

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative McGinnis

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 24-7-406 TO PROVIDE
9 ALTERNATE TAX TREATMENT OF MEMBER CONTRIBUTIONS FOR THE
10 TEACHER RETIREMENT SYSTEM UNDER SECTION 414(h) OF THE
11 INTERNAL REVENUE TAX CODE; TO DECLARE AN EMERGENCY; AND
12 FOR OTHER PURPOSES."

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Subtitle

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

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22 SECTION 1. Arkansas Code § 24-7-406 is amended to read as follows:

23 "24-7-406. Retirement fund assets accounts - Members' deposit account -
24 Contributions.

25 (a)(1) The members' deposit account shall be the account in which
26 shall be accumulated at regular interest the members' contributions to the
27 system and from which shall be paid refunds of accumulated contributions and
28 transfers as provided in this act; however, employer contributions which are
29 paid by an employee instead of an employer shall be credited to the members'
30 deposit account. Those contributions shall be subject to refund under the
31 same conditions that regular member contributions are refundable.

32 (2) Upon a member's retirement, his accumulated contributions
33 standing to his credit in the members' deposit account shall be transferred
34 to the retirement reserve account.

35 (3) In the event survivor benefits become payable on account of

1 the death of a member, his accumulated contributions standing to his credit
2 in the members' deposit account shall be transferred to the survivor benefit
3 account.

4 (b)(1) Except as provided otherwise in this section, the contributions
5 of a member to the system shall be the amounts set forth in this subsection.

6 (2) Each member who first became a member July 1, 1971, or later
7 shall contribute to the system six percent (6%) of his salary.

8 (3) Member contributions before July 1, 1969, shall be in
9 accordance with provisions in force before July 1, 1969.

10 (4) For each member who first became a member before July 1,
11 1971, member contributions for the period after June 30, 1969, shall be six
12 percent (6%) of the first seven thousand eight hundred dollars (\$7,800) of
13 his annual salary, unless he shall have elected, in accordance with rules and
14 regulations established by the board, to contribute six percent (6%) of his
15 full salary for the period after June 30, 1969. If the election is made
16 before July 1, 1984, the member must contribute to the system the difference
17 between full salary member contributions and member contributions based on
18 seven thousand eight hundred dollars (\$7,800) annual covered salary
19 retroactive to July 1, 1969, or to the actual date of employment, whichever
20 is later, plus regular interest from the dates the added contributions would
21 normally have been received by the system to the date of the actual added
22 contributions. If the election is made July 1, 1984, or later, the member
23 must contribute to the system both the added member contributions and the
24 added employer contributions which would have been paid to the system had the
25 member's full salary always been covered, plus regular interest from the
26 dates the added contributions would normally have been received by the system
27 to the date of the actual added contributions. The regular interest and added
28 employer contributions shall be considered member contributions for purposes
29 of the system.

30 (5) Members who left covered employment before July 1, 1985, and
31 who had annual compensation of seven thousand eight hundred dollars (\$7,800)
32 or less shall, upon their return to covered employment, have full salary
33 considered for purposes of the system.

34 (6) Contributions shall be required on all salary earned in
35 covered employment during the fiscal year in which membership begins.

1 (c)(1) Each employer shall deduct the member contributions provided
2 for in this section from the salary of each member on each and every payroll,
3 for each and every payroll period, from the date of his entrance into the
4 system until he retires, and the employer shall remit the contributions to
5 the system; however, a member who is receiving remuneration under both a
6 regular contract and a purchased contract, or under both a regular contract
7 and a contract won through litigation, shall have only the greater of the two
8 (2) amounts considered as salary for the purposes of the system. Should the
9 employer fail at any time to report the salary of a member and remit the
10 contributions to the system, the system shall have the right to collect from
11 the employee and the employer the contributions due, if any, from each,
12 together with regular interest beginning with the subsequent fiscal year;
13 provided further, in no case shall a member be given credit for service
14 rendered until any contributions and interest due from each are paid in full.

15 (2) The member's contributions provided for in this section
16 shall be made notwithstanding that the minimum salary provided by law for any
17 member shall be thereby changed.

18 (3) Each member shall be deemed to consent and agree to the
19 deductions made and provided for in this section. Payment of his salary less
20 the deductions shall be a full and complete discharge and acquittance of all
21 claims and demands whatsoever for the services rendered by the member during
22 the period covered by the payment, except as to benefits provided by the
23 system.

24 (4) The members' contributions, so deducted from their salaries,
25 shall be remitted to the system in such manner and form and in such frequency
26 and shall be accompanied by such supporting data as the board shall prescribe
27 from time to time.

28 (5) Money used by a school district to purchase a qualified tax-
29 sheltered annuity or a life insurance policy for a member in lieu of salary
30 shall be considered as salary for purposes of the system. Retainers,
31 consultant's fees, lump sum payments for unused sick leave, special payments
32 not in the form of regular remuneration, and stipends paid by an employer or
33 other educational agency which are five hundred dollars (\$500) or less in
34 amount shall not be considered salary for the purposes of the system.
35 Further, stipend amounts shall not be cumulative.

1 (d)(1) In addition to the contributions deducted from the salaries of
2 a member, as provided in this section, a member may deposit in the system, by
3 a single contribution or by an increased rate of contributions as approved by
4 the board, the amounts he may have received therefrom and not repaid thereto,
5 together with regular interest from the date of withdrawal to the date of
6 repayment.

7 (2) In no case shall a member be given credit for service
8 rendered prior to the date he received payments until he returns to the
9 system all amounts due from him.

10 (e)(1) A retirant may elect to make additional contributions to the
11 system in order to provide himself with additional benefits if he retired
12 after June 30, 1970, and is still receiving a system annuity and he had not
13 contributed on his full salary for the period after June 30, 1969.

