

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S2/19/99 S2/25/99 S3/1/99

A Bill

SENATE BILL 407

5 By: Senator Hopkins
6 By: Representative Faris
7
8

For An Act To Be Entitled

10 "AN ACT TO AUTHORIZE THE ARKANSAS TEACHER RETIREMENT
11 SYSTEM TO CREATE AND OWN SUBSIDIARIES, CORPORATIONS
12 AND OTHER LEGAL ENTITIES; TO PERMIT THE SYSTEM TO OWN
13 AND OPERATE AFFORDABLE HOUSING FACILITIES, RETIREMENT
14 HOMES, ASSISTED LIVING FACILITIES, SKILLED NURSING
15 FACILITIES, NURSING FACILITIES AND OTHER SIMILAR
16 FACILITIES AS INVESTMENTS AND FOR THE BENEFIT OF ITS
17 MEMBERS; TO PERMIT THE SYSTEM TO GUARANTEE THE DEBT OF
18 ITS SUBSIDIARIES, CORPORATIONS AND OTHER LEGAL
19 ENTITIES; TO PERMIT THE SYSTEM AND ITS SUBSIDIARIES TO
20 ENTER INTO JOINT VENTURES OR PARTNERSHIPS WITH PRIVATE
21 ENTERPRISES OR GOVERNMENTAL AGENCIES FOR THE BUILDING,
22 OWNERSHIP OR OPERATION OF AFFORDABLE HOUSING
23 FACILITIES, RETIREMENT HOMES, ASSISTED LIVING
24 FACILITIES, SKILLED NURSING FACILITIES, NURSING
25 FACILITIES AND OTHER SIMILAR FACILITIES; TO AMEND
26 VARIOUS SECTIONS OF ARKANSAS CODE, TITLE 24 AND TITLE
27 22 TO REVISE THE PRUDENT INVESTOR RULES AND TO EXEMPT
28 TEACHER RETIREMENT FACILITIES FROM PUBLIC CONTRACTING
29 LAWS; TO DECLARE AN EMERGENCY; AND FOR OTHER
30 PURPOSES. "

Subtitle

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33 "THE ARKANSAS TEACHER RETIREMENT SYSTEM
34 AFFORDABLE HOUSING INVESTMENT ACT TO
35 OPERATE AFFORDABLE HOUSING FACILITIES,
36 NURSING FACILITIES, AND SIMILAR

1 FACILITIES AS INVESTMENTS. "

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4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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6 SECTION 1. Short title. This act may be known and shall be cited as
7 the "Arkansas Teacher Retirement System Affordable Housing Investment Act."

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9 SECTION 2. Legislative purpose. The General Assembly of the State of
10 Arkansas finds, determines and declares that:

11 (1) There is an existing and immediate need to assure members that they
12 will have adequate and affordable housing and living facilities and other
13 basic needs available to them upon retirement from active service;

14 (2) Among these needs is the need for decent, safe and affordable
15 housing together with skilled and semi-skilled medical personnel to assist
16 with health problems not requiring acute care hospitalization for qualified
17 occupants;

18 (3) While the power and authority of the system to use the assets of
19 the system to provide for such needs is probably implied, the statutes
20 governing the system are not sufficiently clear so as to give administrators,
21 financial institutions, governmental agencies and others guidance needed to
22 proceed with measures to make provisions for such needs;

23 (4) The purpose and intent of this act is to make clear that the system
24 has the statutory authority to utilize assets of the system and other
25 resources available to it so as to provide, or assist in the provision for,
26 the housing and medical assistance alluded to above, all as provided for, but
27 subject to the limitations set forth in this act.

28
29 SECTION 3. Definitions. As used in this act, unless the context
30 otherwise requires:

31 (1) "Assisted living facility" means retirement housing at which
32 minimal food, security and medical assistance services are available for
33 occupants;

34 (2) "Board" means the Board of Trustees of the Arkansas Teacher
35 Retirement System;

36 (3) "Facilities" when used without elaboration, means and refers to any

1 or all the facilities referred to herein, including, but not limited to,
2 retirement housing, assisted living facility, skilled nursing facility,
3 nursing facility or any combination thereof, built, owned and operated for the
4 exclusive use and benefit of qualified occupants;

5 (4) "Members" means any individual who is a member of the system;

6 (5) "Nursing facility" means a nursing home, or a distinct part of
7 another retirement housing facility, not meeting the skilled nursing facility
8 licensure regulations but which provides, on a more limited basis, skilled
9 nursing and supportive care;

10 (6) "Qualified occupant" means any member or the dependent of any
11 member who is receiving or is designated by a member to receive any plan
12 benefit from the system, or any other person deemed by the board, by
13 regulation promulgated by the board or otherwise, to be a suitable occupant of
14 the facility;

15 (7) "Retirement housing" means residential housing facilities;

16 (8) "Skilled nursing facility" means a nursing home, or a distinct part
17 of a retirement housing facility, which home or distinct part is licensed by
18 the Office of Long-Term Care of the State of Arkansas (or any similar
19 successor agency) as meeting the skilled nursing facility licensure
20 regulations and which provides skilled nursing care and supportive care on a
21 twenty-four (24) hour basis to residents whose primary need is for
22 availability of skilled nursing care on an extended basis; and

23 (9) "System" means the Arkansas Teacher Retirement System as
24 established by Arkansas Code § 24-7-201(1987).

