

December 20, 2023

Executive Summary
Proposed Rule Amendment
ATRS Rule 4 – Election of Board of Trustees

I. Purpose

The Arkansas Teacher Retirement System (“ATRS” or “System”) requests the review and approval of proposed amendments to ATRS Rule 4 – Election of Board of Trustees (“Rule 4”).

On December 4, 2023, the Board of Trustees of the Arkansas Teacher Retirement System (“Board”) voted to proceed with the promulgation process for Rule 4.

II. Authority

A.C.A. § 24-7-301 provides that the Board is responsible for the general administration and proper operation of the System and for implementing the Arkansas Teacher Retirement System Act, A.C.A. § 24-7-201 et seq.

A.C.A. § 24-7-305(b) gives the Board the authority to promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System.

III. Amendments

Rule 4 has been amended as follows:

- Redrafted for clarity and to address issues such as formatting, renumbering, grammar, and spelling;
- Redrafted to further align with the Code of Arkansas Rules style format;
- The authority for this rule has been moved to the end of the document;
- Changed title of rule to “Election of the Board of Trustees of the Arkansas Teacher Retirement System” (*See mark-up, page 1*);
- Amended to clarify that published ballots must be mailed by the election vendor by March 15th (*See mark-up, page 5, § 4-113(b)(1)*);
- In the context of education-related agencies, revised definition of “Administrator” to remove “classified or unclassified” and clarify that the employee must be an active member of the system through his or her employment with an education-related agency that is participating in the system (*See mark-up, page 1, § 4-101(b)(2)(B)*);
- Amended to clarify that a completed ballot must be received by April 15 in order to be counted, regardless of the postmark date or other methods used to attempt delivery (*See mark-up, page 5, § 4-113(b)(2)(A)*);

- Amended to clarify that the appointment of a trustee is effective as of the date on which the trustee is appointed by the Board (*See mark-up, page 6, § 4-114(c)(2)*); and
- Amended to clarify that the term of office of a person who is elected to fill a trustee position to which a trustee was appointed will be six (6) years (*See mark-up, page 7, § 4-115(c)(2)*).

IV. Recommendation

The System recommends that the proposed amendments to Rule 4 be approved as proposed.

Mark-Up Color Code

- Blue – Non-substantive changes by ATRS staff.
- Green – Substantive changes by ATRS staff.
- Red – Required legislative changes.
- Brown – Non-substantive changes where the rule was transferred from one rule to another.

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ATRS Rule 4 Election of Board of Trustees of the Arkansas Teacher Retirement System

§ 4-101. General rules for candidacy and voting in trustee elections – Definitions.

(a) An undefined term in the rules of the Arkansas Teacher Retirement System shall have the same meaning as provided in Arkansas Code § 24-7-202.

(b) As used in this rule:

(1) “Active member” for the purposes of eligibility for the active member trustee position and voting, means:

(A) An active member as defined in Arkansas Code § 24-7-202; or

(B) A member who:

(i) Participates in T-DROP;

(ii) Is employed by a covered employer; and

(iii) Receives T-DROP plan deposits;

(2) “Administrator” for the purposes of eligibility for the administrator trustee position and voting for an administrator trustee position means a person who has a current administrator’s license and is either:

(A) An employee of a covered employer who is employed in one (1) of the following positions:

(i) Public school superintendent, assistant superintendent, principal, or vice-principal;

(ii) Higher education president, chancellor, or director; or

(iii) Director, president, or vice-president of a community college, vocational or technical school, or educational cooperative; or

(B) An employee who is:

(i) An employee of an education-related agency participating in the system;

(ii) An active member of the system through his or her employment with the education-related agency; and

(iii) Employed in a GS13 grade position, its equivalent, or above;

(3) “Licensure” for the purposes of eligibility for the licensed trustee position or voting for the licensed trustee position means a person who is not an administrator and is employed either in:

(A) A position requiring a state teaching license; or

(B) An education institution GS09-GS12 grade position of its equivalent;

and:

(4) “Nonlicensed” for the purposes of eligibility for the nonlicensed trustee position and voting for the nonlicensed trustee position means a person who is:

(A) Employed in a position with a covered employer that does not require a state teaching license;

(B) Employed in a position with an education-related agency in a position that:

(i) Does not require a state teaching license; and

(ii) Is no higher than a GS08 grade position or its equivalent; and

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(C) Not an administrator as that term is defined in Arkansas Code § 24-7-202 and this rule.

