

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

As Engrossed: S2/14/19  
**A Bill**

SENATE BILL 222

By: Senator E. Cheatham

### **For An Act To Be Entitled**

AN ACT TO AMEND THE LAW CONCERNING MEMBER CONTRIBUTIONS UNDER THE ARKANSAS TEACHER RETIREMENT SYSTEM; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### **Subtitle**

TO AMEND THE LAW CONCERNING MEMBER CONTRIBUTIONS UNDER THE ARKANSAS TEACHER RETIREMENT SYSTEM; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative history, findings, and intent.

(a) The General Assembly finds that:

(1) Member contributions as a portion of the salary of an individual employed by a school or an educational institution has been a historical component of the Arkansas Teacher Retirement System since 1937;

(2) Acts 1937, No. 266 created the Arkansas Teacher Retirement System to manage contributions made by teachers to the retirement system in order to ensure that every teacher receives an annuity upon his or her retirement;

(3) The Arkansas Teacher Retirement System Act originally required a teacher to contribute four percent (4%) of his or her salary to fund the investment of the retirement system in the retirement of the teacher;

(4) When the Arkansas Teacher Retirement System Act was first



enacted, every teacher:

(A) Had to contribute to the retirement system; and

(B) Was enrolled as a contributory member of the retirement system;

(5) Throughout the eighty-one (81) year history of the retirement system, the law has been amended multiple times to either allow a member to opt-in or opt-out of his or her contributory or noncontributory status in the retirement system as follows:

(A) From the time the Arkansas Teacher Retirement System Act was first enacted until 1986, the provisions of the act did not provide an option for a member to become a noncontributory member that was consistent with the design of the retirement system;

(B) Acts 1985, No. 504 allowed a new member of the retirement system to elect whether he or she would participate as a contributory or noncontributory member of the retirement system, and if the member did not make an election, the member was enrolled as a contributory member of the retirement system;

(C) Amendments to the Arkansas Teacher Retirement System Act that occurred between 1986 and 1991 added new categories of employees from various state agencies or eligibility requirements that affected the reporting or classifications of the employees;

(D) Acts 1989, No. 821 allowed a member of the retirement system to make a one-time additional election to become a contributory or noncontributory member of the retirement system;

(E) Effective July 1, 1991, a new member of the retirement system was enrolled as a noncontributory member of the retirement system and could elect to become a contributory member of the retirement system.

(F) Additionally, effective July 1, 1991, if a member became an inactive member who later returned to the retirement system, the member was enrolled as a noncontributory member of the retirement system with the option of electing to become a contributory member of the retirement system;

(G) Similar to Acts 1985, No. 504, Acts 1991, No. 14 allowed new and returning members to the retirement system to be enrolled as noncontributory members of the retirement system with the option of electing to become a contributory member of the retirement system;

(H) Acts 1993, No. 435, effective July 1, 1993, allowed a member to annually change his or her status from a:

(i) Contributory to noncontributory member of the retirement system; or

(ii) Noncontributory to contributory member of the retirement system;

(I) Acts 1995, No. 332 added more state agency employees to the retirement system while Acts 1995, No. 542 changed the amount of service an employee was required to have before he or she could become an active member of the retirement system;

(J) Acts 1997, No. 393 amended the annual election window of a member to be effective for July 1 of the year of the election if the member made the election before October of that same year;

(K) Acts 1999, No. 81, effective July 1, 1999, eliminated the noncontributory option for a new member and allowed a current member a one-time irrevocable option to become either a contributory or noncontributory member of the retirement system;

(L) Acts 1999, No. 81 set a different requirement for an election to become either a contributory or noncontributory member of the retirement system that was based on the status of the member as an active, inactive, or new member of the retirement system;

(M) Acts 1999, No. 907 repealed Acts 1999, No. 81 and allowed certain members to retain the option to elect either contributory or noncontributory status in the retirement system;

(N) The Arkansas Teacher Retirement System notified the members of the retirement system of the election permitted under Acts 1999, No. 907, and allowed a member with service credit as of June 30, 1998 to make a final election to become a contributory or noncontributory member of the retirement system by June 30, 2000;