25
26 SECTION 4. (a) Authorization. In addition to all of the other powers
27 and authorities previously granted to the system, along with the other
28 Arkansas retirement systems, and specifically in addition to those powers set
29 forth in Arkansas Code 24-3-410, the system is authorized to construct,
30 acquire by purchase, gift or otherwise, and to own and operate facilities.

31 (b) Additional authority. In furtherance of the authority granted in
32 the preceding subsection, and for the other purposes set forth hereinbelow,
33 the system, either directly or indirectly through a wholly-owned subsidiary,
34 is authorized and empowered to:

35 (1) Investigate and obtain information concerning members'
36 present and projected needs for services such as those offered by the

1 facilities;

2 (2) Construct and equip facilities or acquire by gift or purchase
3 existing buildings and the sites upon which they are situated for use as, or
4 to be converted to, facilities and held as investments of the system while
5 providing additional benefits to members;

6 (3) Provide for the operation and management of the facilities so
7 constructed or acquired and arrange for providing of benefits to members
8 through the use of such facilities at a rent or charge to qualified occupants
9 upon such terms and conditions as the respective board may determine;

10 (4) Execute contracts, including by way of example, but not
11 limited to, leases (as lessor or lessee), purchase agreements, construction
12 contracts, and management agreements, necessary to accomplish the purposes of
13 this act;

14 (5) Incur debt as necessary to accomplish the purposes of this
15 act;

16 (6) Apply for, receive, accept, and use any moneys and properties
17 from the United States, or any state, or any department or agency thereof;
18 from any public or private corporate of any nature, and from any individual or
19 group;

20 (7) Establish and enforce minimum standards and criteria for the
21 management, maintenance, and operation of all facilities authorized by this
22 act;

23 (8) Provide for the management, maintenance and operation of the
24 facilities as may be required by this act or otherwise by law to be managed,
25 maintained, or operated by the board;

26 (9) Cooperate with the Arkansas Development Finance Authority for
27 the issuance of bonds pursuant to the Arkansas Development Finance Authority
28 Act, as amended, to finance the acquisition, construction, leasing or
29 equipping, or purchase of the facilities authorized by this act;

30 (10) Take such other action, not inconsistent with law, as may be
31 necessary or desirable to carry out the powers, purposes, and authorities set
32 forth in this act and to carry out the intent of this act;

33 (11) To enter into lease-purchase agreements, as lessee or
34 lessor, to obtain the facilities;

35 (12) Create wholly-owned subsidiary corporations, limited
36 liability companies and other legal entities to facilitate the financing of

1 facilities and to own or operate facilities. Such subsidiary corporations or
2 other legal entities may be a venture in a joint venture, a general or limited
3 partner in a partnership, a member of a limited liability company, and may
4 have such status in other legal entities comprised of governmental agencies
5 (federal or state), private individuals, partnerships, corporations or other
6 entities, as might be necessary or desirable to accomplish the purposes of
7 this act; and

8 (13)(A) Guarantee, wholly or partially, debt obligations of any
9 subsidiary corporation or other owned entity; enter into agreements to
10 purchase or re-purchase debt obligations of any subsidiary corporation or
11 other owned entity; and to take such other measures as might be appropriate to
12 enhance the credit and the ability of any of its subsidiary corporations or
13 other owned entities to borrow money; provided, however, that any instrument
14 or agreement containing a guaranty of the system must prominently state that
15 the guaranty is limited to the assets of the system and does not constitute a
16 pledge of the full faith and credit of the system or of the State of Arkansas
17 and, provided further that, in addition to the limitations set forth in the
18 preceding proviso, the system shall not be authorized to enter into any kind
19 of guaranty or credit enhancement arrangement if the amount of debt guaranteed
20 or credit enhanced when added to all previous guaranty or enhancement
21 arrangements still in effect would exceed three percent (3%) of the total
22 assets of the system as reflected on its most recent balance sheet.