§ 4-102. Membership and Authority of the Board of Trustees of the Arkansas Teacher Retirement System.

- (a) The general administration and proper operation of the Arkansas Teacher Retirement System is vested in the Board of Trustees of the Arkansas Teacher Retirement System. The board shall consist of eleven (11) elected members and four (4) ex officio members.
- (b) In accordance with Arkansas Code § 24-7-301, the board shall adopt rules and regulations for the election of a trustee and a vacancy on the board.

§ 4-103. Candidacy and voting in trustee elections — Generally.

- (a) A candidate who is employed in more than one (1) position with a covered employer shall have his or her eligibility determined based on his or her primary position for which he or she receives the greater percentage of covered salary.
- (b)(1) Only members of the Arkansas Teacher Retirement System shall vote in a trustee election.
- (2) Guardians, attorneys-in-fact, or others shall not vote on behalf of a member.
- (c)(1) An employee of the system shall not be elected or appointed to the board.
- (3) An employee of the system shall not be a candidate for election or appointment to the board.

§ 4-104. Qualifications and voter eligibility for elected trustee positions — Active Member Trustee Positions one through four.

- (a) The Arkansas congressional district boundaries as defined on the first day of the fiscal year in which an election for an active member trustee position occurs shall be used to determine:
- (1) Whether a person is qualified to become a candidate for an active member trustee position; and
- (2) The eligibility of a member to vote in an election for an active member trustee position.
- (b) There shall be four (4) active member trustees each of whom shall represent one (1) of the four (4) congressional districts in Arkansas.
- (c) A person is qualified to become a candidate for an active member trustee position if the person is:
- (1) An active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System;
- (2) Employed by a covered employer located in the congressional district for which he or she is seeking election; and
- (3) Employed in a position requiring state teaching licensure or the equivalent under this rule.
- (d) A member is eligible to vote in an election for an active member trustee if the member is:
- (1) An active member, regardless of credited service;
- (2) Employed by a covered employer located in the congressional district for which the active member trustee election is being held; and

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(3) Otherwise eligible to be a candidate under this rule.

§ 4-105. Qualifications and voter eligibility for elected trustee positions — Active Administrator Trustee Positions five through six.

(a) There shall be two (2) active member trustees each of whom shall be employed as an administrator as defined in this rule.

(b) A person is qualified to become a candidate for an active administrator trustee position if the person is:

(1) An active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System; and

(2)(A) Employed in a position requiring an administrator's license.

(B)(i) As provided in Arkansas Code § 24-7-301, at least one (1) of the administrators serving as an active administrator trustee shall be employed by a covered employer as a school superintendent or educational cooperative director;

(ii) If there is an open administrator active member trustee position and the other filled administrator active member trustee position is held by a person who is not a superintendent or an educational cooperative director, a candidate for the open administrator active member trustee position shall be a superintendent or an educational cooperative director and the notice of election shall state that a candidate for the open administrator active member trustee position is required to be a superintendent or an educational cooperative director.

(c) A member is eligible to vote in an election for an active administrator trustee position if the member is:

(1) An active member, regardless of the amount of credited service that the member has in the system; and

(2) Employed as a licensed administrator in a position requiring and administrator's license.

§ 4-106. Qualifications and voter eligibility for elected trustee positions — Nonlicensed trustee position seven.

(a) A person is qualified to become a candidate for the nonlicensed trustee position if the person is:

(1) An active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System; and

(2) Employed in a position that does not require state licensure.

