

Revised May 2023

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT _____
BOARD/COMMISSION Arkansas Public Employees' Retirement System
BOARD/COMMISSION DIRECTOR Amy Fecher
CONTACT PERSON Laura Gilson
ADDRESS 124 W. Capitol, Suite 400
PHONE NO. (501) 682-7853 **EMAIL** laura.gilson@arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Amy Fecher, Laura Gilson
PRESENTER EMAIL(S) amy.fecher@arkansas.gov; laura.gilson@arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
APERS Rule 312 – 2011 (5) – Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2001.
2. What is the subject of the proposed rule? Contributions and service credits for local elected officials
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

Ark. Code Ann. § 24-4-521(b)(5) and Ark. Code Ann. § 24-4-101(15)(B). Specifically, the amendment to Rule 312 clarifies which contributory and noncontributory members employed as local elected officials are subject to the required additional employee contributions for enhanced service credit. Ark. Code Ann. § 24-4-521(b)(5). The proposed rule change also clarifies that a contributory member who is employed as a local elected official is subject to the ten (10) year enhanced service credit limitation under Ark. Code Ann. 24-4-101(15)(B).

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

This is an amendment to an existing rule, not a new rule.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

§ 24-4-105(b)(1)

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

To clarify the administration of benefits for local elected officials

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

apers.org

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 09/06/2023

15. What is the proposed effective date for this rule? Ten (10) days after filing rule with the Secretary of State

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

none

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION Arkansas Public Employees' Retirement System
PERSON COMPLETING THIS STATEMENT Laura Gilson
TELEPHONE NO. (501) 682-7853 **EMAIL** laura.gilson@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE APERS Rule 312 – 2011 (5) – Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2001.

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue⁰ _____
 Federal Funds⁰ _____
 Cash Funds⁰ _____
 Special Revenue⁰ _____
 Other (Identify)⁰ _____

Total \$ 0.00 _____

Next Fiscal Year

General Revenue⁰ _____
 Federal Funds⁰ _____
 Cash Funds⁰ _____
 Special Revenue⁰ _____
 Other (Identify)⁰ _____

Total \$ 0.00 _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 0.00 _____

Next Fiscal Year

\$ 0.00 _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00 _____

Next Fiscal Year

\$ 0.00 _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Proposed Rule Regarding Local Elected Officials

DATE: July 12, 2023

PURPOSE: The Arkansas Public Employees' Retirement System (APERS) seeks to amend APERS Rule 312-2011 (5) which pertains to the crediting of service and additional contributions required of local elected officials.

BACKGROUND: Pursuant to Ark. Code Ann. § 24-4-105(b)(1), the APERS Board has the authority to make all rules necessary to administer the Arkansas Public Employees' Retirement System. Act 563 of 2011, Ark. Code Ann. § 24-4-521(b)(5) requires that certain local elected public officials make additional employee contributions to the system for enhanced service credit.

KEY POINTS: The proposed amendment to the Rule:

(1) clarifies which contributory and noncontributory members employed as local elected officials are subject to the required additional employee contributions for enhanced service credit;

(2) clarifies that a contributory member who is employed as a local elected official is subject to the ten (10) year enhanced service credit limitation under Ark. Code Ann. § 24-4-101(15)(B);

(3) references the corresponding section of Arkansas Code, rather than the creating act; and

(4) drafts the rule in Code of Rules format.

DISCUSSION: The current Rule was promulgated pursuant to Act 563 of 2011 to address the additional employee contribution required to receive enhanced service credit for certain members who are employed as local elected officials. The proposed amendment to the Rule clarifies which contributory and noncontributory members employed as local elected officials are subject to the additional employee contribution requirement, consistent with Ark. Code Ann. § 24-4-521(b)(5). Additionally, the proposed amendment rewrites the Rule in Bureau of Legislative Research's Code of Rules format for clarity.

RECOMMENDATION: APERS recommends that the proposed amendment to APERS Rule 312-2011 (5) be approved to clarify APERS administration pursuant to Ark. Code Ann. § 24-4-521(b)(5).

MARK-UP

312 – 2011 (5) – Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2004 Crediting of service and additional contributions required of local elected officials.

~~In compliance with Act 563 of 2011, any county or municipal elected official who (1) has never served in an elected position covered by this system; (2) who is elected or appointed to office on or after July 1, 2011; and (3) who is entitled to receive enhanced service credit under A.C.A. 24-4-521(b)(5), shall contribute 2.5% of his or her gross salary for the additional service credit that exceeds the regular rate of service credit in order to be entitled to any service credit whatsoever accruing as a result of serving in the elected office. Any such official who requests a refund of these contributions shall forfeit all service credit for the period represented by the refund.~~

(a) In compliance with Ark. Code Ann. § 24-4-521(b)(5), a person who is employed as a local elected official covered by Arkansas Public Employees' Retirement System is eligible to receive enhanced service credit at two (2) times the regular rate of crediting service.

