

**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 146 of the Regular Session**

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

# A Bill

SENATE BILL 129

5 By: Senators J. Jeffress, Faris  
6 By: Representative Sullivan  
7  
8

## For An Act To Be Entitled

AN ACT TO AMEND CERTAIN ELIGIBILITY AND BENEFIT  
REQUIREMENTS OF THE ARKANSAS TEACHER RETIREMENT  
SYSTEM; AND FOR OTHER PURPOSES.

### Subtitle

AN ACT TO AMEND CERTAIN ELIGIBILITY AND  
BENEFIT REQUIREMENTS OF THE ARKANSAS  
TEACHER RETIREMENT SYSTEM.

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19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 24-2-302 is amended to read as follows:  
23 24-2-302. Classification of members.

24 Except as otherwise specifically provided in this subchapter, all  
25 employees of the State of Arkansas or any of its political subdivisions who  
26 are members or become members of a state retirement system shall be members  
27 of the retirement system indicated in this section as follows:

28 (1) All eligible employees of the Arkansas State Highway and  
29 Transportation Department shall be members of the Arkansas State Highway  
30 Employees' Retirement System;

31 (2) All eligible employees of the Department of Arkansas State  
32 Police shall be members of the State Police Retirement System;

33 (3) The following persons shall be members of the Arkansas  
34 Teacher Retirement System:

35 (A) Any person employed by a school for the purpose of



1 giving instruction and whose employment requires state certification;

2 (B) Any other person employed by a school in a regular or  
3 special position, ~~but specifically excluding employment as a janitor, bus~~  
4 ~~driver, or cafeteria worker;~~

5 (C) Any person employed by any of the following  
6 organizations or agencies, ~~except janitors, bus drivers, and cafeteria~~  
7 ~~workers:~~

8 (i) Arkansas School for the Blind;

9 (ii) Arkansas School for the Deaf;

10 (iii) Arkansas Activities Association;

11 (iv) A local school board;

12 (v) Chief county school officers;

13 (vi) State Board of Education;

14 (vii) Regional educational cooperatives; and

15 ~~(viii) The state surplus property program; and~~

16 ~~(ix)~~ (viii) Arkansas Teacher Retirement System;

17 (D) Any person employed in a position requiring  
18 professional training or certification with an area vocational-technical  
19 school or employed by the Arkansas Educational Television Commission, except  
20 that employees of area vocational-technical schools and the Department of  
21 Workforce Education who have elected to participate in an alternate  
22 retirement plan established by §§ 24-7-901 - 24-7-908 shall be active members  
23 of the alternate retirement plan;

24 (E)(i) Any person employed in a position requiring  
25 professional training or certification with the Arkansas Rehabilitation  
26 Services of the Department of Workforce Education, the Division of State  
27 Services for the Blind of the Department of Human Services, or the Division  
28 of Youth Services of the Department of Human Services except those employees  
29 who have elected coverage under § 24-4-101 et seq.

30 (ii) Membership of employees of the Arkansas  
31 Rehabilitation Services of the Department of Workforce Education and the  
32 Division of State Services for the Blind of the Department of Human Services  
33 shall be subject to the following conditions:

34 (a) Those employees who were employed before  
35 January 1, 1985, and who were members of the Arkansas Teacher Retirement  
36 System on that date shall continue to be members of the Arkansas Teacher

1 Retirement System, except that in the event the time limit for those  
 2 employees to change to the noncontributory plan of the Arkansas Public  
 3 Employees' Retirement System under § 24-4-522 is extended beyond January 1,  
 4 1985, those employees shall have the maximum time allowed by law to elect to  
 5 make the change;

6 (b) Those employees who were employed before  
 7 January 1, 1985, and are members of the noncontributory plan of the Arkansas  
 8 Public Employees' Retirement System on that date shall continue to be members  
 9 of the Arkansas Public Employees' Retirement System; and

10 (c) Persons whose initial employment by either  
 11 the Arkansas Rehabilitation Services of the Department of Workforce Education  
 12 or the Division of State Services for the Blind of the Department of Human  
 13 Services is on or after January 1, 1985, shall be members of the  
 14 noncontributory plan of the Arkansas Public Employees' Retirement System; and

15 (4) All eligible employees of the State of Arkansas or any of  
 16 its political subdivisions except those who are members of another legally  
 17 established state retirement plan shall be members of the Arkansas Public  
 18 Employees' Retirement System.