(O) Acts 2003, No. 23 allowed an active member who previously elected a noncontributory status to make an irrevocable election to become a contributory member of the retirement system;

(P) Additionally, Acts 2003, No. 23 required the length of a contract between a member and school to determine the:

(i) Status of a member as a contributory or noncontributory member of the retirement system; and

(ii) Right of a member to elect a contributory or noncontributory status in the retirement system;

(Q) Acts 2003, No. 23 permitted a member who transferred from employment as a nonteacher to employment as a teacher with a contract of one hundred eighty-one (181) days or more to become a contributory member of the retirement system regardless of a previous election made by the member;

(R) Effective July 1, 2005, Acts 2005, No. 385 provided an active member who previously elected to become a noncontributory member of the retirement system with the option of irrevocably electing to become a contributory member of the retirement system; and

(S) Effective July 1, 2007, Acts 2007, No. 93 provided a member with an option to elect to be a contributory member depending on whether the member was:

(i) An active, non-contributory member of the retirement system;

(ii) An inactive member or a rescinding retiree reentering the retirement system; or

(iii) A new member of the retirement system under contract for one hundred eighty (180) days or less;

(6) The right of a member to elect a contributory or noncontributory status in the retirement system has not been amended since the passage of Acts 2007, No. 93;

(7) Myriad legislative amendments have continuously changed the ability of a member of the retirement system to become a revocable or irrevocable contributory or noncontributory member of the retirement system;

(8) The classification of a member as an active, an inactive, or a new member of the retirement system affects the right of a member to elect a contributory or noncontributory status in the retirement system;

(9) The incorporation of the various legislative amendments into the Arkansas Code has created challenging subsections and subdivisions of the law through which the retirement system must determine the status of a member based on when the member first:

(A) Enrolled in the retirement system;

(B) Returned to the retirement system; or

(C) Elected a different status in the retirement system;

(10) The election of a contributory or noncontributory status in

the retirement system affects the retirement benefit calculation for a member;

(11) A restructuring of § 24-7-406(e) concerning the contributory or noncontributory status of a member of the retirement system is intended to retain existing law without impairing, broadening, or changing the applicability of § 24-7-406(e) to the current status of a member;

(12) The purpose of the amendment to § 24-7-406(e) is to simplify the current language and application of the statute to the current contributory or noncontributory status of a member of the retirement system, so that the retirement system may correctly and efficiently manage records pertaining to a member; and

(13) Therefore, a restructuring of § 24-7-406(e) is necessary to:

(A) Accurately and logically organize the language of the statute in order to prevent ambiguity of the law and allow the Arkansas Teacher Retirement System to administer vested benefits and manage the accounts of its members;

(B) Clarify the existing provisions under § 24-7-406(e) so that the provisions may be correctly interpreted and efficiently managed by the retirement system;

(C) Preserve and retain existing law regarding the vested contributory or noncontributory status of a member of the retirement system;

(D) Neither expand nor contract a current vested or nonvested contributory or noncontributory status of a member of the retirement system; and

(E) Provide a logical framework for a future amendment to § 24-7-406(e).

SECTION 2. Arkansas Code § 24-7-406(e), concerning retirement fund asset accounts, member deposit accounts, and contributions under the Arkansas Teacher Retirement System, is amended to read as follows:

~~(e)(1)(A) Active members as of July 1, 1999, shall elect by written election filed with the system in accordance with rules and regulations adopted by the board to eliminate future member contributions or to make member contributions, otherwise provided for in this section.~~ Effective July 1, 1999, an active member shall:

(i) Elect to become a contributory or noncontributory member of the system as provided for in this section; and

(ii) File a written election with the system in accordance with the rules and regulations adopted by the board.

(B)(i) The election of the member:

(a) shall be Is irrevocable; and

(b) shall Shall be made on or before July 1, 2000.

(ii) If no election is made, then the member's status on June 30, 2000, shall be in effect and shall be irrevocable If a member does not make an election, then the status of the member on June 30, 2000:

(a) Remains in effect;

(b) Is irrevocable.

