

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

HOUSE BILL 1140

5 By: Representative Nickels  
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## For An Act To Be Entitled

8 AN ACT TO PREVENT INEQUITY IN THE CALCULATION OF  
9 FINAL AVERAGE SALARY BY REMOVING THE ANTISPIKING  
10 PROVISIONS FOR A MAJOR GAP OF EMPLOYMENT UNDER THE  
11 ARKANSAS TEACHER RETIREMENT SYSTEM; TO DECLARE AN  
12 EMERGENCY; AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO PREVENT INEQUITY IN THE CALCULATION OF  
16 FINAL AVERAGE SALARY BY REMOVING THE  
17 ANTISPIKING PROVISIONS FOR A MAJOR GAP OF  
18 EMPLOYMENT UNDER THE ARKANSAS TEACHER  
19 RETIREMENT SYSTEM; TO DECLARE AN  
20 EMERGENCY.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code § 24-7-202(27), concerning the definition of  
27 "salary" under the Arkansas Teacher Retirement System Act, is amended to read  
28 as follows:

29 (27)(A)~~(i)(a)~~ "Salary" means the remuneration paid to a member  
30 employed in a position covered by the Arkansas Teacher Retirement System on  
31 which the employer withholds federal income tax.

32 ~~(b)(B)~~ "Salary" includes:

33 (i) an An incentive bonus paid to an employee for  
34 the employee's certification by the National Board of Professional Teaching  
35 Standards under § 6-17-413r; and

36 ~~(ii)(a) However, compensation in excess of the~~



1 ~~limitations set forth in section 401(a)(17) of the Internal Revenue Code of~~  
2 ~~1986 shall be disregarded.~~

3 ~~(b) The limitation on compensation for~~  
4 ~~eligible employees shall not be less than the amount that was allowed to be~~  
5 ~~taken into account under the Arkansas Teacher Retirement System as in effect~~  
6 ~~on July 1, 1993. For this purpose, an eligible employee is an individual who~~  
7 ~~was a member of the Arkansas Teacher Retirement System before the first plan~~  
8 ~~year beginning after December 31, 1995.~~

9 ~~(c) However, compensation in excess of the~~  
10 ~~limitations set forth in section 401(a)(17) of the Internal Revenue Code of~~  
11 ~~1986 shall be disregarded.~~

12 ~~(iii)(a)(1) The applicable number of years used in~~  
13 ~~computing final average salary for retirement benefits shall be set by the~~  
14 ~~board.~~

15 ~~(2) Only full service years shall be~~  
16 ~~used in the calculation.~~

17 ~~(3) The applicable number of highest~~  
18 ~~salary years shall be ranked from lowest to highest remuneration.~~

19 ~~(4) The lowest remuneration year in the~~  
20 ~~ranking shall be the base year.~~

21 ~~(5) The next highest ranked remuneration~~  
22 ~~year shall be compared to the base year.~~

23 ~~(6) The next highest year's value in the~~  
24 ~~calculation of final average salary shall not exceed one hundred twenty~~  
25 ~~percent (120%) of the base year, unless the difference in value between the~~  
26 ~~next highest year and the base year is five thousand dollars (\$5,000) or~~  
27 ~~less.~~

28 ~~(7) After comparison of the base year to~~  
29 ~~the next highest year, any required reduction to the next highest year shall~~  
30 ~~be made.~~

31 ~~(8) The next highest year, with any~~  
32 ~~required reduction, becomes the new base year to compare to the next~~  
33 ~~succeeding highest remuneration year in the ranking until all years in the~~  
34 ~~ranking have been compared to its base and reduced as necessary according to~~  
35 ~~the formula.~~

36 ~~(9) The total value of the base years~~

1 ~~shall then be averaged to determine final average salary.~~

2 ~~(b) If full service years of service are not~~  
3 ~~available for the number of applicable years of service required by board~~  
4 ~~rule for the calculation of a member's final average salary for retirement~~  
5 ~~benefits, the board may promulgate rules to establish a fair base year for a~~  
6 ~~member's final average salary for purposes of comparison under subdivision~~  
7 ~~(27)(A)(iii)(a) of this section.~~

8 ~~(iv) If a member's salary includes remuneration paid~~  
9 ~~other than in cash, the cash value of the remuneration is considered in the~~  
10 ~~amount the employer is required to report for federal income tax purposes.~~

11 ~~(B)(i) In determining salary, employer Employer pick-up~~  
12 ~~contributions, cafeteria plans as defined in § 21-5-901, and employee~~  
13 ~~contributions to qualified retirement plans, including without limitation~~  
14 ~~qualified annuities and deferred compensation plans, shall be included.~~

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

18 ~~(iii) Employment contracts purchased by a covered~~  
19 ~~employee or won through litigation that results in either a consent~~  
20 ~~agreement, judgment, or decree may be counted as salary upon payment of all~~  
21 ~~required member and employer contributions, including interest, to the~~  
22 ~~system.~~

23 ~~(iv) A member who receives remuneration under a~~  
24 ~~regular contract and a purchased contract or under both a regular contract and~~  
25 ~~a contract won through litigation shall have the greater of two (2) amounts~~  
26 ~~considered as salary for the purposes of determining the final average salary~~  
27 ~~of the member.~~

28 ~~(v) A retirement annuity may be based on service~~  
29 ~~credit covered by the purchased contract.~~

30 ~~(vi) A contributory employee's contributions and an~~  
31 ~~employer's contributions are required on covered salary including~~  
32 ~~contributions that are paid concurrently with other remuneration for another~~  
33 ~~covered employer or used in calculating member benefits.~~

34 ~~(C) A member who is receiving remuneration under both a~~  
35 ~~regular contract and a purchased contract or under both a regular contract~~  
36 ~~and a contract won through litigation, consent agreement, judgment, or decree~~

1 shall have only the greater of the two (2) amounts considered as salary for  
 2 Arkansas Teacher Retirement System purposes.