(b) A member is eligible to vote in an election for the nonlicensed trustee position if the member is:

(1) An active member, regardless of the amount of credited service that the member has in the system; and

(2) Employed by a covered employer in a nonlicensed position.

§ 4-107. Qualifications and voter eligibility for elected trustee positions — Minority trustee position eight.

(a) There shall be one (1) member trustee of a minority racial ethnic group.

(b) A person is qualified to become a candidate for the minority trustee position if the person is a member of a minority racial or ethnic group and either a retired member or an

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active member with at least five (5) years of actual service credit in the Arkansas Teacher Retirement System.

(c) A member is eligible to vote in an election for the minority trustee position if the member is a retired member or an active member, regardless of the amount of credited service that the member has in the system.

§ 4-108. Qualifications and voter eligibility for elected trustee positions — At-large retired member trustee positions nine through eleven.

(a) There shall be three (3) retired member trustees who shall be retirees as defined by Arkansas Code § 24-7-202.

(b) A person is qualified to become a candidate for a retired member trustee position if the person is a retiree and a resident of the State of Arkansas.

(c) A member is eligible to vote in an election for a retired member trustee position if the member is a retiree, regardless of his or her present employment status or residency.

§ 4-109. Elected trustee nominations — Scheduling and notice of election.

(a) The Arkansas Teacher Retirement System may publish electronically any public notice required by this rule.

(b)(1) During December in a year in which an elected trustee position is subject to a regular or special election, the Arkansas Teacher Retirement System shall publish public notice of the upcoming trustee position election in a statewide newspaper for at least five (5) consecutive days.

(2) The notice will also be sent to each person or group that requests notice of a trustee vacancy.

(3) The notice shall also be posted on the system's website from December until the closing of the nomination period.

§ 4-110. Elected trustee nominations — Candidate petitions and verification of member signatures.

(a)(1) For all elected positions, a candidate must submit a petition signed legibly by at least twenty-five (25) system members who are eligible to vote for the trustee position for which the member is seeking nomination.

(2) The petition shall include the last four (4) digits of each signatory's Social Security number for verification of the member's eligibility to vote for the position.

(3)(A) The original petitions shall be submitted to the Executive Director of the Arkansas Teacher Retirement System no later than January 10.

(B) Actual delivery shall be made by January 10, regardless of postmark date or other methods used to attempt delivery.

(C) Upon receipt of a petition, the Arkansas Teacher Retirement System shall confirm receipt of the petition and verify the eligibility of the candidate for the trustee position.

(D) The system shall verify the signature of each member who signs the petition as an eligible voter.

(b) The system shall:

(1) Notify each candidate who submits a petition of whether or not his or her petition has been accepted; and

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(2) Provide each candidate who submits a petition with a list of other candidates who were certified to participate in the election for the trustee position for which the candidate sought nomination.

§ 4-111. Elected trustee nominations — Ballots.

(a) Before ballots are mailed, the Arkansas Teacher Retirement System or its designee shall conduct a random drawing for ballot positions.

(b) At least two (2) independent witnesses shall witness and certify the drawing of the ballot positions.

(c) The system shall notify each candidate who was certified to participate in election for the trustee position of the order in which the candidate will be listed on the ballot.

§ 4-112. Elected trustee nominations — Campaign materials.

(a) Upon request of a candidate who is certified to participate in the election for the trustee position, the Arkansas Teacher Retirement System shall provide a list of mailing addresses of all eligible voters for the distribution of a candidate's campaign materials.

(b) The candidate's message shall not contain information that:

(1) Would constitute defamation of another candidate; or

(2) Claims or appears to claim the endorsement of the system or the Board of the Arkansas Teacher Retirement System.

(c) Campaign materials shall be mailed by the election vendor from the election vendor's place of business.

(d) All postage for campaign materials shall be paid for by the candidate distributing the campaign materials.

§ 4-113. Trustee elections.

(a) The Arkansas Teacher Retirement System shall employ an independent election vendor to conduct the trustee elections.