19  
 20 SECTION 2. Arkansas Code § 24-7-202 is amended to read as follows:  
 21 24-7-202. Definitions.

22 As used in this act, unless the context otherwise requires:

23 (1) "Accumulated contributions" means the total of all amounts  
 24 contributed by a member and standing to his or her credit in his or her  
 25 individual account in the members' deposit account, together with regular  
 26 interest credited thereon;

27 (2) "Active member" means any member rendering service which is  
 28 covered by the system;

29 (3) "Actuarial equivalent" means a benefit of equal reserve  
 30 value;

31 (4) "Annuity" means an annual amount payable by the system in  
 32 equal monthly installments throughout the life of a person or for a temporary  
 33 period;

34 (5) "Beneficiary" means any person who is receiving or is  
 35 designated to receive a system benefit by reason of the system membership of  
 36 another person;

1 (6) "Benefit program" means a schedule of benefits or benefit  
2 formulas from which the amounts of system benefits can be determined;

3 (7) "Board" means the Board of Trustees of the Arkansas Teacher  
4 Retirement System;

5 (8) "Child of a member" means either a natural child of the  
6 member, a child that has been made a child of the member by applicable court  
7 action before the death of the member, or a child under the permanent care of  
8 the member at the time of the latter's death, which permanent care status  
9 shall be determined by evidence satisfactory to the board;

10 (9) "Code" means the federal Internal Revenue Code of 1986, as  
11 amended, as it existed on January 1, 2001;

12 (10) "Credited service" means service which is creditable as  
13 service by the system;

14 (11) "Employee" means any person employed by a school in a  
15 regular or special position;

16 (12) "Employer" means any school, ~~habilitative services~~  
17 ~~corporation,~~ or other educational agency participating in the system;

18 (13) "Employment with a school" means, beginning July 1, 1993:

19 (A) Employment with any of the following institutions or  
20 agencies:

- 21 (i) Arkansas School for the Blind;
- 22 (ii) Arkansas School for the Deaf;
- 23 (iii) Arkansas Activities Association;
- 24 (iv) A local school board;
- 25 (v) Chief county school officers;
- 26 (vi) The State Board of Education;
- 27 (vii) Regional education cooperatives; and
- 28 ~~(viii) The state Surplus Property Program; and~~
- 29 ~~(ix)~~ (viii) The Arkansas Teacher Retirement System;

30 (B) Employment in a position with any of the following  
31 organizations:

- 32 (i) Juvenile training schools;
- 33 (ii) The Arkansas Educational Television Commission;

34 and

35 (iii) Area vocational-technical schools, except  
36 those employees of area vocational schools and the Department of Workforce

1 Education who have elected to participate in an alternate retirement plan  
2 established by §§ 24-7-901 and 24-7-903 - 24-7-908;

3 (C) Employment by the Arkansas Rehabilitation Services or  
4 the Division of State Services for the Blind, except those employees who have  
5 elected to participate in the noncontributory plan of the Arkansas Public  
6 Employees' Retirement System;

7 (D) Employment in a position with an educationally related  
8 agency if the employee is or has been a member of the Arkansas Teacher  
9 Retirement System for a minimum of five (5) years and elects to become or  
10 remain a member of the system. The employment shall be related to the  
11 training of public school employees or school board members, or teaching  
12 public school students, or in adult education programs. The employment shall  
13 not be related in any manner to private schools. Such an agency shall be  
14 approved according to rules and regulations established by the board, shall  
15 be considered an employer under subdivision (12) of this section, and shall  
16 be responsible for all required employer contributions;

