-eligible as determined by the PSHE employer;

1 (B) Is a vested member of the Arkansas Teacher Retirement System
2 at the time of initial employment; and

3 (C) Signs an irrevocable PSHE plan participation form provided
4 by the system.

5 (b)(1) A nonmandatory employer becomes a PSHE employer upon enrolling
6 a new eligible member with the system on or after July 1, 2011.

7 (2) A PSHE plan employee shall continue as a member in the
8 system retirement plan so long as the member is employed by a PSHE employer.

9 (3) An election to participate in the retirement system plan
10 under this subsection (b) of this section is irrevocable so long as the
11 employee does not obtain a termination refund from the system after the
12 election.

13 (c)(1) The PSHE employer shall remit employer contributions under §
14 24-7-401 et seq. and be subject to the rights and obligations of an employer
15 under the Arkansas Teacher Retirement System Act once a benefits-eligible
16 employee elects to participate in the system.

17 (2) The benefits-eligible employee who elects to participate in
18 the system retirement plan shall remit employee contributions under § 24-7-
19 406 et seq. and be subject to the rights and obligations of an employee under
20 the Arkansas Teacher Retirement System Act.

21 (d) The PSHE employer shall comply with the system's verification and
22 reporting requirements that may be implemented by the system.

23 (e) A member shall not purchase prior unreported service on or after
24 July 1, 2011, regardless of when service was provided to a nonmandatory
25 employer.

26
27 24-7-1606. Concurrent participation and certain salary credit
28 prohibited.

29 (a)(1) A benefits-eligible employee shall not participate in an
30 alternate retirement plan and continue to accrue service credit with the
31 Arkansas Teacher Retirement System.

32 (2) If a benefits-eligible employee is first employed by a
33 nonmandatory employer or PSHE employer after July 1, 2011, and is
34 concurrently employed by another retirement system employer, all separate
35 days of service shall count for service credit, but only the highest salary
36 of the concurrent retirement system employer shall count to determine final

1 average salary.

2
3 24-7-1607. Duties and responsibilities.

4 The Board of Trustees of the Arkansas Teacher Retirement System may
5 promulgate rules necessary to carry out this subchapter.

6
7 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that the establishment of the Post-
9 Secondary Education Plan is part of a history of retirement legislation that
10 seeks to develop a more equitable retirement system for members of the
11 Arkansas Teacher Retirement System; that confusion exists concerning the
12 coverage of employees of state colleges, vocational-technical schools and
13 particularly-named institutions; that there is uncertainty in the
14 administration of this provision of the law; that legislative clarification
15 is desperately needed; that certain provisions of Title 24 regarding
16 retirement and pensions are in urgent need of revision; that such revision is
17 of great importance to members of the Arkansas Teacher Retirement System and
18 to other citizens of the State of Arkansas; that this act is needed to
19 protect the retirement benefits of employees of the public school system, to
20 provide fair treatment and clear intent with respect to part-time employees
21 of post-secondary or higher education employers, and to clarify the
22 obligations of the Arkansas Teacher Retirement System with respect to its
23 members who become employed by a post-secondary or higher education employer;
24 and that this act is necessary in order to maintain an orderly system of
25 benefits for the members of the Arkansas Teacher Retirement System.
26 Therefore, an emergency is declared to exist and this act being necessary for
27 the preservation of the public peace, health, and safety shall become
28 effective on July 1, 2011.

29
30
31 **APPROVED: 03/21/2011**