

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

SENATE BILL 142

5 By: Senators J. Jeffress, Faris
6 By: Representatives Sullivan, Childers
7
8

For An Act To Be Entitled

9 AN ACT TO AMEND REFERENCES TO THE INTERNAL
10 REVENUE CODE IN ARKANSAS TEACHER RETIREMENT LAW
11 FOR CLARITY AND CONSISTENCY; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

15 AN ACT TO AMEND REFERENCES TO THE
16 INTERNAL REVENUE CODE IN ARKANSAS
17 TEACHER RETIREMENT LAW FOR CLARITY AND
18 CONSISTENCY.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 24-7-202 is amended to read as follows:
25 24-7-202. Definitions.

26 As used in this act, unless the context otherwise requires:

27 (1) "Accumulated contributions" means the total of all amounts
28 contributed by a member and standing to his or her credit in his or her
29 individual account in the members' deposit account, together with regular
30 interest credited thereon;

31 (2) "Active member" means any member rendering service which is
32 covered by the system;

33 (3) "Actuarial equivalent" means a benefit of equal reserve
34 value;

35 (4) "Annuity" means an annual amount payable by the system in
36 equal monthly installments throughout the life of a person or for a temporary



1 period;

2 (5) "Beneficiary" means any person who is receiving or is
3 designated to receive a system benefit by reason of the system membership of
4 another person;

5 (6) "Benefit program" means a schedule of benefits or benefit
6 formulas from which the amounts of system benefits can be determined;

7 (7) "Board" means the Board of Trustees of the Arkansas Teacher
8 Retirement System;

9 (8) "Child of a member" means either a natural child of the
10 member, a child that has been made a child of the member by applicable court
11 action before the death of the member, or a child under the permanent care of
12 the member at the time of the latter's death, which permanent care status
13 shall be determined by evidence satisfactory to the board;

14 ~~(9) "Code" means the federal Internal Revenue Code of 1986, as~~
15 ~~amended, as it existed on January 1, 2001;~~

16 ~~(10)~~(9) "Credited service" means service which is creditable as
17 service by the system;

18 ~~(11)~~(10) "Employee" means any person employed by a school in a
19 regular or special position;

20 ~~(12)~~(11) "Employer" means any school, habilitative services
21 corporation, or other educational agency participating in the system;

22 ~~(13)~~(12) "Employment with a school" means, beginning July 1,
23 1993:

24 (A) Employment with any of the following institutions or
25 agencies:

26 (i) Arkansas School for the Blind;

27 (ii) Arkansas School for the Deaf;

28 (iii) Arkansas Activities Association;

29 (iv) A local school board;

30 (v) Chief county school officers;

31 (vi) The State Board of Education;

32 (vii) Regional education cooperatives;

33 (viii) The state Surplus Property Program; and

34 (ix) The Arkansas Teacher Retirement System;

35 (B) Employment in a position with any of the following
36 organizations:

- 1 (i) Juvenile training schools;
- 2 (ii) The Arkansas Educational Television Commission;
- 3 and
- 4 (iii) Area vocational-technical schools, except
- 5 those employees of area vocational schools and the Department of Workforce
- 6 Education who have elected to participate in an alternate retirement plan
- 7 established by §§ 24-7-901 and 24-7-903 - 24-7-908;
- 8 (C) Employment by the Arkansas Rehabilitation Services or
- 9 the Division of State Services for the Blind, except those employees who have
- 10 elected to participate in the noncontributory plan of the Arkansas Public
- 11 Employees' Retirement System;
- 12 (D) Employment in a position with an educationally related
- 13 agency if the employee is or has been a member of the Arkansas Teacher
- 14 Retirement System for a minimum of five (5) years and elects to become or
- 15 remain a member of the system. The employment shall be related to the
- 16 training of public school employees or school board members, or teaching
- 17 public school students, or in adult education programs. The employment shall
- 18 not be related in any manner to private schools. Such an agency shall be
- 19 approved according to rules and regulations established by the board, shall
- 20 be considered an employer under subdivision ~~(12)~~(11) of this section, and
- 21 shall be responsible for all required employer contributions;
- 22 (E) Employment in an enterprise privatized by a public
- 23 school district. If a public school district should privatize any of its
- 24 services, any individual who is or was employed by the school district in one
- 25 (1) of those services and who is or has been a member of the Arkansas Teacher
- 26 Retirement System may elect to remain a member if the board determines
- 27 pursuant to rules and regulations adopted by the board that the participation
- 28 of these employees in the system will not in any way impair any legal status
- 29 of the system, including, but not limited to, its status as a governmental
- 30 plan pursuant to the federal Internal Revenue Code and the Employee
- 31 Retirement Income Security Act of 1974, or have a substantial adverse impact
- 32 on the actuarial soundness of the system and if the private provider assumes
- 33 all responsibility for the required employer contributions and any fees for
- 34 obtaining Internal Revenue rulings or Employee Retirement Income Security Act
- 35 of 1974 opinions; and
- 36 (F)(i) Employment in positions with educational nonprofit