17 (E) Employment in an enterprise privatized by a public  
18 school district. If a public school district should privatize any of its  
19 services, any individual who is or was employed by the school district in one  
20 (1) of those services and who is or has been a member of the Arkansas Teacher  
21 Retirement System may elect to remain a member if the board determines  
22 pursuant to rules and regulations adopted by the board that the participation  
23 of these employees in the system will not in any way impair any legal status  
24 of the system, including, but not limited to, its status as a governmental  
25 plan pursuant to the federal Internal Revenue Code and the Employee  
26 Retirement Income Security Act of 1974, or have a substantial adverse impact  
27 on the actuarial soundness of the system and if the private provider assumes  
28 all responsibility for the required employer contributions and any fees for  
29 obtaining Internal Revenue rulings or Employee Retirement Income Security Act  
30 of 1974 opinions; and

31 (F)(i) Employment in positions with educational nonprofit  
32 corporations ~~associated with the Community Providers Association in Arkansas~~  
33 licensed and regulated by the Division of Developmental Disabilities Services  
34 of the Department of Human Services, if the nonprofit corporation has elected  
35 to participate in the Arkansas Teacher Retirement System, and if the board  
36 determines pursuant to rules and regulations adopted by the board that their

1 participation will not in any way impair any legal status of the system,  
2 including, but not limited to, its status as a governmental plan pursuant to  
3 the federal Internal Revenue Code and the Employee Retirement Income Security  
4 Act of 1974, or have a substantial adverse impact on the actuarial soundness  
5 of the system.

6 (ii) The employment shall be related to the training  
7 of public school employees or school board members, or teaching public school  
8 students, or in adult education programs.

9 (iii) The employment shall not be related in any  
10 manner to private schools.

11 (iv) Each nonprofit corporation shall be approved  
12 according to rules and regulations established by the board, shall be  
13 considered an employer under subdivision (12) of this section, and shall be  
14 responsible for all required employer contributions and any fees for  
15 obtaining Internal Revenue rulings or Employee Retirement Income Security Act  
16 of 1974 opinions;

17 (14)(A)(i) "Final average salary" means, for a member who  
18 retires after June 30, 1997, the average of the annual salaries paid him or  
19 her during the period of not less than three (3) years nor more than five (5)  
20 years of credited service producing the highest annual average with the exact  
21 time period to be determined in accordance with the rules and regulations of  
22 the Board of Trustees of the Arkansas Teacher Retirement System as is  
23 actuarially appropriate for the system, subject to the provisions of  
24 subdivision (23)(A) of this section.

25 (ii) Prior to reducing the time period used to  
26 determine final average salary, the board shall file relevant information  
27 concerning the actuarial appropriateness of the action with the Joint Interim  
28 Committee on Public Retirement and Social Security Programs, and the action  
29 shall be reviewed by the committee.

30 (B) Should a member have less than the minimum of three  
31 (3) years of credited service, "final average salary" means the annual  
32 average of salaries paid him or her during his or her total years of credited  
33 service, subject to the provisions of subdivision (23)(A) of this section;

34 (15) "Inactive member" means any former active member who is no  
35 longer rendering service which is covered by the system and who is not a  
36 retirant;

1           (16) "Interest" means the rate or rates per annum, compounded  
2 annually, as the board shall adopt from time to time, that will be charged  
3 for the purchase of service credit or to repay a refund, but the rate shall  
4 equal no less than the system's current assumed interest rate assumption;

5           (17) "Member" means any person included in the membership of the  
6 system;

7           (18) "Nonteacher" means any employee except a teacher;

8           (19) "Normal retirement age" means sixty-five (65) years of age;

9           (20) "Regular interest" means the rate or rates per annum,  
10 compounded annually, that the board shall adopt from time to time, that will  
11 be used to compute interest on members' contributions;

12           (21) "Reserve" means the present value of all payments to be  
13 made on account of any system benefit based upon such reasonable tables of  
14 experience and regular interest as the board shall adopt from time to time;

15           (22) "Retirant" means a former member receiving a system annuity  
16 by reason of having been a member;

17           (23) "Retires" means the beginning of annuity payments to a  
18 retirant;

19           (24)(A)(i) "Salary" means the remuneration paid an employee in a  
20 position covered by the system and on which the employer withholds federal  
21 income tax.

22                           (ii) Provided, however, compensation in excess of  
23 the limitations set forth in section 401(a)(17) of the Internal Revenue Code  
24 shall be disregarded. The limitation on compensation for eligible employees  
25 shall not be less than the amount which was allowed to be taken into account  
26 under the system as in effect on July 1, 1993. For this purpose, an eligible  
27 employee is an individual who was a member of the system before the first  
28 plan year beginning after December 31, 1995.

