

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1183

By: Representative Maddox
By: Senator K. Hammer

For An Act To Be Entitled

AN ACT TO AMEND AND UPDATE PROVISIONS FOR OUTSOURCING
UNDER THE ARKANSAS TEACHER RETIREMENT SYSTEM; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND AND UPDATE PROVISIONS FOR
OUTSOURCING 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. Arkansas Code § 24-7-506 is amended 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:

(i) Nonmandatory employer or a PSHE employer as
defined under § 24-7-1602; or

(ii) Covered employer that reports through the
Arkansas Administrative Statewide Information System;

(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~~ the covered employer’s 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~~ become 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~~ A surcharge employer shall account for and remit to the Arkansas Teacher Retirement System a ~~monthly~~ surcharge of no more than four percent (4%) 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 August 1, 2017, the surcharge shall be payable beginning in the 2018 fiscal year. The Board of Trustees of the Arkansas Teacher Retirement System may establish by resolution the surcharge rate for any fiscal year following the 2022 fiscal year.~~

~~(3) A surcharge adopted by the board applies to an entire fiscal year and shall be adopted ~~prior to~~ before 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 August 1, 2017, 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 August 1, 2017, 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 August 1, 2017.~~

~~(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)(d)(1)~~ The Arkansas Teacher Retirement System may require a

~~covered employer that makes an election under this section~~ surchage employer 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~~ shall 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~~ surchage 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~~ surchage 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)(e)(1)~~ (e)(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)~~(f) 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.

(g) The board may promulgate rules to implement this section.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, need revision and updating to address reporting, contribution, and other administrative complexities caused by these provisions and to bring these provisions into conformance with sound public pension policy and actuarial requirements; that the revisions and updates are of great importance to members and covered employers of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that as the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30, a July 1, 2023, effective date is necessary in order to allow the provisions within this act to begin on the first day of the fiscal year and to allow for a structured and proper administration of the procedures referenced in this act; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance and necessary for protecting member benefits and clarifying the reporting and contribution requirements of employers participating in the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. 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, 2023.