

INTERIM STUDY PROPOSAL 2019-075

State of Arkansas *As Engrossed: S2/20/19 S3/13/19 S4/2/19*

92nd General Assembly

A Bill

Regular Session, 2019

SENATE BILL 238

By: Senators M. Johnson, G. Stubblefield, Caldwell, B. Ballinger, Bledsoe, E. Cheatham, B. Davis, L. Eads, J. English, Flippo, T. Garner, K. Hammer, Hester, G. Leding, D. Wallace, *J. Hendren, Bond, Irvin, K. Ingram*

By: Representatives G. Hodges, Sullivan, Lowery, Beck, Bentley, Boyd, A. Davis, L. Fite, Lundstrum, McCollum, Richmond, Womack, *J. Mayberry, Blake, Burch, Cavanaugh, V. Flowers, D. Whitaker*

Filed with: Joint Committee on Public Retirement and Social Security Programs
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO PROVIDE FOR INELIGIBILITY FOR *CERTAIN RETIREMENT* BENEFITS UPON CONVICTION OF A FELONY ARISING OUT OF AN ELECTED PUBLIC OFFICIAL'S OFFICIAL ACTIONS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR INELIGIBILITY FOR CERTAIN RETIREMENT BENEFITS UPON CONVICTION OF A FELONY ARISING OUT OF AN ELECTED PUBLIC OFFICIAL'S OFFICIAL ACTIONS; AND TO DECLARE AN EMERGENCY.

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

*SECTION 1. Arkansas Code § 24-1-301 is amended to read as follows:
24-1-301. Definitions.*

As used in this subchapter:

(1) *"Beneficiary" means an individual who receives or is designated by a member or retirant to receive a plan benefit under a retirement system; and*

1 (2) "Elected public official" means a person elected or
2 appointed to one (1) or more of the following offices:

3 (A) Governor;

4 (B) Lieutenant Governor;

5 (C) Attorney General;

6 (D) Secretary of State;

7 (E) Treasurer of State;

8 (F) Auditor of State;

9 (G) Commissioner of State Lands;

10 (H) A member of the Senate; or

11 (I) A member of the House of Representatives; and

12 ~~(2)~~(3) "Retirement system" means:

13 (A) The Arkansas Teacher Retirement System, established by
14 the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;

15 (B) The Arkansas State Highway Employees' Retirement
16 System, established by § 24-5-103;

17 (C) The Arkansas Public Employees' Retirement System,
18 established by § 24-4-103;

19 (D) The State Police Retirement System, established by §
20 24-6-203;

21 (E) The Arkansas Judicial Retirement System, established
22 by § 24-8-201 et seq.;

23 (F) An alternate retirement plan for:

24 (i) A college, university, or the Department of
25 Higher Education provided for under § 24-7-801 et seq.; and

26 (ii) A vocational-technical school or the Department
27 of Career Education provided for under § 24-7-901 et seq.;

28 (G) The Arkansas Local Police and Fire Retirement System
29 provided for under § 24-10-101 et seq.; and

30 (H) A firemen's relief and pension fund or a policemen's
31 pension and relief fund provided for under § 24-11-101 et seq.

32
33 SECTION 2. Arkansas Code Title 24, Chapter 1, Subchapter 3, is amended
34 to add an additional section to read as follows:

1 24-1-306. Elected public officials – Ineligibility for certain
2 retirement benefits upon conviction of felony arising out of official
3 actions.

4 (a) As used in this section, "felony" means a felony offense arising
5 under a law governing:

6 (1) Abuse of public trust;

7 (2) Abuse of office; or

8 (3) Fraud.

9 (b)(1) A current or former elected public official shall forfeit his
10 or her credited service in the Arkansas Public Employees' Retirement System
11 for his or her term of office as an elected public official if he or she:

12 (A) Is convicted in a state or federal court of a felony
13 arising out of that person's official actions while serving as an elected
14 public official; or

15 (B) Pleads guilty or nolo contendere in a state or federal
16 court to a felony arising out of that person's official actions while serving
17 as an elected public official.

18 (2) The credited service forfeited under subdivision (b)(1) of
19 this section includes all credited service in the Arkansas Public Employees'
20 Retirement System earned as an elected public official, irrespective of the
21 elected public office held when performing the official actions from which
22 the felony arose.