1 corporations associated with the Community Providers Association in Arkansas
 2 if the nonprofit corporation has elected to participate in the Arkansas
 3 Teacher Retirement System, and if the board determines pursuant to rules and
 4 regulations adopted by the board that their participation will not in any way
 5 impair any legal status of the system, including, but not limited to, its
 6 status as a governmental plan pursuant to the federal Internal Revenue Code
 7 and the Employee Retirement Income Security Act of 1974, or have a
 8 substantial adverse impact on the actuarial soundness of the system.

9 (ii) The employment shall be related to the training
 10 of public school employees or school board members, or teaching public school
 11 students, or in adult education programs.

12 (iii) The employment shall not be related in any
 13 manner to private schools.

14 (iv) Each nonprofit corporation shall be approved
 15 according to rules and regulations established by the board, shall be
 16 considered an employer under subdivision ~~(12)~~(11) of this section, and shall
 17 be responsible for all required employer contributions and any fees for
 18 obtaining Internal Revenue rulings or Employee Retirement Income Security Act
 19 of 1974 opinions;

20 ~~(14)~~(13)(A)(i) "Final average salary" means, for a member who
 21 retires after June 30, 1997, the average of the annual salaries paid him or
 22 her during the period of not less than three (3) years nor more than five (5)
 23 years of credited service producing the highest annual average with the exact
 24 time period to be determined in accordance with the rules and regulations of
 25 the Board of Trustees of the Arkansas Teacher Retirement System as is
 26 actuarially appropriate for the system, subject to the provisions of
 27 subdivision ~~(23)~~(24)(A) of this section.

28 (ii) Prior to reducing the time period used to
 29 determine final average salary, the board shall file relevant information
 30 concerning the actuarial appropriateness of the action with the Joint Interim
 31 Committee on Public Retirement and Social Security Programs, and the action
 32 shall be reviewed by the committee.

33 (B) Should a member have less than the minimum of three
 34 (3) years of credited service, "final average salary" means the annual
 35 average of salaries paid him or her during his or her total years of credited
 36 service, subject to the provisions of subdivision ~~(23)~~(24)(A) of this

1 section;

2 ~~(15)~~(14) "Inactive member" means any former active member who is
3 no longer rendering service which is covered by the system and who is not a
4 retirant;

5 ~~(16)~~(15) "Interest" means the rate or rates per annum,
6 compounded annually, as the board shall adopt from time to time, that will be
7 charged for the purchase of service credit or to repay a refund, but the rate
8 shall equal no less than the system's current assumed interest rate
9 assumption;

10 (16) "Internal Revenue Code" means the federal Internal Revenue
11 Code of 1986, as amended, as it existed on January 1, 2005, except as
12 provided in § 24-7-406(c)(1)(A)(ii);

13 (17) "Member" means any person included in the membership of the
14 system;

15 (18) "Nonteacher" means any employee except a teacher;

16 (19) "Normal retirement age" means sixty-five (65) years of age;

17 (20) "Regular interest" means the rate or rates per annum,
18 compounded annually, that the board shall adopt from time to time, that will
19 be used to compute interest on members' contributions;

20 (21) "Reserve" means the present value of all payments to be
21 made on account of any system benefit based upon such reasonable tables of
22 experience and regular interest as the board shall adopt from time to time;

23 (22) "Retirant" means a former member receiving a system annuity
24 by reason of having been a member;

25 (23) "Retires" means the beginning of annuity payments to a
26 retirant;

27 (24)(A)(i) "Salary" means the remuneration paid an employee in a
28 position covered by the system and on which the employer withholds federal
29 income tax.

30 (ii) Provided, however, compensation in excess of
31 the limitations set forth in section 401(a)(17) of the Internal Revenue Code
32 shall be disregarded. The limitation on compensation for eligible employees
33 shall not be less than the amount which was allowed to be taken into account
34 under the system as in effect on July 1, 1993. For this purpose, an eligible
35 employee is an individual who was a member of the system before the first
36 plan year beginning after December 31, 1995.

1 (iii) However, when a member retires, the current
2 year's salary used in the computation of retirement benefits shall not exceed
3 one hundred ten percent (110%) of the previous year's salary, unless the
4 increase is a direct result of a promotion, change in position, incremental
5 increase provided in the school district salary schedule, or an increase in
6 school revenues.

7 (B) Should a portion of an employee's remuneration be paid
8 other than in cash, the cash value of the remuneration shall be established
9 by the system in an amount not to exceed the amount the employee is required
10 to report for federal income tax purposes.

