

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

SENATE BILL 58

4
5 By: Senator J. Key

For An Act To Be Entitled

8 AN ACT TO AMEND VARIOUS STATUTES CONCERNING THE
9 ARKANSAS LOCAL POLICE AND FIRE RETIREMENT SYSTEM; AND
10 FOR OTHER PURPOSES.

Subtitle

14 TO AMEND VARIOUS STATUTES CONCERNING THE
15 ARKANSAS LOCAL POLICE AND FIRE RETIREMENT
16 SYSTEM.

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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code § 24-10-102 is amended to read as follows:
22 24-10-102. Definitions.

23 As used in this chapter:

24 (1)(A) "Accumulated contributions" means the total of all
25 amounts contributed by a member and standing to his or her credit in his or
26 her individual account in the Arkansas Local Police and Fire Retirement
27 System, together with regular interest thereon.

28 (B) Beginning July 1, 2009, accumulated contributions
29 shall be separated into after-tax contributions and picked-up contributions
30 under § 24-10-404(f);

31 (2) "Active member" means any member who renders actual service
32 in a position covered by the system;

33 (3)(A) "Actual service" means service rendered in a position
34 covered by the system.

35 (B) "Actual service" does not mean purchased service,
36 service under § 24-10-508, or reciprocal service;



1 ~~(2)~~(4) “Actuarial equivalent” means a benefit of equal reserve
2 value, ~~where~~ when “reserve” means the present value of all payments to be
3 made on account of any benefit based upon such reasonable rates of interest
4 and tables of experience as the system shall adopt from time to time;

5 ~~(3)~~(5)(A) “Actuary” means a qualified actuary with experience in
6 retirement plan financing.

7 (B) Membership in the American Academy of Actuaries shall
8 be sufficient for a person to be deemed a qualified actuary;

9 ~~(4)~~(6) “Age” means age on last birthday;

10 ~~(5)~~(7) “Annuity” means a monthly amount payable throughout the
11 life of a person or for a temporary period;

12 ~~(6)~~(8) “Beneficiary” means any person who is receiving or
13 designated by a member to receive a plan benefit, except a retirant;

14 ~~(7)~~(9) “Benefit program” means a schedule of benefits or benefit
15 formulas from which the amounts of benefits can be determined;

16 ~~(8)~~(10) “Board” means the board of trustees of the system;

17 ~~(9)~~(11) “Covered employment” means employment as a police
18 officer or firefighter in a position covered by the system;

19 ~~(10)~~(A)(12) “Credited service” means covered employment that is
20 creditable as service by the system and is the total of paid service and
21 volunteer service;

22 ~~(B) Credited service cannot be both paid service and~~
23 ~~volunteer service for the same period of time.~~

24 ~~(11)~~(13)(A) “Dependent child” means a child until his or her
25 death, his or her marriage, or his or her attainment of ~~age~~ eighteen (18)
26 years of age, whichever occurs first.

27 (B)(i) The age-eighteen maximum shall be extended as long
28 as the child continues uninterruptedly being a full-time student at an
29 accredited secondary school, college, or university, but in no event beyond
30 the first day of the month after his or her attainment of ~~age~~ twenty-three
31 (23) years of age.

32 (ii) The age-eighteen maximum shall also be extended
33 for any child who has been deemed physically or mentally incompetent by an
34 Arkansas court of competent jurisdiction or by the board for as long as the
35 incompetency exists;

36 ~~(12)~~(14) “Effective date” of the system means July 1, 1981;

1 ~~(13)~~(15)(A) "Employee" means any person regularly employed by a
2 political subdivision who receives remuneration from the political
3 subdivision for personal services rendered as a police officer or
4 firefighter.

5 (B) "Employee" shall not include any person who acts for
6 the political subdivision under contract or is paid on a fee basis.