14 (2) By written election made after June 1, 1981, the retirant
15 may contribute on his full salary in the same manner as provided in
16 subsection (b) of this section for members, but regular interest must be
17 added to the additional contributions for the period from the date the
18 relevant salary was paid to the date the contributions are received by the
19 system.

20 (3) When the contributions and interest are received, the
21 monthly annuity of the retirant shall be recalculated to be the annuity
22 amount which would be payable if the contributions had all been paid by the
23 effective date of retirement.

24 (4) The resulting increase in the monthly annuity shall be
25 effective for the calendar month after the date the payment of contributions
26 and interest is completed.

27 (f)(1) Each member may elect, by written election filed with the
28 system in accordance with rules and regulations adopted by the board, to
29 eliminate future member contributions otherwise provided for in this section.

30 (2) For a new member, the election shall become a binding
31 agreement upon its effective date, if the election is so filed before
32 preparation of the payroll containing his first salary payment, but in no
33 event before July 1, 1986. In all other circumstances, the election shall be
34 effective the July 1 immediately following the filing of the election, but in
35 no event before July 1, 1986.

1 (3) Beginning July 1, 1993, any member may change his election
2 concerning member contributions once each fiscal year, to be effective the
3 July 1 immediately following the filing of the election.

4 (4) If the election is to eliminate member contributions, then
5 the election shall apply only to future member salaries and shall not change
6 the status of any member contributions made before the election. If the
7 effect of the election is to require member contributions, then the election
8 shall apply only to future member salaries and shall not change any member
9 contribution requirements existing before the election. However, if a member
10 has previously contributed on only the first seven thousand eight hundred
11 dollars (\$7,800) of his annual salary, he cannot contribute on full future
12 salaries until he has made added contributions on past full salaries as
13 provided in subsection (b) of this section.

14 (5) All new members, including any former active members, shall
15 not make the member contributions otherwise provided for in this section.
16 Such members may elect, by written election filed with the system in
17 accordance with rules and regulations adopted by the board, to make
18 contributions as provided for in this section. Such election shall become a
19 binding agreement upon its effective date, if the election is so filed with
20 the system before the preparation of the payroll containing his first salary
21 payment. In all other circumstances, the election shall be effective the
22 July 1 immediately following the filing of the election.

23 (6) For a new member who files in compliance with subdivisions
24 (f)(1) or (f)(5), the effective date shall be the date the first paycheck is
25 received. In all other circumstances, the effective date shall be July 1.

26 (g)(1) Employees who are eligible for membership in the system under
27 §24-7-202, who are or have been erroneously enrolled in the Public Employees'
28 Retirement System, whose membership in that system is cancelled and whose
29 employee or employer contributions are refunded by that system under
30 §§24-2-301 - 24-2-305, shall be eligible to become members of either the
31 contributory plan or the noncontributory plan of this system under the
32 provisions of this section.

33 (2) If such an employee becomes an active member of the
34 contributory plan of this system, he may establish contributory credit for
35 all or part of his service that is cancelled by the Public Employees'

1 Retirement System by paying both the employee and employer contributions
2 required by this system, plus regular interest.

3 (3) If he becomes an active member of the noncontributory plan
4 of this system, he may establish noncontributory credit for all or part of
5 his service that is cancelled by the Public Employees' Retirement System by
6 paying the employer contributions required by this system, plus regular
7 interest.

8 (h) Each employer shall pay the member contributions required by this
9 section for each salary earned by a member after June 30, 1995 and those
10 contributions shall then be treated as employer contributions in determining
11 tax treatment under the provisions of the federal Internal Revenue Code and
12 the Arkansas Income Tax Act, Arkansas Code §§ 26-51-101 et. seq. Provided,
13 however, each employer shall continue to withhold federal and state income
14 taxes based upon those contributions as income of the member until the
15 federal Internal Revenue Service or the federal courts rule that, pursuant to
16 Section 414(h) of the Internal Revenue Code, the contributions shall not be
17 included as gross income of the member until they are distributed or made
18 available to the member. The employer shall pay these member contributions
19 from the same source of funds used in paying the salary to the member. The
20 employer may pay these contributions by a reduction in the cash salary of the
21 member, or by a setoff against future salary increases, or by a combination
22 of a reduction in salary and a setoff against future salary increases. If
23 member contributions are paid by the employer as provided under this
24 subsection, they shall be treated for all purposes of the Teacher Retirement
25 System in the same manner and to the same extent possible as member
26 contributions made prior to the date the employer began payment of the
27 member's contributions hereunder."

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29 SECTION 3. All provisions of this act of general and permanent nature
30 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
31 Revision Commission shall incorporate the same in the Code.

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33 SECTION 4. If any provisions of this act or the application thereof to
34 any person or circumstance is held invalid, the invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provisions or application, and to this end the provisions of this
2 act are declared to be severable.

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4 SECTION 5. All laws and parts of laws in conflict with this act are
5 hereby repealed.

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7 SECTION 6. Emergency. It is hereby found and determined by the
8 Eightieth General Assembly of the State of Arkansas that current language in
9 the federal Internal Revenue Code makes it imperative that changes be made in
10 laws of the Teacher Retirement System regarding employee contributions for
11 income tax treatment purposes; that those changes need to be made at the
12 beginning of the state fiscal year on July 1st; and that these changes are
13 essential to protect the interest of the membership of the Teacher Retirement
14 System. Therefore, in order to protect the members of the System, an
15 emergency is hereby declared to exist, and this act being necessary for the
16 immediate preservation of the public peace, health, and safety, shall be in
17 full force and effect from and after July 1, 1995.

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