

1 State of Arkansas
2 91st General Assembly
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4
5 By: Representative Rye
6

As Engrossed: H3/2/17

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 *EMBEDDED* EMPLOYEES IN LIEU OF
10 MEMBERSHIP IN THE ARKANSAS TEACHER RETIREMENT SYSTEM;
11 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

15 TO PROVIDE CERTAIN EMPLOYERS WITH THE
16 OPTION TO PAY A SURCHARGE FOR *EMBEDDED*
17 EMPLOYEES IN LIEU OF MEMBERSHIP IN THE
18 ARKANSAS TEACHER RETIREMENT SYSTEM; AND
19 TO DECLARE AN EMERGENCY.

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

24 *SECTION 1. Arkansas Code § 24-7-202(17), concerning the definition of*
25 *"employment in a school" under the Arkansas Teacher Retirement System Act, is*
26 *amended to add an additional subdivision to read as follows:*

27 *(G) Employment with a covered employer that elects to*
28 *treat embedded employees of a contractor as members of the system;*

30 *SECTION 2. Arkansas Code Title 24, Chapter 7, Subchapter 5, is amended*
31 *to add an additional section to read as follows:*

32 *24-7-506. Outsourcing – Election to participate – Definitions.*

33 *(a) As used in this section:*

34 *(1)(A) "Covered employer" means any public school, public*
35 *educational agency, or other eligible employer participating in the Arkansas*
36 *Teacher Retirement System;.*



1 (B) "Covered employer" does not include a nonmandatory
2 employer or a PSHE employer as defined under § 24-7-1602;

3 (2)(A) "Embedded employee" means a person who:

4 (i) Provides an outsourced service on the premises
5 of a covered employer; and

6 (ii) Is employed and paid by an outsource
7 contractor.

8 (B) "Embedded employee" does not include a person who is
9 employed by:

10 (i) A covered employer listed under § 24-7-202; or

11 (ii) An employer that offers the Arkansas Teacher
12 Retirement System as an optional retirement plan as of the date of
13 outsourcing;

14 (3) "Outsource" or "outsourcing" means the use of a contractor
15 by a covered employer for the performance of a service common to the normal
16 daily operation on the premises of the covered employer;

17 (4) "Outsource contractor" means a person who is contractually
18 obligated under an outsourcing agreement to provide a covered employer with a
19 service common to the normal daily operation of the covered employer;

20 (5) "Participating employer" means a covered employer that
21 outsources and opts for the embedded employees of all of its outsource
22 contractors to become members of the Arkansas Teacher Retirement System;

23 (6)(A) "School nursing" means a nursing service that is required
24 to be offered in a public school under § 6-18-706 or the Standards for
25 Accreditation of Arkansas Public Schools and School Districts.

26 (B) "School nursing" does not include nursing services
27 provided by a:

28 (i) School-based health clinic under § 6-18-703;

29 (ii) Medical clinic operated on a public school
30 campus by a hospital or physician's office that is under contract with the
31 public school;

32 (iii) Healthcare provider other than a nurse; or

33 (iv) Healthcare service reimbursed or paid for by
34 Medicaid, Medicare, health insurance, or any other third-party payer;

35 (7) "Service common to the normal daily operation" means and is
36 limited to a service that:

1 (A) Is provided by an outsource contractor or embedded
2 employee to a covered employer;

3 (B) Is physically provided or based on the premises of a
4 covered employer;

5 (C) Is paid for with public funds and not with private
6 grant funds; and

7 (D) Consists of one (1) or more of the following:

8 (i) The maintenance and operation of:

9 (a) One (1) or more vehicles used for the
10 regular and daily transport of passengers; and

11 (b) A facility that provides support for the
12 maintenance and operation of one (1) or more vehicles described under
13 subdivision (a)(7)(D)(i)(a) of this section;

14 (ii) The maintenance and operation of a cafeteria or
15 other food service operation;

16 (iii) Custodial or maintenance services for the
17 regular and continuous maintenance, repair, and upkeep of grounds or
18 facilities;

19 (iv) Security services that are not covered by
20 another retirement system;

21 (v) School nursing;

22 (vi) Substitute teaching; or

23 (vii) Service as a teacher's aide; and

24 (8) "Surcharge employer" means a covered employer that
25 outsources and pays a surcharge to the Arkansas Teacher Retirement System in
26 lieu of opting for the embedded employees of outsource contractors to accrue
27 service credit in the Arkansas Teacher Retirement System.