(b)(1) The system shall publish ballots and submit the published ballots to the election vendor **to be mailed by March 15** to the address of record of each member who is eligible to vote in the election.

(2)(A) A completed ballot shall be counted if it is received by the election vendor on or before April 15, **regardless of postmark date or other methods used to attempt delivery.**

(B) Only ballots that are correctly completed shall be counted.

(c) If any position receives only one (1) nomination and the position is uncontested, the Board of Trustees of the Arkansas Teacher Retirement System, at its next regular or special meeting, may certify the nomination and declare the candidate duly elected as a trustee before the trustee's term begins.

(d) The election vendor shall certify the results for positions not subject to a runoff election to the system by April 20.

(e)(1) A run-off election shall be held between the two (2) candidates who receive the highest number of votes for a trustee position if:

(A) The election vendor certifies the outcome of the trustee election; and

(B) A single candidate does not receive at least fifty percent (50%) of the votes cast by eligible voters.

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(2) The election vendor shall mail run-off ballots to each member who is eligible to vote in the election on or before May 1.

(3) Completed ballots for a run-off election that are received by the election vendor after June 1 shall not be counted.

(4) The election vendor shall certify the results of a run-off election to the system by June 5.

(f)(1) A candidate included on a ballot may challenge to the election vendor's certified results for an elected trustee position by submitting a written challenge to the Executive Director of the Arkansas Teacher Retirement System within five (5) calendar days of the date on which the election results are certified by the election vendor.

(2)(A) A written challenge to the election vendor's certified results for an election shall not be considered if it is submitted more than (5) calendar days after the date on which the election results are certified to the system by the election vendor.

(B) After a written challenge to a certified election result is received by the system, the board shall hold a special meeting to consider the challenge.

(C) The Executive Director of the Arkansas Teacher Retirement System shall issue a recommendation to the board along with the administrative record concerning the certified election results of the position being challenged.

(3) If a candidate challenges the election results, the election process shall be suspended for the same number of days that the resolution of the challenge requires and the remaining election schedule shall be adjusted accordingly.

(g) Upon completion of an election, all elected trustee terms, except for special elections, shall begin on July 1 following the election.

(h) For any fixed date in the election schedule that falls on a holiday or a weekend, the official date shall become the next business day.

§ 4-114. Unexpired terms of elected trustees.

(a) The Arkansas Teacher Retirement System staff shall notify the Board of Trustees of the Arkansas Teacher Retirement System of a resignation or vacancy by other cause in a trustee position as soon as possible after staff has knowledge of the resignation or vacancy.

(b) The board shall take appropriate action authorized by law to fill the vacancy.

(c)(1) The board by majority vote may appoint a trustee until the next system election.

(2) The appointment of a trustee shall be effective as of the date on which the trustee is appointed by the board.

(d)(1) A special election to fill a trustee position caused by resignation or vacancy by other cause shall be scheduled and held if the board by majority vote determines that the vacancy should be filled by a special election.

(2) If an elected trustee position is declared vacant by the board and the board determines that the vacancy should be filled by a special election, the system shall:

(A) Publish notice that a special election will be held; and

(B)(i) Announce the schedule for the special election.

(ii) The schedule for the special election shall include the following:

(a) The date the vacancy occurred and position being vacated;

(b) The time period for circulating petitions for nominating

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signatures;

- (c) The deadline for filing petitions with the system;
- (d) The date the system will verify the validity of petitions;
- (e) The date ballots will be sent to eligible voters;
- (f) The election date; and
- (g) The date the term shall begin.

(3) The system may publish public notices related to a special election in accordance with the rules governing a regular election of the system.

§ 4-115. Elected and appointed trustee terms.

(a)(1) The term of office of each elected trustee shall be six (6) years unless the trustee is elected in a special election.

(2) Each trustee shall continue to serve as trustee until the expiration of his or her term unless he or she resigns or is otherwise ineligible to continue serving as a trustee under this rule.