7 (C) "Employee" shall include any person regularly employed
8 by the administration of the system;

9 ~~(14)~~(16) "Employer" means any political subdivision that has its
10 eligible employees covered by the system or the Arkansas Local Police and
11 Fire Retirement System as employer of its administrative staff;

12 ~~(15)~~(17)(A) "Final average pay" means the monthly average of the
13 pays to an employee during the period of thirty-six (36) consecutive months
14 of credited service producing the highest monthly average, but the period
15 must be contained within the period of one hundred twenty (120) consecutive
16 months of credited service immediately preceding his or her separation from
17 covered employment.

18 (B) Should a member have less than thirty-six (36) months
19 of credited service, "final average pay" means the monthly average of pays to
20 him or her during his or her total months of credited service.

21 (C)(i) In any event, pays usable in determining final
22 average pay shall be limited by the test in subdivision ~~(15)(C)(ii)~~
23 (17)(c)(ii) of this section, considering the final average pay period in four
24 (4) contiguous segments.

25 (ii)(a) Pays during any one (1) annual segment shall
26 be usable only to the extent that the pays do not exceed thirty-one percent
27 (31%) of the total pays in the final average pay period.

28 (b) However, if the final average pay period
29 is less than four (4) full years, the maximum usable thirty-one percent (31%)
30 shall be increased proportionately.

31 (D)(i) For the limited purposes of calculating final
32 average pay for disability retirement benefits under § 24-10-607, pay shall
33 include workers' compensation benefits received by the member.

34 (ii) However, the pay that is increased for any
35 month for the limited purposes of calculating this final average pay shall
36 not be greater than the current pay attached to the rank of the member;

1 ~~(16)~~(18)(A) “Firefighter” means any regular or permanent
2 employee of a fire department of a political subdivision, including a
3 probationary firefighter.

4 (B) ~~The term “firefighter” shall~~ “Firefighter” does not
5 include any civilian employee of a fire department or any person temporarily
6 employed as a firefighter during an emergency;

7 ~~(17)~~(19) “General Assembly” means the General Assembly of the
8 state;

9 ~~(18)~~(20)(A) “Inflation index” means the Consumer Price Index for
10 Urban Wage Earners and Clerical Workers, U.S. City Average, as determined by
11 the United States Department of Labor and in effect January 1, 1981.

12 (B) Should the inflation index be restructured subsequent
13 to 1980 in a manner materially changing its character, the board after
14 receiving the advice of its actuary shall change the application of the
15 inflation index so that, as far as is practicable, the 1980 intent of the use
16 of the inflation index shall be continued;

17 ~~(19)~~(21) “Joint Committee on Public Retirement” means the Joint
18 Committee on Public Retirement and Social Security Programs created by §§ 10-
19 3-701 – 10-3-703, or any successor committee;

20 ~~(20)~~(22) “Member” means any police officer or firefighter
21 included in the membership of the system or a person regularly employed by
22 the administration of the system;

23 ~~(21)~~(23) “Normal retirement age” means the younger of the
24 following ages:

25 (A) ~~Age fifty-five~~ Fifty-five (55) years of age if the
26 member has at least twenty (20) years of credited service;

27 (B) ~~Age sixty~~ Sixty (60) years of age if the member has
28 less than twenty (20) years of credited service; or

29 (C) Any age if the member has twenty-eight (28) or more
30 years of credited service;

31 ~~(22)~~(24) “Operative date” of the system means January 1, 1983;

32 ~~(23)~~(25) “Paid service” is covered employment that is half-time
33 employment or more and that becomes credited service. For a calendar month in
34 1981 to become paid service, the police officer or firefighter ~~must~~ shall be
35 paid at least five hundred dollars (\$500) for that month’s personal services
36 as a police officer or firefighter. For any calendar year after 1981, the

1 ~~five hundred dollars (\$500)~~ monthly minimum of five hundred dollars (\$500)
 2 shall be increased by any percentage increase in the inflation index for the
 3 period from October 1980 to the October immediately preceding the calendar
 4 year;

5 ~~(24)~~(26)(A) "Pay" means the recurring remuneration paid an
 6 employee for personal services rendered by the employee in a position covered
 7 by the system and shall not exceed the amount the employee is required to
 8 report for federal income tax purposes.