23 (c)(1) Each time a person is elected, re-elected, or appointed as an
24 elected public official, as a condition of his or her election or
25 appointment, he or she shall be deemed to consent and agree to the forfeiture
26 of his or her credited service in the Arkansas Public Employees' Retirement
27 System for his or her term of office as an elected public official if the
28 person:

29 (A) Is convicted in a state or federal court of a felony
30 arising out of that person's official actions while serving as an elected
31 public official; or

32 (B) Pleads guilty or nolo contendere in a state or federal
33 court to a felony arising out of that person's official actions while serving
34 as an elected public official.

1 (2) Subdivision (c)(1) of this section applies to an elected
2 public official regardless of the date the person originally became a member
3 of the Arkansas Public Employees' Retirement System.

4 (d) The clerk of the court in which a proceeding against the current
5 or former elected public official is being conducted shall send written
6 notice by certified mail, return receipt requested, to the Executive Director
7 of the Arkansas Public Employees' Retirement System when:

8 (1) A current or former elected public official is convicted of
9 or pleads guilty or nolo contendere to a felony arising out of that person's
10 official actions while serving as an elected public official;

11 (2) A current or former elected public official appeals his or
12 her conviction of or plea of guilty or nolo contendere to a felony arising
13 out of that person's official actions while serving as an elected public
14 official; and

15 (3) The appellate court issues a final ruling upholding or
16 reversing the conviction or plea of guilty or nolo contendere of the current
17 or former elected public official for a felony arising out of that person's
18 official actions while serving as an elected public official.

19 (e) Upon the final determination of a conviction or plea under
20 subsection (b) of this section, including without limitation the final
21 resolution of an appeal that upholds the conviction or plea, the Arkansas
22 Public Employees' Retirement System shall:

23 (1) Have the current or former elected public official's
24 annuity:

25 (A) Stopped immediately, if the current or former elected
26 public official is receiving an annuity that is based solely upon his or her
27 term of office as an elected public official; or

28 (B) Reduced by the amount of the annuity attributable to
29 his or her term of office as an elected public official, if the current or
30 former elected public official is receiving an annuity based upon credited
31 service in the Arkansas Public Employees' Retirement System in addition to
32 the credited service resulting from his or her term of office as an elected
33 public official; and

34 (2)(A) Refund to the current or former elected public official
35 the accumulated contributions credited to the elected public official for his

1 or her term of office as an elected public official less any annuity
2 received.

3 (B) If a court orders that some or all of a refund of
4 accumulated contributions under subdivision (e)(2)(A) of this section be paid
5 as restitution in connection with the felony arising out of the official
6 actions of the current or former elected public official, the Arkansas Public
7 Employees' Retirement System shall:

8 (i) Reduce the refund of accumulated contributions
9 by that sum; and

10 (ii) Direct the sum ordered by the court as
11 restitution to the court issuing the order.

12 (f) This section applies to:

13 (1) A person elected, re-elected, or appointed as an elected
14 public official on and after January 1, 2020; and

15 (2) An elected public official elected, re-elected, or appointed
16 before January 1, 2020, if the actions constituting the felony arising out of
17 the person's official actions while serving as an elected public official
18 occurred after the effective date of this section.

19 (g) The Arkansas Public Employees' System and its employees are immune
20 from suit for the performance of duties under this section.

21
22 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
23 General Assembly of the State of Arkansas that ensuring the lawful and
24 ethical behavior of elected public officials is of utmost importance to the
25 state; that the provisions of this act provide a powerful disincentive for
26 unlawful conduct and relieve the state from paying certain retirement
27 benefits to persons who abuse their office for personal gain; and this act
28 should become effective as soon as possible to discourage and punish illegal
29 conduct. Therefore, an emergency is declared to exist, and this act being
30 immediately necessary for the preservation of the public peace, health, and
31 safety shall become effective on:

32 (1) The date of its approval by the Governor;

33 (2) If the bill is neither approved nor vetoed by the Governor,
34 the expiration of the period of time during which the Governor may veto the
35 bill; or

1 (3) If the bill is vetoed by the Governor and the veto is
2 overridden, the date the last house overrides the veto.

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/s/M. Johnson

8 Referred requested by the Arkansas Senate
9 Prepared by: MBM/VJF

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