(iii) The election of a member to become a contributory or noncontributory member of the system:

(a) Applies only to the future salaries of a member of the system;

(b) Does not alter the contribution requirements of a member; and

(c) Does not alter the status of member contributions that existed before the election.

(iv) An active member who previously elected to become a noncontributory member of the system may change credited service on which a member contribution has not been paid to contributory credited service by paying the system the actuarial equivalent of the member benefits.

(v) If a member previously made contributions to only the first seven thousand eight hundred dollars (\$7,800) of his or her annual salary, then the member cannot contribute on a full future salary until the member makes additional contributions to previous full salaries as provided under this section.

(C)(i) Effective July 1, 2005, an active member whose status later changes from a nonteacher status to an administrator or teacher status under contract for one hundred eighty-one (181) days or more shall become a contributory member of the system otherwise provided for in this section regardless of an earlier election to be a noncontributory member of

the system.

(ii)(a) From July 1, 2005 to June 30, 2007, an active member who has previously elected to be a noncontributory member of the system may make an irrevocable election to become a contributory member of the system.

(b) If the election is made before the preparation of the first salary payment to the member in the fiscal year, the election is effective immediately.

(c) If the election is made after the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the election is effective July 1 of the next fiscal year.

(D) On and after July 1, 2007, an active member who has previously been a noncontributory member of the system, by election or otherwise, may make an irrevocable election to become a contributory member of the system under this section.

~~(2)(A) For an inactive member who enters the system after June 30, 1999, the election shall be made within one (1) year of the effective date the member is considered an active member~~ Effective July 1, 1999, an inactive member who reenters the system shall elect to become a contributory or noncontributory member of the system within one (1) year of the effective date that the member is considered an active member of the system.

(i) The election is effective the earlier of the:

(a) Preparation of the payroll containing the first salary payment upon the reentry of the member into the system; or

(b) July 1 immediately following the date the election is filed with the system.

(ii) If the member does not make an election within one (1) year, then the status of the member before the member reentered the system remains in effect.

~~(B)(i)(B) The election shall be effective the earlier of:~~  
~~(a) The preparation of the payroll containing the first salary payment upon reentry; or~~

~~(b) The July 1 next following the date the election is filed with the system.~~

~~(ii) If no election is made within one (1) year,~~

~~then the member's status prior to reentry will remain in effect~~ Effective July 1, 2007, an inactive member who becomes an active member of the system shall reenter as a contributory member of the system if the member was contributory when he or she first entered the inactive status;

(C) Effective July 1, 2007, an inactive member or a rescinding retiree who reenters the system may make an irrevocable election to become contributory member of the system under this section at the time of his or her reemployment regardless of his or her previous noncontributory status.

(D) If the election is made:

(i) Before the preparation of the first salary payment to the member in the fiscal year, the election is effective immediately; and

(ii) After the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the election is effective July 1 of the next fiscal year.

~~(3)(A)(i)(3) If the election is to eliminate member contributions, then the election shall apply only to future member salaries and shall not change the status of any member contributions made before the election~~ Effective July 1, 1999, a new member shall be a contributory member of the system.

(A) From July 1, 1999 to June 30, 2007, a new member who is under contract with a covered employer for one hundred eight (180) days or less shall have one (1) year to make an irrevocable election to become a contributory member of the system.

(B) From July 1, 1999 to June 30, 2007, a new member who is not under contract with a covered employer shall not become a contributory member of the system.

(C)(i) Effective July 1, 2007, a new member under contract with a covered employer for one hundred eight-one (181) days or more shall be a contributory member of the system.

(ii) A new member under contract with a covered employer for one hundred eighty (180) days or less may make an irrevocable election to become a contributory member of the system.

(iii) A new member not under contract with a covered employer may make an irrevocable election to become a contributory member of

the system under this section.

