

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4
5 By: Representative Rye
6

A Bill

HOUSE BILL 1287

For An Act To Be Entitled

8 AN ACT TO PROVIDE CERTAIN EMPLOYERS WITH THE OPTION
9 TO PAY A SURCHARGE FOR OUTSOURCED EMPLOYEES IN LIEU
10 OF MEMBERSHIP IN THE ARKANSAS TEACHER RETIREMENT
11 SYSTEM; TO DECLARE AN EMERGENCY; AND FOR OTHER
12 PURPOSES.

Subtitle

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16 TO PROVIDE CERTAIN EMPLOYERS WITH THE
17 OPTION TO PAY A SURCHARGE FOR OUTSOURCED
18 EMPLOYEES IN LIEU OF MEMBERSHIP IN THE
19 ARKANSAS TEACHER RETIREMENT SYSTEM; AND
20 TO DECLARE AN EMERGENCY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code § 24-7-202(17), concerning the definition of
26 "employment in a school" under the Arkansas Teacher Retirement System Act, is
27 amended to add an additional subdivision to read as follows:

28 (G) Employment with a school that elects to treat its
29 outsourced employees as members of the system;
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31 SECTION 2. Arkansas Code Title 24, Chapter 7, Subchapter 5, is amended
32 to add an additional section to read as follows:

33 24-7-506. Outsourcing - Election to participate - Definitions.

34 (a) As used in this section:

35 (1) "Covered employer" has the same meaning as an employer
36 defined under § 24-7-202;



1 (2) "Embedded employee" means a person who is outsourced or
2 whose services are outsourced and is an outsourced employee;

3 (3) "Outsource" or "outsourcing" means the employment of a
4 person or entity to perform work for a covered employer through a third
5 party, a private employer, an independent contractor, or other contractual
6 relationship;

7 (4) "Outsourced employer" means an employer who is the employer
8 of an outsourced employee;

9 (5) "Outsourced employee" means a person who works for an
10 outsourced employer and performs a service for a covered employer that is
11 common to the normal daily operation of the covered employer's functions;

12 (6) "Participating employer" means an employer that outsources
13 and opts for embedded employees to become members of the Arkansas Teacher
14 Retirement System;

15 (7) "Surcharge employer" means an employer that outsources and
16 pays a surcharge to the system in lieu of opting for embedded employees to
17 become members of the system; and

18 (8)(A) "Service common to the normal daily operation" means any
19 service provided by an outsourced employer, outsourced employee, or embedded
20 employee to a covered employer that constitutes a:

21 (i) Primary function or obligation of the covered
22 employer;

23 (ii) Necessary action performed on a regular,
24 continuous basis for the efficient operation of the covered employer;

25 (iii) Commonly provided activity;

26 (iv) Service procured by the covered employer on a
27 regular, continuous basis through custom and usage; or

28 (v) Required or authorized activity under law as a
29 service common to the normal daily operation.

30 (B) "Service common to the normal daily operation"
31 includes without limitation:

32 (i) Direct administrative service whether provided
33 by licensed or unlicensed personnel and their support staff;

34 (ii) Education service whether provided by licensed
35 or unlicensed personnel and their support staff;

36 (iii) Food service that includes without limitation

1 the planning, supervision, direction, management, and responsibility for the
2 operations of a regular food or cafeteria service;

3 (iv) Transportation service for the covered employer
4 that includes without limitation the planning, supervision, direction,
5 management, performance, and responsibility for the operations of a
6 transportation facility;

7 (v) Custodial or maintenance service that includes
8 without limitation the planning, supervision, direction, management,
9 performance, and responsibility for the regular, continuous maintenance,
10 repair, and upkeep of the covered employer's grounds and facilities;

11 (vi) School security service that is not covered by
12 another retirement system and is performed on the covered employer's grounds
13 and facilities;

14 (vii) Health-related service that includes without
15 limitation certified or noncertified and licensed or nonlicensed nurses,
16 health aides, or practical nurses; and

17 (viii) Service performed as a substitute teacher or
18 in another part-time position.

19 (C) "Service common to the normal daily operation" does
20 not include:

21 (i) Service performed on a vending machine installed
22 on the covered employer's grounds or facilities;

23 (ii) Equipment repair service performed under an
24 equipment warranty or lease agreement;

25 (iii) Emergency service to repair the covered
26 employer's grounds or facilities;

27 (iv) Solid waste disposal and transportation of
28 waste to a solid waste facility;

29 (v) Extraordinary service not commonly performed by
30 the covered employer's employees;

31 (vi) Architectural and engineering service related
32 to designing and building the covered employer's grounds or facilities;

33 (vii) Consultant service that involves, for a
34 particular purpose, temporarily providing an analysis of, advice on, or
35 reports concerning a special project to the covered employer;

36 (viii) Pest control, heating, ventilation, air

1 conditioning, and refrigeration, construction, and other related service; and
2 (ix) Service provided by a licensed contractor,
3 auditor, attorney, or other similar professional who is not under the covered
4 employer's supervision.

5 (b) A covered employer that enters into an agreement to outsource a
6 service common to the normal daily operation shall make an irrevocable
7 election to be either a participating employer or a surcharge employer within
8 sixty (60) days of the outsourcing agreement on a form provided by or in a
9 manner established by the system.