11 (C)(i) In determining salary, employer pick-up
12 contributions, cafeteria plans as defined in § 21-5-901, and employee
13 contributions to tax-sheltered annuities shall be included.

14 (ii) Provided, however, a member may establish
15 salary earned under a purchase service contract with a covered employer by
16 paying employee and employer contributions plus interest.

17 (D) Money which is in lieu of remuneration and which is
18 used by an employer to purchase a qualified tax-sheltered annuity or a life
19 insurance policy for an employee shall be considered as salary for system
20 purposes.

21 (E) An employee who is receiving remuneration under both a
22 regular contract and a purchased contract or under both a regular contract
23 and a contract won through litigation shall have only the greater of the two
24 (2) amounts considered as salary for system purposes.

25 (F) Should an employee make a charitable donation or
26 return any part of his or her salary to his or her employer, the amount of
27 his or her recurring remuneration otherwise usable as salary shall be reduced
28 by such amount or amounts to arrive at his or her salary for system purposes.

29 (G) In case of any dispute concerning an employee's salary
30 for system purposes, the system shall have the power to settle the dispute;

31 (25) "School" means any public school under the control of
32 school authorities of the state and supported wholly or partially by state
33 moneys;

34 (26) "Service" means employment rendered as an employee;

35 (27) "Social security" means the federal social security old
36 age, survivors and disability insurance program;

- 1 (28) "State" means the State of Arkansas;
- 2 (29) "System" means the Arkansas Teacher Retirement System;
- 3 (30)(A) "Teacher" means, beginning July 1, 1989, any person
- 4 employed by a school for the purpose of giving instructions and whose
- 5 employment requires state certification.
- 6 (B) In any case of question as to who is a teacher, the
- 7 board shall have the final power to decide the question; and
- 8 (31) "Trustee" means a member of the board.

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10 SECTION 2. Arkansas Code § 24-7-210(a), concerning operation of the

11 Arkansas Teacher Retirement System consistent with the federal Internal

12 Revenue Code, is amended to read as follows:

13 (a) The Executive Director of the Arkansas Teacher Retirement System

14 is authorized and directed to operate the Arkansas Teacher Retirement System

15 and interpret any provisions of § 24-7-101 et seq. consistent with the

16 requirements under the ~~federal Internal Revenue Code of 1986, as amended, as~~

17 ~~it existed on January 1, 2001,~~ and applicable United States Treasury

18 regulations necessary to permit the system to be operated as a "qualified

19 trust" under section 401(a) of the code.

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21 SECTION 3. Arkansas Code § 24-7-730(b)(2)(D), concerning benefit

22 distribution compliance, is amended to read as follows:

23 (D) Notwithstanding the provisions of this subchapter, all

24 distributions of benefits under the system shall comply with the requirements

25 of section 401(a)(9) of the ~~federal Internal Revenue Code as it existed on~~

26 ~~January 1, 2001,~~ and the regulations thereunder, including United States

27 Treasury Regulation § 1.401(a)(9)-2, and those provisions shall override any

28 distribution options in this chapter that are inconsistent with section

29 401(a)(9).

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31 SECTION 4. Arkansas Code § 24-7-733 is amended to read as follows:

32 24-7-733. Limitation on benefits.

33 (a) Notwithstanding the provisions of this subchapter, benefits paid

34 under the Arkansas Teacher Retirement System shall not exceed the limitations

35 of section 415 of the ~~federal Internal Revenue Code as it existed on January~~

36 ~~1, 2001,~~ that are applicable to governmental retirement plans, including, but

1 not limited to, the dollar limitations in section 415(b)(1)(A).

2 (b) "Compensation" for purposes of determining section 415 compliance
3 shall be defined as set forth in United States Treasury Regulation § 1.415-
4 2(d)(2) as it existed on January 1, 2001, and shall include any elective
5 deferrals as defined in section 402(g)(3) of the ~~federal~~ Internal Revenue
6 Code ~~as it existed on January 1, 2001~~, and any amount which is contributed or
7 deferred by a member's employer at the election of the member and which is
8 not includable in the gross income of the member by reasons of sections 125
9 or 457 of the ~~federal~~ Internal Revenue Code ~~as it existed on January 1, 2001~~.

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11 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
12 General Assembly of the State of Arkansas that the applicability of the
13 Internal Revenue Code is unclear in current Arkansas Teacher Retirement
14 Systems laws; that this act is necessary to clarify the issue and ensure
15 consistent and correct application of Arkansas Teacher Retirement System
16 provisions; and that the most effective time to make changes to the
17 retirement system is at the beginning of the state's fiscal year. Therefore,
18 an emergency is declared to exist and this act being immediately necessary
19 for the preservation of the public peace, health, and safety shall become
20 effective on July 1, 2005.

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