

Stricken language would be deleted from and underlined language would be added to present law.
Act 575 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/2/17
A Bill

HOUSE BILL 1287

By: Representative Rye

For An Act To Be Entitled

AN ACT TO PROVIDE CERTAIN EMPLOYERS WITH THE OPTION TO PAY A SURCHARGE FOR *EMBEDDED* EMPLOYEES IN LIEU OF MEMBERSHIP IN THE ARKANSAS TEACHER RETIREMENT SYSTEM; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

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

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

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

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

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

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

(a) As used in this section:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Healthcare provider other than a nurse; or

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

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

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

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

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

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

(i) The maintenance and operation of:

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

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

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

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

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

(v) School nursing;

(vi) Substitute teaching; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

under subsection (c) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/s/Rye

APPROVED: 03/22/2017