28 (b) A covered employer that enters into an agreement to outsource a
29 service common to the normal daily operation shall make an irrevocable
30 election to be either a participating employer or a surcharge employer within
31 sixty (60) days of the outsourcing agreement on a form provided by or in a
32 manner established by the Arkansas Teacher Retirement System.

33 (c)(1) If a covered employer elects to become a surcharge employer
34 under this section, then the covered employer shall account for and remit to
35 the Arkansas Teacher Retirement System a monthly surcharge on the total
36 salaries paid to all the embedded employees on an aggregate basis as follows:

1 (A) Five-tenths of one percent (0.5%) during the 2018
2 fiscal year;

3 (B) One percent (1%) during the 2019 fiscal year;

4 (C) Two percent (2%) during the 2020 fiscal year;

5 (D) Three percent (3%) during the 2021 fiscal year; and

6 (E) An amount not to exceed four percent (4%) during the
7 2022 fiscal year and succeeding fiscal years as established by a resolution
8 of the Board of Trustees of the Arkansas Teacher Retirement System at a
9 meeting of the board.

10 (2) If the covered employer is outsourcing on the effective date
11 of this act, the surcharge shall be payable beginning in the 2018 fiscal
12 year.

13 (3) A surcharge adopted by the board applies to an entire fiscal
14 year and shall be adopted prior to the beginning of the fiscal year.

15 (d) If a covered employer elects to become a participating employer as
16 provided under this section, then the covered employer shall account for and
17 remit each of the covered employer's contributions in the same amount and in
18 the same manner as required for covered employer contributions under § 24-7-
19 401 and member contributions under § 24-7-406.

20 (e)(1)(A) A covered employer that begins outsourcing after the
21 effective date of this act and elects to become a participating employer may
22 phase-in the election by selecting an effective date that is no later than
23 the beginning of the third fiscal year after the effective date of the
24 outsourcing agreement.

25 (B) During the phase-in of becoming a participating
26 employer, the covered employer shall account for and remit a phase-in
27 surcharge in the same amount and manner required of a surcharge employer
28 under subsection (c) of this section.

29 (2)(A) If a covered employer is outsourcing on the effective
30 date of this act and the covered employer elects to become a participating
31 employer, then the covered employer may phase-in the election by selecting an
32 effective date that is no later than the beginning of the fourth fiscal year
33 after the effective date of this act.

34 (B) During the phase-in of becoming a participating
35 employer, the covered employer shall account for and remit a phase-in
36 surcharge in the same amount and manner as required of a surcharge employer

1 under subsection (c) of this section.

2 (f)(1) The Arkansas Teacher Retirement System may require a covered
3 employer that makes an election under this section to provide any
4 documentation necessary to collect and account for the surcharge or
5 contributions as is consistent with the covered employer's election.

6 (2) The Arkansas Teacher Retirement System may collect an
7 unremitted surcharge amount due, including interest, from a surcharge
8 employer under § 24-7-401 or contribution due from a participating employer
9 under § 24-7-406 in any manner allowed by law.

10 (3) If a covered employer reasonably accepts a written statement
11 from an outsource contractor reporting the salaries paid by the outsource
12 contractor to embedded employees for services common to the normal daily
13 operation of the covered employer, it shall be conclusively presumed that the
14 written statement accurately reflects the salaries subject to surcharge under
15 this section.

16 (g)(1) A covered employer or an outsource contractor may request a
17 determination from the Arkansas Teacher Retirement System as to whether an
18 embedded employee performs or will perform a service common to the normal
19 daily operation of a covered employer.

20 (2) A request made under subdivision (g)(1) of this section
21 shall include:

22 (A) Information about the employment relationship and
23 contract provisions that are necessary for the Arkansas Teacher Retirement
24 System to evaluate the service provided to the covered employer; and

25 (B) Any additional information requested by the Arkansas
26 Teacher Retirement System to make the determination.