10 (c) If a covered employer elects to become a surcharge employer as
11 provided under subsection (b) of this section, then the:

12 (1) Covered employer shall account for and remit a surcharge of
13 up to ten percent (10%) of the embedded employee's salary to the system in
14 the same manner as required for covered employer contributions and reporting
15 under § 24-7-401;

16 (2) Embedded employee shall not be a member of the system and
17 the surcharge employer shall not be a covered employer of the system for any
18 purpose relating to the embedded employee; and

19 (3) System shall not pay benefits to the embedded employee based
20 on the surcharge remitted under subdivision (c)(1) of this section.

21 (d) If a covered employer elects to become a participating employer as
22 provided under subsection (b) of this section, then the covered employer
23 shall account for and remit each of the covered employer's contributions in
24 the same amount and in the same manner as required for covered employer
25 contributions under § 24-7-401 and member contributions under § 24-7-406.

26 (e) The system may require a covered employer that makes an election
27 under subsection (b) of this section to provide any documentation necessary
28 to collect and account for the surcharge or contributions as is consistent
29 with the covered employer's election.

30 (f) The system may collect an unremitted surcharge amount due,
31 including interest, from a surcharge employer under § 24-7-401 or
32 contribution due from a participating employer under § 24-7-406 in any manner
33 allowed by law.

34 (g)(1) A covered employer or an outsourced employer may request a
35 determination from the system as to whether an embedded employee will perform
36 a service common to the normal daily operation of the covered employer's

1 normal daily operation.

2 (2) A request under subdivision (g)(1) of this section shall
3 include:

4 (A) Information about the employment relationship and
5 contract provisions necessary for the system to evaluate the service provided
6 to the covered employer; and

7 (B) Any additional information requested by the system in
8 order to make the determination.

9 (3) The Board of Trustees of the Arkansas Teacher Retirement
10 System may promulgate rules necessary to administer the provisions of this
11 section.

12 (h) A nonmandatory employer or post-secondary or higher education
13 employer as defined under § 24-7-1602 is not a covered employer for the
14 purposes of this section.

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16 SECTION 3. DO NOT CODIFY. Within sixty (60) days of the effective date
17 of this act, a covered employer that is outsourcing a service common to the
18 normal daily operation shall make an irrevocable election to be either a
19 participating employer or a surcharge employer on a form provided by or in a
20 manner established by the Arkansas Teacher Retirement System.

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22 SECTION 4. DO NOT CODIFY. Each covered employer shall provide the
23 Arkansas Teacher Retirement System with a preliminary report accounting for
24 each outsourced position, outsourced employer, and the total salary paid for
25 outsource positions no later than sixty (60) days from the effective date of
26 this act. The collection of contributions or surcharges under § 24-7-506 may
27 be implemented in phases. The system shall not collect a contribution or
28 surcharge from an outsourced employee or outsourced employer under § 24-7-506
29 prior to fiscal year 2017-2018.

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31 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that the retirement security of our
33 state's educators and teachers has been a cornerstone of our educational
34 system since the General Assembly created the Arkansas Teacher Retirement
35 System under Act 266 of 1937; that Act 266 of 1937 provided that retirement
36 security under the Arkansas Teacher Retirement System "shall be an integral

1 part of the contract entered into by any teacher and the school board
2 employing such teacher"; that the Arkansas Teacher Retirement System is a
3 vital component in the attraction and retention of dedicated, high-quality
4 educators and teachers; that those educators and teachers, as well as the
5 operations and infrastructure to support their efforts, make a major
6 contribution to the wellbeing of the citizens of Arkansas; that the
7 operations of the Arkansas Teacher Retirement System are complex; that the
8 Arkansas Teacher Retirement System must be able to meet the needs of its
9 members as anticipated by the General Assembly; that current practices to
10 keep costs competitive and manage school budgets within the amounts allocated
11 for education by the General Assembly have increased the practice of
12 outsourcing services that are a common part of the normal daily operation of
13 the school's responsibilities and duties to persons who perform these
14 services and jobs through a private employer; that the private employer does
15 not contribute to the Arkansas Teacher Retirement System and yet benefits
16 from the infrastructure that is the operation of the educational system
17 mandated by the General Assembly; that for every job that is outsourced to
18 the private sector, the remaining employees in the Arkansas Teacher
19 Retirement System bear the burden of the loss of contributions by the
20 outsourced employer and outsourced employee; that this act is needed to
21 account for and address the lack of contributions from the outsourced
22 employers and outsourced employees in a manner responsible and fair to all
23 school employees; that the Arkansas Teacher Retirement System requires
24 immediate calculations to evaluate the impact of outsourcing on its members
25 and their retirement security; that certain provisions of the Arkansas
26 Teacher Retirement System are imminently in need of revision and updating to
27 operate the Arkansas Teacher Retirement System efficiently and effectively;
28 that such revision and updating is of great importance to members of the
29 Arkansas Teacher Retirement System, to the State of Arkansas in fulfilling
30 its contractual obligations to educators and teachers and the operations
31 necessary to support their efforts on behalf of all citizens, and to other
32 citizens of the State of Arkansas; and that this act is immediately necessary
33 to maintain an orderly management of benefits for the members of the Arkansas
34 Teacher Retirement System. Therefore, an emergency is declared to exist, and
35 this act being immediately necessary for the preservation of the public
36 peace, health, and safety shall become effective on:

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(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.