9 ~~(B) Should a portion of an employee's remuneration be paid~~
 10 ~~him or her other than in cash, the cash value of the remuneration shall be~~
 11 ~~established by the system, in an amount not to exceed the amount the employee~~
 12 ~~is required to report for federal income tax purposes.~~

13 ~~(C)~~(B) In determining pay, ~~no~~ consideration shall not be
 14 given to:

- 15 (i) Special single-sum payments paid by an employer;
- 16 (ii) Employer contributions to any employee benefit
- 17 plan; or
- 18 (iii) Any other unusual or nonrecurring
- 19 remuneration.

20 (C) Annual compensation in excess of the limitations under
 21 Section 401(a) of the Internal Revenue Code of 1986, as it existed on January
 22 1, 2011, shall be disregarded;

23 ~~(25)~~(27)(A) "Police officer" means any regular or permanent
 24 employee of a police department of a political subdivision, including a
 25 probationary police officer.

26 (B) ~~The term "police officer" shall~~ "Police officer" does
 27 not include any civilian employee of a police department or any person
 28 temporarily employed as a police officer during an emergency;

29 ~~(26)~~(28) "Political subdivision" means:

- 30 (A) Incorporated towns;
- 31 (B) Cities of the first class;
- 32 (C) Cities of the second class;
- 33 (D) Counties;
- 34 (E) Fire protection districts that maintain standards
- 35 established by the board;
- 36 (F) Rural fire protection corporations; and

1 (G) Suburban improvement districts;

2 ~~(27)~~(29) "Regular interest" means such reasonable rate or rates
3 per annum, compounded annually, as the board shall adopt;

4 ~~(28)~~(30) "Relief fund" means:

5 (A) Any police officers' pension and relief fund created
6 by state law, applicable to police officers, and covering one (1) or more
7 persons on December 31, 1982; or

8 (B) Any fire fighters' relief and pension fund created by
9 state law, applicable to firefighters, and covering one (1) or more persons
10 on December 31, 1982;

11 ~~(29)~~(31) "Retirant" means a former member receiving a plan
12 annuity by reason of having been a member;

13 ~~(30)~~(32) "Social security" means the federal social security old
14 age, survivors, and disability insurance program, as amended;

15 ~~(31)(A) "Social security primary benefit" means a member's
16 benefit for age or for disability determined and payable under social
17 security, determined as of the date of his or her separation from covered
18 employment.~~

19 ~~(B) Should a member so separate before being eligible for
20 a social security primary benefit with monthly payments commencing
21 immediately, the amount of his or her social security primary benefit shall
22 be equal to the social security disability benefit he or she would receive if
23 he or she were disabled at the time of separation;~~

24 ~~(32)~~(33) "State" means the State of Arkansas and includes all of
25 its duly constituted agencies;

26 ~~(33)~~(34) "System" means the Arkansas Local Police and Fire
27 Retirement System created by this chapter; and

28 ~~(34)~~(35) "Volunteer service" ~~is~~ means covered employment that
29 becomes credited service and cannot be classified as paid service.

30

31 SECTION 2. Arkansas Code § 24-10-204(f), concerning the Executive
32 Director of the Arkansas Local Police and Fire Retirement System, is amended
33 to read as follows:

34 (f) The executive director shall be ~~the~~;

35 (1) The Plan Administrator of the Arkansas Local Police and Fire
36 Retirement System;

1 (2) The appointing authority in the employment of ~~such~~ other
2 professional and clerical employees ~~of the system~~; and ~~shall be responsible~~

3 (3) ~~Responsible~~ for the purchase of such equipment and supplies
4 as are required for the proper operation of the system, subject to the
5 approval of the board.

6
7 SECTION 3. Arkansas Code Title 24, Chapter 10, Subchapter 2 is amended
8 to add an additional section to read as follows:

9 24-10-206. Federal taxation.

10 (a) The Plan Administrator of the Arkansas Local Police and Fire
11 Retirement System shall operate the Arkansas Local Police and Fire Retirement
12 System and interpret § 24-10-101 et seq. consistent with the Internal Revenue
13 Code of 1986, as it existed on January 1, 2011, and applicable United States
14 Department of the Treasury Regulations, as they existed on January 1, 2011,
15 necessary to allow the system to be operated as a "qualified trust" under
16 Section 401(a) of the Internal Revenue Code of 1986, as it existed on January
17 1, 2011.