(3) In a year in which a six-year term of a trustee expires, the trustee position shall be filled under the regular election schedule provided in this rule.

(b) A trustee who is elected in a special election shall serve for the remainder of the six-year term of the vacating trustee.

(c)(1) A trustee who is appointed to the Board of Trustees of the Arkansas Teacher Retirement System shall serve until the next election of the Arkansas Teacher Retirement System that is held to fill the trustee position to which the trustee was appointed.

(2) The term of office of the person who is elected to fill the trustee position to which a trustee was appointed shall be six (6) years.

§ 4-116. Elected trustee vacancies.

(a) An active member trustee shall be ineligible to serve if he or she:

(1) Becomes inactive;

(2) Retires; or

(3) Changes his or her employment category during his or her term of office and the employment category is a requirement of the trustee position.

(b) A retiree member trustee shall be ineligible to serve after becoming an active member.

(c)(1) A trustee vacancy may occur if a trustee is absent from meetings.

(2) The Board of the Arkansas Teacher Retirement System or its designee shall notify the trustee after the trustee's second consecutive absence.

(3) The board by resolution shall vote to declare a position vacant if:

(A)(i) A trustee has three (3) consecutive unexcused absences from regular meetings of the board.

(ii) An absence that is excused by a majority of the members of the board shall not be counted towards a vacancy.

(iii) Attendance on either day of a two-day meeting of the board is sufficient to meet the attendance requirement for the two-day meeting of the board;

(B) A trustee becomes ineligible to serve on the board due to a change in status under Arkansas Code § 24-7-302 that results in the trustee being absent from three

(3) consecutive regular meetings of the board before the expiration of the trustee's term;
or

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(C) A trustee resigns or dies.

(d)(1) If the board by resolution declares a vacancy as provided under this rule, the board may vote to hold a special election to fill an unexpired term using the board's procedures to fill unexpired terms for elected trustees.

(2) If the board does not declare a vacancy by resolution under this rule, the vacancy shall be filled during the next regular system election held after the expiration of the vacating trustee's term.

Authority: Arkansas Code §§ 24-7-301, 24-7-302, and 24-7-305

History

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|---------------------------|--------------------------|------------------------|
| <u>Approved:</u> | <u>May 10, 2000</u> | <u>4-2</u> |
| <u>Amended:</u> | <u>April 26, 2007</u> | <u>4-1</u> |
| | <u>February 11, 2008</u> | <u>4-1,4-2</u> |
| | <u>December 18, 2009</u> | <u>4-1,4-2</u> |
| | <u>July 1, 2011</u> | <u>4-2 (Emergency)</u> |
| <u>Adopted:</u> | <u>August 8, 2011</u> | <u>4-2</u> |
| <u>Effective:</u> | <u>November 11, 2011</u> | <u>4-2</u> |
| <u>Approved by Board:</u> | <u>October 5, 2015</u> | <u>4-1</u> |
| <u>Amended:</u> | <u>February 1, 2016</u> | <u>4-1</u> |
| <u>Effective:</u> | <u>February 10, 2016</u> | <u>4-1</u> |
| <u>Effective:</u> | <u>August 5, 2019</u> | <u>Rule 4</u> |
| <u>Effective:</u> | <u>May 20, 2022</u> | <u>Rule4</u> |
| <u>Effective:</u> | <u>TBD</u> | <u>Rule 4</u> |

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Legal
BOARD/COMMISSION Arkansas Teacher Retirement System
PERSON COMPLETING THIS STATEMENT Jennifer Liwo
TELEPHONE NO. (501) 682-1517 **EMAIL** jenniferl@artrs.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 Rule 4: Election of Board of Trustees

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? *n/a*

Current Fiscal Year

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

Total \$0.00 _____

Next Fiscal Year

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

Total \$0.00 _____

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

Current Fiscal Year

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

Total \$0.00 _____

Next Fiscal Year

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

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 _____

n/a

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 _____

n/a

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.