(b) Pursuant to Ark. Code Ann. § 24-4-521(b)(5), a person employed as a local elected official must contribute an additional percentage of his or her compensation for the additional service credit that exceeds the regular rate of crediting service if that person:

(1) Has never served in a noncontributory elected position covered by Arkansas Public Employees' Retirement System before July 1, 2011; or

(2) Has never served in a contributory elected position covered by Arkansas Public Employees' Retirement System before January 1, 2014.

(c) Any noncontributory local elected official who requests a refund of these contributions shall forfeit all service credit for the period represented by the refund.

(d) Pursuant to Ark. Code Ann. § 24-4-101(15)(B), a contributory member who is employed as a local elected official covered by Arkansas Employees' Retirement System shall accrue enhanced service credit on no more than ten (10) actual years of service.

CLEAN

312 – 2011 (5) - Crediting of service and additional contributions required of local elected officials.

(a) In compliance with Ark. Code Ann. § 24-4-521(b)(5), a person who is employed as a local elected official covered by Arkansas Public Employees' Retirement System is eligible to receive enhanced service credit at two (2) times the regular rate of crediting service.

(b) Pursuant to Ark. Code Ann. § 24-4-521(b)(5), a person employed as a local elected official must contribute an additional percentage of his or her compensation for the additional service credit that exceeds the regular rate of crediting service if that person:

(1) Has never served in a noncontributory elected position covered by Arkansas Public Employees' Retirement System before July 1, 2011; or

(2) Has never served in a contributory elected position covered by Arkansas Public Employees' Retirement System before January 1, 2014.

(c) Any noncontributory local elected official who requests a refund of these contributions shall forfeit all service credit for the period represented by the refund.

(d) Pursuant to Ark. Code Ann. § 24-4-101(15)(B), a contributory member who is employed as a local elected official covered by Arkansas Employees' Retirement System shall accrue enhanced service credit on no more than ten (10) actual years of service.

Public Notice of Intended Board Action:

Please take notice that the Board of Trustees of the Arkansas Public Employees Retirement System (APERS), 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201 has voted to amend the Board Rule "312 – 2011 (5) – Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2001" to clarify the administration requirements as applied to local elected officials.

Copies of this proposed amendment are available for inspection and copying during normal business hours, 8:00 a.m. to 4:30 p.m., at APERS's principal offices, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201. A mark-up of the rule and a summary of the proposed amendment are also available on the APERS website, <https://www.apers.org>, and on the Arkansas Secretary of State's website, <https://www.sos.arkansas.gov>.

Written public comment concerning the proposed amendment may be submitted to APERS within **thirty (30) days** of the first publication of this notice. Public comments should be addressed to Laura Gilson, Arkansas Public Employees' Retirement System, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201. If required under Ark. Code Ann. § 25-15-204(a)(2)(B), a public hearing on these rules will be held on September 11, 2023, at 9:00 a.m. in the fourth floor conference room in APERS's main offices, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201.



Public Notice of Intended Board Action:

Please take notice that the Board of Trustees of the Arkansas Public Employees Retirement System (APERS), 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201 has voted to amend the Board Rule "312 – 2011 (5) – Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2001" to clarify the administration requirements as applied to local elected officials.

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312607f

Post Date: 08/06 12:00 AM

Refcode: #312607 Print 

RECEIVED

By Secretary of State at 10:31 am, Aug 07, 2023

ARKANSAS REGISTER



Proposed Rule Cover Sheet

Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department Arkansas Public Employees' Retirement System (APERS)

Agency or Division Name APERS

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person Richmond Giles

Contact E-mail richmond.giles@arkansas.gov

Contact Phone 501-682-5436

Name of Rule APERS Rule 312-2011(5) - Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2001

Newspaper Name Arkansas Democrat-Gazette

Date of Publishing August 6, 2023

Final Date for Public Comment September 6, 2023

Location and Time of Public Meeting 124 W. Capitol, Suite 400, September 11, 2023 at 9:00 a.m.

Public Comment Summary

Pursuant to Ark. Code Ann. § 25-15-204, Arkansas Public Employees' Retirement System (APERS) published public notice of its intention to amend APERS Board Rules 24 CAR § 1-213, 312-2011(5), 410 – 2005 (5) and 411 – 2009 (5) (repeal), and Arkansas State Police Retirement System (ASPRS) Board Rule 14. The public notices and accompanying information were published in the Arkansas Democrat Gazette for three (3) consecutive days and were posted on the Secretary of State's for thirty (30) days. The public comment period expired on September 6, 2023. APERS received one (1) public comment.