18 (b) Notwithstanding any language to the contrary under this chapter,
19 the Board of Trustees of the Arkansas Local Police and Fire Retirement System
20 may promulgate rules consistent with this section.

21 (c) Any rule or portion of a rule promulgated under this section that
22 is found by a court of competent jurisdiction to be in conflict with an
23 applicable provision of the Internal Revenue Code of 1986, as it existed on
24 January 1, 2011, shall be promptly corrected.

25
26 SECTION 4. Arkansas Code § 24-10-502(d), concerning military service,
27 is amended to add an additional subdivision to read as follows:

28 (8)(A) If a member dies on or after January 1, 2007, while
29 performing USERRA-qualified military service, the member shall be treated as
30 though he or she resumed covered employment on the day before the day of
31 death.

32 (B) For a member who had not attained a vested status in
33 the system, sufficient service credit shall accrue to permit the member to
34 become vested.

35 (C) For a member who had attained a vested status,
36 additional service credit accrual shall not occur.

1 (D) In all cases, the eligible benefit awarded by the
2 system under this section shall be a nonduty death benefit.

3
4 SECTION 5. Arkansas Code § 24-10-508 is amended to read as follows:
5 24-10-508. Service credit.

6 Any active member of the Arkansas Local Police and Fire Retirement
7 System who has at least five (5) years of actual service and who has service
8 in an Arkansas law enforcement agency or fire department and who has been
9 employed as a public safety or law enforcement officer in any agency not
10 covered by the system or any other system that is reciprocal to the system
11 shall receive credited service for that service.

12
13 SECTION 6. Arkansas Code Title 24, Chapter 10, Subchapter 6 is amended
14 to add an additional section to read as follows:

15 24-10-620. Limitations on benefits.

16 (a)(1) Notwithstanding any language to the contrary under this
17 chapter, benefits attributable to employer contributions and paid under the
18 Arkansas Local Police and Fire Retirement System shall not exceed the
19 limitations of Section 415 of the Internal Revenue Code of 1986, as it
20 existed on January 1, 2011, that are applicable to government retirement
21 plans for employees of police and fire departments, including without
22 limitation the dollar limitations in Section 415(b)(1)(A) of the Internal
23 Revenue Code of 1986, as it existed on January 1, 2011.

24 (2) If the dollar amount referenced in Section 415(b)(1)(A) of
25 the Internal Revenue Code of 1986, as it existed on January 1, 2011, is
26 increased pursuant to regulations issued under that section, the increase
27 shall be effective as of January 1 of the calendar year for which the
28 regulations were effective.

29 (b) The annual benefits, as may be increased in subsequent years, that
30 are paid to a retirant of the system shall not exceed the limitations under
31 Section 415(b) of the Internal Revenue Code of 1986, as it existed on January
32 1, 2011, applicable to the annuity effective date under that section.

33 (c) For purposes of determining compliance with Section 415 of the
34 Internal Revenue Code of 1986, as it existed on January 1, 2011,
35 “compensation” is defined as set forth in United States Department of the
36 Treasury Regulation 1.415-2(d)(2), as it existed on January 1, 2011.

1 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
2 General Assembly of the State of Arkansas that the Arkansas Local Police and
3 Fire Retirement System is in place to provide economic security for eligible
4 citizens of Arkansas, that the statutes need amending to account for changes
5 in the economy, and that these citizens need to be immediately covered by
6 these changes. Therefore, an emergency is declared to exist and this act
7 being necessary for the preservation of the public peace, health, and safety
8 shall become effective on:

- 9 (1) The date of its approval by the Governor;
10 (2) If the bill is neither approved nor vetoed by the Governor,
11 the expiration of the period of time during which the Governor may veto the
12 bill; or
13 (3) If the bill is vetoed by the Governor and the veto is
14 overridden, the date the last house overrides the veto.

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