23 (B) If the system should enter into any guaranty or other credit
24 enhancement arrangement for any subsidiary corporation or other owned entity
25 it shall be entitled to charge such subsidiary or other entity a fee for
26 providing the credit enhancement, such fee not to exceed one percent (1%) of
27 the principal amount of the credit enhanced unless the Board, with the advice
28 of counsel, finds that the charging of such a fee could adversely affect the
29 credit being enhanced by adversely affecting the availability or the cost of
30 said credit or have any other adverse effect on such credit.

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32 SECTION 5. When investing and managing trust assets as a prudent
33 investor, the board may consider the benefits members may obtain from
34 investments which return more than a return on principal but also provide
35 other benefits to the members such as health care, housing, and entertainment,
36 including, but not limited to, investment in the ownership or operation of

1 facilities for the use and benefit of qualified occupants.

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3 SECTION 6. The board shall make the final determination regarding the
4 location, design, purpose, construction and operation of the facilities. All
5 agreements and other matters concerning the buying, trading, selling, renting,
6 renovating, or acquiring of any facility as authorized by this act shall be
7 matters of public record and available for public inspection.

8
9 SECTION 7. Nothing in this act shall be construed as to in any way
10 limit or alleviate the board's obligation to provide retirement benefits to
11 the system's members.

12
13 SECTION 8. If made in compliance with the requirements and limitations
14 of this act, and in compliance with the prudent investor rule set forth in
15 Arkansas Code § 24-3-417, investments made by the system in facilities are
16 hereby declared by the General Assembly to be an appropriate investment for
17 funds of the system.

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19 SECTION 9. Nothing in this act exempts the Arkansas Teacher Retirement
20 System, its subsidiaries, corporations or other related legal entities from
21 the requirement to acquire a permit of approval, as set forth in § 20-8-101
22 through § 20-8-112, or any Office of Long Term Care licensure or certification
23 requirement to own, operate or manage a long term care facility.

24
25 SECTION 10. Arkansas Code 22-2-103(a), regarding the applicability of
26 public construction laws to governmental building projects, is hereby amended
27 to read as follows:

28 "(a) The provisions of this chapter shall not apply to the construction
29 and reconstruction of roads and bridges in the state highway system by the
30 State Highway Commission. Except as specifically provided in Title 24 of the
31 Arkansas Code of 1987, Annotated, neither the provisions of this chapter nor
32 the provisions of any other chapter of the Arkansas Code of 1987, Annotated,
33 shall apply ~~nor~~ to any lands, buildings, or other structures or facilities now
34 owned or hereafter acquired by the system, as defined in the Arkansas Teacher
35 Retirement System Affordable Housing Investment Act, ~~an Arkansas state~~
36 ~~retirement system~~ as an investment or as a result of the investment of assets

1 of the system, or pursuant to the Arkansas Teacher Retirement System
2 Affordable Housing Investment Act."

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4 SECTION 11. Arkansas Code § 24-3-423(c), regarding the limitations on
5 investment authority by public retirement systems, is repealed.

6 ~~(c) Provided, however, the purchase or sale of investments or trust~~
7 ~~assets by the trustee on its own behalf and in its own name shall be executed~~
8 ~~on a competitive award basis on which at least three (3) offerings or bids~~
9 ~~have been secured. The trustee shall record and keep on file all competitive~~
10 ~~offerings and bids.~~

11
12 SECTION 12. Arkansas Code § 24-7-303(e), regarding the professional
13 services provided to the Board of Trustees of the Arkansas Teacher Retirement
14 System, is amended to read as follows:

15 "(e)(1) The board shall appoint a professional investment counsel to be
16 investment advisor to the board.

17 (2) No investment shall be made by the board until it has
18 received the advice of its investment advisor; provided, however, that if the
19 contemplated investment involves anything other than 'financial assets', as
20 defined in Arkansas Code 4-8-102(a)(9) then, in lieu of seeking advice from
21 its investment advisor, the board shall seek and receive advice from a person
22 having recognized expertise with respect to the type of investment
23 contemplated."

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25 SECTION 13. No benefit enhancement provided for by this act shall be
26 implemented if it would cause the publicly supported retirement system's
27 unfunded actuarial accrued liabilities to exceed a thirty (30) year
28 amortization. No benefit enhancement provided for by this act shall be
29 implemented by any publicly supported system which has unfunded actuarial
30 accrued liabilities being amortized over a period exceeding thirty (30) years
31 until the unfunded actuarial accrued liability is reduced to a level less than
32 the standards prescribed by Arkansas Code, Title 24.

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34 SECTION 14. All provisions of this act of a general and permanent
35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
36 Code Revision Commission shall incorporate the same in the Code.

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SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 16. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 17. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-second General Assembly that the state needs to assure that the system is able to provide the best possible benefits, including safe, adequate, and affordable facilities, for the system's members and that several changes in, and clarification of, existing laws are immediately necessary in order for the system to continue to efficiently, effectively and timely administer the member's retirement benefits. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ Hopkins