Commenter: Chris Villines, Executive Director, Association of Arkansas Counties

Comment: Director Villines submitted a comment on the proposed amendments to APERS Board Rule 312 – 2011 (5). Director Villines suggested additional language be added to further clarify how this rule applies to contributory and noncontributory members of APERS who are employed as local elected officials. Specifically, Director Villines requested that APERS add language to the rule to state that the enhanced service credit accrual limitation under Ark. Code Ann. 24-4-101(15)(B) does not apply to noncontributory members. Director Villines also requested that APERS add language to clarify to which members of APERS the additional contribution required under Ark. Code Ann. § 24-4-521(b)(5) for enhanced service credit applies.

APERS Response: APERS has added additional language to the proposed amendment to APERS Board Rule 312 – 2011 (5) to address Director Villines' comments and concerns. APERS has added subsection (c)(2) to state that the enhanced service credit accrual limitation under Ark. Code Ann. 24-4-101(15)(B) does not apply to noncontributory members. APERS has also inserted a chart showing the members required to make additional contributions for the enhanced service credit.

MARK-UP

312 – 2011 (5) – Contributions Required of New County and Elected Officials Who Are Elected for the First Time after July 1, 2004 Crediting of service and additional contributions required of local elected officials.

In compliance with Act 563 of 2011, any county or municipal elected official who (1) has never served in an elected position covered by this system; (2) who is elected or appointed to office on or after July 1, 2011; and (3) who is entitled to receive enhanced service credit under A.C.A. 24-4-521(b)(5), shall contribute 2.5% of his or her gross salary for the additional service credit that exceeds the regular rate of service credit in order to be entitled to any service credit whatsoever accruing as a result of serving in the elected office. Any such official who requests a refund of these contributions shall forfeit all service credit for the period represented by the refund.

(a) In compliance with Ark. Code Ann. § 24-4-521(b)(5), a person who is employed as a local elected official covered by Arkansas Public Employees' Retirement System is eligible to receive enhanced service credit at two (2) times the regular rate of crediting service.

(b)(1) Pursuant to Ark. Code Ann. § 24-4-521(b)(5), a person who is employed as a local elected official covered by the system must contribute an additional percentage of his or her compensation for the additional service credit that exceeds the regular rate of crediting service if that person based on the following chart:

(1) Has never served in a noncontributory elected position covered by Arkansas Public Employees' Retirement System before July 1, 2011; or

(2) Has never served in a contributory elected position covered by Arkansas Public Employees' Retirement System before January 1, 2014.

Local Elected Officials Requirements for Additional Contributions				
Contributory/Noncontributory Member Status	Beginning Service Date as Elected Official	Service Credit	Additional Employer Contributions	Additional Employee Contributions
Noncontributory	06/30/2011 or earlier	2x regular rate	0%	0%
Noncontributory (elected)	07/01/2011 or later	2x regular rate	2.5%	2.5%
Contributory	12/31/2013 or earlier	2x regular rate	0%	0%
Contributory (elected)	01/01/2014 or later	2x regular rate	2.5%	2.5%

(c)(2) Any noncontributory local elected official who requests a refund of these contributions shall forfeit all service credit for the period represented by the refund.

MARK-UP

(d)(c)(1) Pursuant to Ark. Code Ann. § 24-4-101(15)(B), a contributory member who is employed as a local elected official covered by Arkansas Public Employees' Retirement System ~~the system~~ shall accrue enhanced service credit on no more than ten (10) actual years of service.

(2) A noncontributory member who is employed as a local elected official covered by the system is not subject to the ten (10) year enhanced service credit accrual limitation in subsection (c)(1) of this rule.

CLEAN

312 – 2011 (5) - Crediting of service and additional contributions required of local elected officials.

(a) In compliance with Ark. Code Ann. § 24-4-521(b)(5), a person who is employed as a local elected official covered by Arkansas Public Employees' Retirement System is eligible to receive enhanced service credit at two (2) times the regular rate of crediting service.

(b)(1) Pursuant to Ark. Code Ann. § 24-4-521(b)(5), a person who is employed as a local elected official covered by the system must contribute an additional percentage of his or her compensation for the additional service credit that exceeds the regular rate of crediting service based on the following chart:

Local Elected Officials Requirements for Additional Contributions				
Contributory/Noncontributory Member Status	Beginning Service Date as Elected Official	Service Credit	Additional Employer Contributions	Additional Employee Contributions
Noncontributory	06/30/2011 or earlier	2x regular rate	0%	0%
Noncontributory (elected)	07/01/2011 or later	2x regular rate	2.5%	2.5%
Contributory	12/31/2013 or earlier	2x regular rate	0%	0%
Contributory (elected)	01/01/2014 or later	2x regular rate	2.5%	2.5%

(2) Any noncontributory local elected official who requests a refund of these contributions shall forfeit all service credit for the period represented by the refund.

(c)(1) Pursuant to Ark. Code Ann. § 24-4-101(15)(B), a contributory member who is employed as a local elected official covered by the system shall accrue enhanced service credit on no more than ten (10) actual years of service.

(2) A noncontributory member who is employed as a local elected official covered by the system is not subject to the ten (10) year enhanced service credit accrual limitation under subsection (c)(1) of this rule.