29                           (iii) However, ~~when a member retires, the current~~  
30 ~~year's salary used in the computation of retirement benefits shall not exceed~~  
31 ~~one hundred ten percent (100%) of the previous year's salary~~ in computing  
32 retirement benefits, no salary paid in one (1) of the years which is utilized  
33 in the computation of the member's final average salary shall exceed one  
34 hundred ten percent (110%) of the salary earned in the year preceding that  
35 year used in the computation, unless the increase is a direct result of a  
36 promotion, change in position, incremental increase provided in the school

1 district salary schedule, or an increase in school revenues.

2 (B) Should a portion of an employee's remuneration be paid  
3 other than in cash, the cash value of the remuneration shall be established  
4 by the system in an amount not to exceed the amount the employee is required  
5 to report for federal income tax purposes.

6 (C)(i) In determining salary, employer pick-up  
7 contributions, cafeteria plans as defined in § 21-5-901, and employee  
8 contributions to tax-sheltered annuities shall be included.

9 (ii) Provided, however, a member may establish  
10 salary earned under a purchase service contract with a covered employer by  
11 paying employee and employer contributions plus interest.

12 (D) Money which is in lieu of remuneration and which is  
13 used by an employer to purchase a qualified tax-sheltered annuity or a life  
14 insurance policy for an employee shall be considered as salary for system  
15 purposes.

16 (E) An employee who is receiving remuneration under both a  
17 regular contract and a purchased contract or under both a regular contract  
18 and a contract won through litigation shall have only the greater of the two  
19 (2) amounts considered as salary for system purposes.

20 (F) Should an employee make a charitable donation or  
21 return any part of his or her salary to his or her employer, the amount of  
22 his or her recurring remuneration otherwise usable as salary shall be reduced  
23 by such amount or amounts to arrive at his or her salary for system purposes.

24 (G) In case of any dispute concerning an employee's salary  
25 for system purposes, the system shall have the power to settle the dispute;

26 (25) "School" means any public school under the control of  
27 school authorities of the state and supported wholly or partially by state  
28 moneys;

29 (26) "Service" means employment rendered as an employee;

30 (27) "Social security" means the federal social security old  
31 age, survivors and disability insurance program;

32 (28) "State" means the State of Arkansas;

33 (29) "System" means the Arkansas Teacher Retirement System;

34 (30)(A) "Teacher" means, beginning July 1, 1989, any person  
35 employed by a school for the purpose of giving instructions and whose  
36 employment requires state certification.



1 (B) In any case of question as to who is a teacher, the  
2 board shall have the final power to decide the question; and

3 (31) "Trustee" means a member of the board.  
4

5 SECTION 3. Arkansas Code § 24-7-504 is repealed.

6 ~~24-7-504. Authority.~~

7 ~~The Board of Trustees of the Arkansas Teacher Retirement System shall~~  
8 ~~have the authority to promulgate such rules and regulations as are necessary~~  
9 ~~to provide for the participation of employers that are habilitative services~~  
10 ~~corporations authorized under the provisions of § 4-34-101 et seq. Provided,~~  
11 ~~however, the board shall not admit or retain any employer whose participation~~  
12 ~~in the Arkansas Teacher Retirement System would jeopardize the tax-qualified~~  
13 ~~status of the plan under the Internal Revenue Code, or that would subject the~~  
14 ~~plan to additional federal requirements, or to any other consequence that the~~  
15 ~~board would determine to be detrimental to the system.~~  
16

17 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
18 General Assembly of the State of Arkansas that the current laws applicable to  
19 the Arkansas Teacher Retirement System are unclear regarding certain  
20 eligibility and benefit requirements; that revisions are necessary to ensure  
21 the effective and efficient operation of the system; and that the most  
22 effective time to make changes to the retirement system is at the beginning  
23 of the state's fiscal year. Therefore, an emergency is declared to exist and  
24 this act being immediately necessary for the preservation of the public  
25 peace, health, and safety shall become effective on July 1, 2005.  
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28 APPROVED: 2/11/2005  
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