

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 1325 of the Regular Session

1 State of Arkansas

As Engrossed: S2/10/09 S2/18/09 S3/4/09 S4/1/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

SENATE BILL 231

4
5 By: Senator J. Jeffress

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8 **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
15 **Subtitle**

16 TO AMEND THE DEFINITIONS OF SALARY AND
17 INTEREST IN THE ARKANSAS TEACHER
18 RETIREMENT SYSTEM ACT TO EXCLUDE
19 NONRECURRING PAYMENTS FROM THE
20 CALCULATION OF FINAL AVERAGE SALARY.

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

24
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)~~



1 ~~of this section.~~;

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

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

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

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

16 (B) Not a retirant;

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

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

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

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

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

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

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

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

1 (25) "Retirant" means a ~~former~~ member receiving an Arkansas
2 Teacher Retirement System annuity;

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

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

9 (ii)(a) However, compensation in excess of the
10 limitations set forth in section 401(a)(17) of the Internal Revenue Code of
11 1986 shall be disregarded.

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

18 (c) However, compensation in excess of the
19 limitations set forth in Section 401(a)(17) of the Internal Revenue Code of
20 1986 shall be disregarded.

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

26 ~~(a) A promotion;~~

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

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

30 ~~(d) An increase in school revenue~~ The applicable number of years used
31 in computing final average salary for retirement benefits shall be set by the
32 board.

33 (2) Only full service years shall be used in
34 the calculation.

35 (3) The applicable number of highest salary
36 years shall be ranked from lowest to highest remuneration.

1 (4) The lowest remuneration year in the
2 ranking shall be the base year.

3 (5) The next highest ranked remuneration year
4 shall be compared to the base year.

5 (6) The next highest year's value in the
6 calculation of final average salary shall not exceed one hundred twenty
7 percent (120%) of the base year, unless the difference in value between the
8 next highest year and the base year is five thousand dollars (\$5,000) or
9 less.

10 (7) After comparison of the base year to the
11 next highest year, any required reduction to the next highest year shall be
12 made.

13 (8) The next highest year, with any required
14 reduction, becomes the new base year to compare to the next succeeding
15 highest remuneration year in the ranking until all years in the ranking have
16 been compared to its base and reduced as necessary according to the formula.

17 (9) The total value of the base years shall
18 then be averaged to determine final average salary.

19 (b) If full service years of service are not
20 available for the number of applicable years of service required by board
21 rule for the calculation of a member's final average salary for retirement
22 benefits, the board may promulgate rules to establish a fair base year for a
23 member's final average salary for purposes of comparison under subdivision
24 (27)(A)(iii)(a) of this section.

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

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

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

36 (ii) However, a member may establish salary earned

1 under a purchase service contract with a covered employer by paying employee
2 and employer contributions plus interest.

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

8 (iv) A member who receives remuneration under a
9 regular contract and a purchased contract or under both a regular contract and
10 a contract won through litigation shall have the greater of two (2) amounts
11 considered as salary for the purposes of determining the final average salary
12 of the member.

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

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

19 ~~(D) Money that is in lieu of remuneration and is used by~~
20 ~~an employer to purchase a qualified tax sheltered annuity or a life insurance~~
21 ~~policy for an employee shall be considered as salary for Arkansas Teacher~~
22 ~~Retirement System purposes.~~

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

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

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

34 ~~(F) Should an employee make a charitable donation or~~
35 ~~return any part of his or her salary to his or her employer, the amount of~~
36 ~~his or her recurring remuneration otherwise usable as salary shall be reduced~~

1 ~~by such an amount or amounts to arrive at his or her salary for Arkansas~~
2 ~~Teacher Retirement System purposes.~~

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

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7 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that certain provisions of the
9 Arkansas Teacher Retirement System Act are badly in need of revision and
10 updating to bring them into conformance with sound public pension policy;
11 that such revision and updating is of great importance to members of the
12 Arkansas Teacher Retirement System and to other citizens of the State of
13 Arkansas; and that this act is immediately necessary in order to maintain an
14 orderly system of benefits for the members of the Arkansas Teacher Retirement
15 System. Therefore, an emergency is declared to exist and this act being
16 necessary for the preservation of the public peace, health, and safety shall
17 become effective on July 1, 2009.

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19 /s/ J. Jeffress

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21 **APPROVED: 4/9/2009**
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