~~(ii) Beginning July 1, 1999, an active member who has previously elected to eliminate member contributions may change credited service on which no member contributions have been paid to contributory credited service by paying the actuarial equivalent of the member's benefits to the system.~~

~~(B)(i) If the effect of the election is to require member contributions, then the election shall apply only to future member salaries and shall not change any member contribution requirements existing before the election.~~

~~(ii) If a member has previously contributed on only the first seven thousand eight hundred dollars (\$7,800) of his or her annual salary, then he or she cannot contribute on full future salaries until he or she has made added contributions on past full salaries as provided in subsection (b) of this section.~~

~~(4)(A)(i) After July 1, 1999, all new members shall make the member contributions otherwise provided for in this section. From July 1, 1999, through June 30, 2007, new members who are under contract with a covered employer for one hundred eighty (180) days or less shall have one (1) year to make an irrevocable election to make member contributions.~~

~~(ii) Effective July 1, 2005, any active member whose status later changes from nonteacher status to teacher status under contract for one hundred eighty one (181) days or more shall make the member contributions otherwise provided for in this section regardless of an earlier election to be noncontributory.~~

~~(B) Through June 30, 2007, new members who are not under contract with a covered employer shall not make member contributions.~~

~~(5)(A)(4)(A) From July 1, 2005, and each July 1 thereafter through June 30, 2007, active members who have previously elected to eliminate member contributions may make an irrevocable election to make future contributions to the system. The board may exclude the participation of a member under this subsection if the board determines that the contributions of a member may not be treated as employer contributions under the:~~

~~(i) Internal Revenue Code, 26 U.S.C. § 1 et seq., or~~

~~(ii) Income Tax Act of 1929, § 26-51-101 et seq.~~

~~(B) If the election is made:~~

~~(i) Before the preparation of the first salary payment to the member in the fiscal year, the election shall become effective immediately; and~~

~~(ii) After the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the election shall become effective July 1 of the next fiscal year. The board shall interpret this subsection in a manner that is consistent with the requirements of the:~~

~~(i) Internal Revenue Code; and~~

~~(ii) Applicable United States Department of the Treasury regulations under the Internal Revenue Code, 26 U.S.C. § 401(a).~~

~~(6)(A)(i) Effective July 1, 2007, new members who are under contract with a covered employer for one hundred eighty-one (181) days or more shall make member contributions under this section.~~

~~(ii) Effective July 1, 2007, persons reentering the system who left as contributory members shall reenter as contributory members and shall make member contributions under this section.~~

~~(B)(i) Effective July 1, 2007, new members who are under contract with a covered employer for one hundred eighty (180) days or less and new members who are not under contract with a covered employer may make an irrevocable election to make future member contributions under this section.~~

~~(ii) Effective July 1, 2007, and each July 1 thereafter, active members who have previously been noncontributory, whether by election or otherwise, may make an irrevocable election to make future member contributions under this section.~~

~~(iii) Effective July 1, 2007, inactive members or rescinding retirees reentering the system may make an irrevocable election to make future member contributions under this section at the time of reemployment regardless of previous noncontributory status.~~

~~(iv) If the election is made:~~

~~(a) Before the preparation of the first salary payment to the member in the fiscal year, the election shall become effective immediately; and~~

~~(b) After the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the~~

~~election shall become effective July 1 of the next fiscal year.~~

~~(C) If the board determines that a member's contributions may not be treated as employer contributions under the Internal Revenue Code, 26 U.S.C. § 1 et seq., or the Income Tax Act of 1929, § 26-51-101 et seq., the board may exclude the member's participation under this subsection.~~

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Teacher Retirement System maintains a system of member records that reflect the contributory or noncontributory status of each member in the system according to the laws in effect at the time and, if an election was made, the election of a member; that numerous laws enacted over many legislative sessions have modified, amended, or repealed the laws enacted in previous sessions concerning the contributory or noncontributory status of members of the Arkansas Teacher Retirement System; that accurately keeping track of these election options requires precise administrative recordkeeping and understanding of the laws in effect at the time a member first entered the system or was allowed to exercise a membership option; that the laws need to be simplified to reduce the risk of confusion of keeping track of these election options; and that this act is necessary because the most effective time to make changes to the retirement system is at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.

*/s/E. Cheatham*

**APPROVED: 3/5/19**