3 ~~(D) A member's contributions if contributory and an~~  
 4 ~~employer's contributions are required on covered salary, including salary~~  
 5 ~~that is paid concurrently with other remuneration from another covered~~  
 6 ~~employer, even if the salary is not used in calculating member benefits.~~

7 ~~(E) Retirement annuities may be based on service credit~~  
 8 ~~covered by the purchased contract.~~

9 ~~(F) In case of any dispute concerning an employee's salary~~  
 10 ~~for Arkansas Teacher Retirement System purposes, the Arkansas Teacher~~  
 11 ~~Retirement System may settle the dispute;~~

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 13 SECTION 2. Arkansas Code Title 24, Chapter 7, Subchapter 7 is amended  
 14 to add additional sections to read as follows:

15 24-7-735. Calculation of final average salary.

16 (a) Compensation in excess of the limitations set forth in section  
 17 401(a)(17) of the Internal Revenue Code of 1986, as it existed on January 1,  
 18 2011, shall not be used for purposes of calculating final average salary on  
 19 which benefits under the Arkansas Teacher Retirement System shall be based.

20 (b)(1) The limitation on compensation for an eligible employee shall  
 21 not be less than the amount that was allowed to be taken into account under  
 22 the system as in effect on July 1, 1993.

23 (2) As used in subdivision (b)(1) of this section, "eligible  
 24 employee" means an individual who was a member of the system before the first  
 25 plan year beginning after December 31, 1995.

26 (c)(1) The Board of Trustees of the Arkansas Teacher Retirement System  
 27 shall set the applicable number of years to be used in computing final  
 28 average salary for retirement benefits.

29 (2)(A) Full service years shall be used in the calculation  
 30 unless the member has a partial service year that is higher than a full  
 31 service year.

32 (B) If the member does not accrue three (3) full-service  
 33 years, the board may establish by rule a fair base year for a member's final  
 34 average salary for purposes of comparison under subdivision (c)(3) of this  
 35 section.

36 (3)(A) The applicable number of highest salary years shall be

1 ranked from lowest to highest remuneration.

2 (B) The lowest remuneration year in the ranking shall be  
3 the base year.

4 (C) The next highest ranked remuneration year shall be  
5 compared to the base year.

6 (D) The next highest year's value in the calculation of  
7 final average salary shall not exceed one hundred twenty percent (120%) of  
8 the base year, unless the difference in value between the next-highest year  
9 and the base year is five thousand dollars (\$5,000) or less.

10 (4) After comparison of the base year to the next-highest year,  
11 any required reduction to the next-highest year shall be made.

12 (5) The next highest year, with any required reduction, becomes  
13 the new base year to compare to the next succeeding highest remuneration year  
14 in the ranking until all years in the ranking have been compared to its base  
15 and reduced as necessary under subdivision (c)(3) of this section.

16 (6) The total value of the base years shall then be averaged to  
17 determine final average salary.

18 (d) If a member has a break in covered employment for eight (8) years  
19 or more between any of the member's three (3) highest salary years,  
20 subdivision (c)(3)(D) of this section shall not apply.

21 (e) The system may settle any dispute concerning an employee's salary  
22 for purposes of the system.

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24 24-7-736. Salary contracts – Additional remuneration.

25 (a) A member may establish salary earned under a contract that is  
26 bought-out by a covered employer by paying employee and employer  
27 contributions plus interest.

28 (b) In determining salary, a retirement annuity may be based on  
29 service credit covered by the purchased contract.

30 (c)(1) Employment contracts purchased by a covered employee or won  
31 through litigation that results in either a consent agreement, judgment, or  
32 decree may be counted as salary upon payment of all required member and  
33 employer contributions, including interest, to the Arkansas Teacher  
34 Retirement System.

35 (2) A member who receives remuneration under a regular contract  
36 and a purchased contract or under both a regular contract and a contract won

1 through litigation, consent agreement, judgment, or decree shall have the  
2 greater of the two (2) amounts considered as salary for the purposes of  
3 determining the final average salary of the member.

4 (d) If a member's salary includes remuneration paid other than in  
5 cash, the cash value of the remuneration is considered in the amount the  
6 employer is required to report for federal income tax purposes.

7 (e) A contributory member's contributions and an employer's  
8 contributions are required on covered salary, including:

9 (1) Contributions that are paid concurrently with other  
10 remuneration for another covered employer or used in calculating member  
11 benefits; and

12 (2) Salary that is paid concurrently with other remuneration  
13 from another covered employer, even if the salary is not used in calculating  
14 member benefits.

15 (f) Retirement annuities may be based on service credit covered by a  
16 purchased contract.

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18 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
19 General Assembly of the State of Arkansas that certain provisions of the  
20 Arkansas Teacher Retirement System Act are in urgent need of revision to  
21 bring them into conformance with sound public pension policy; that this  
22 revision is of great importance to members of the Arkansas Teacher Retirement  
23 System and to other citizens of the State of Arkansas; that certain members  
24 are unfairly penalized in the calculation of their final average salary if  
25 they have a substantial gap in covered employment; that the antispiking  
26 provisions of the law were not intended to penalize such members; and that  
27 this act is necessary in order to maintain an orderly system of benefits for  
28 the members of the Arkansas Teacher Retirement System. Therefore, an  
29 emergency is declared to exist and this act being necessary for the  
30 preservation of the public peace, health, and safety shall become effective  
31 on July 1, 2011.

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