27 (3) The board may promulgate rules necessary to administer this
28 section.

29 (h)(1) The Division of Youth Services Education System shall be a
30 participating employer and may designate any or all of its embedded employees
31 as eligible for membership in the Arkansas Teacher Retirement System.

32 (2) An embedded employee of a contractor for the Division of
33 Youth Services Education System who becomes a member of the Arkansas Teacher
34 Retirement System shall remain a member of the Arkansas Teacher Retirement
35 System as long as the member remains an embedded employee of a contractor for
36 the Division of Youth Services Education System.

1 (i) The use of the terms "employee" and "employer" in this section
2 does not:

3 (1) Create or modify an employment relationship between an
4 embedded employee and a covered employer;

5 (2) Create, permit, expand, or modify any liability or obligation
6 by a covered employer to an embedded employee; or

7 (3) Create, permit, expand, or modify any cause of action by an
8 embedded employee against a covered employer under any employment, labor,
9 civil rights, or other law.

10
11 SECTION 3. DO NOT CODIFY. Within sixty (60) days of the effective date
12 of this act, a covered employer that is outsourcing a service common to
13 normal daily operation shall make an irrevocable election to be either a
14 participating employer or a surcharge employer on a form provided by or in a
15 manner established by the Arkansas Teacher Retirement System.

16
17 SECTION 4. DO NOT CODIFY. Except for the Division of Youth Services
18 Education System, each covered employer shall provide the Arkansas Teacher
19 Retirement System with a preliminary report accounting for the total amount
20 of salary paid to embedded employees of outsource contractors no later than
21 sixty (60) days from the effective date of this act.

22
23 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
24 General Assembly of the State of Arkansas that the retirement security of our
25 state's educators and teachers has been a cornerstone of our educational
26 system since the General Assembly created the Arkansas Teacher Retirement
27 System under Act 1937, No. 266; that Act 1937, No. 266, provided that
28 retirement security under the Arkansas Teacher Retirement System "shall be an
29 integral part of the contract entered into by any teacher and the school
30 board employing such teacher"; that the Arkansas Teacher Retirement System is
31 a vital component in the attraction and retention of dedicated, high-quality
32 educators and teachers; that those educators and teachers, as well as the
33 operations and infrastructure to support their efforts, make a major
34 contribution to the wellbeing of the citizens of Arkansas; that the
35 operations of the Arkansas Teacher Retirement System are complex; that the
36 Arkansas Teacher Retirement System must be able to meet the needs of its

1 members as anticipated by the General Assembly; that current practices to
2 keep costs competitive and manage education budgets within the amounts
3 allocated by the General Assembly have increased the practice of outsourcing
4 services that are a common part of normal daily operation of a covered
5 employer's responsibilities and duties to persons who perform these services
6 and jobs through a private employer; that the private employer does not
7 contribute to the Arkansas Teacher Retirement System and yet benefits from
8 the infrastructure that is the operation of the educational system mandated
9 by the General Assembly; that for every job that is outsourced to the private
10 sector, the remaining employees in the Arkansas Teacher Retirement System
11 bear the burden of the loss of contributions by the outsource contractors and
12 embedded employees; that this act is needed to account for and address the
13 lack of contributions from the outsourced contractors and embedded employees
14 in a manner responsible and fair to all education employees; that the
15 Arkansas Teacher Retirement System requires immediate calculations to
16 evaluate the impact of outsourcing on its members and their retirement
17 security; that certain provisions of the Arkansas Teacher Retirement System
18 are imminently in need of revision and updating to operate the Arkansas
19 Teacher Retirement System efficiently and effectively; that such revision and
20 updating is of great importance to members of the Arkansas Teacher Retirement
21 System, to the State of Arkansas in fulfilling its contractual obligations to
22 educators and teachers and the operations necessary to support their efforts
23 on behalf of all citizens, and to other citizens of the State of Arkansas;
24 and that this act is immediately necessary to maintain an orderly management
25 of benefits for the members of the Arkansas Teacher Retirement System.
26 Therefore, an emergency is declared to exist, and this act being immediately
27 necessary for the preservation of the public peace, health, and safety shall
28 become effective on:

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

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

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

35
36 /s/Rye