

# ACT 177 of 1957

**AN ACT** to Establish a Retirement System for Employees of the State of Arkansas; to Create an Arkansas State Employees Retirement Board and Prescribe its Duties, Organization, Powers and Function; to Provide for the Creation of a Retirement Fund; to Establish the Conditions of Membership in the Retirement System; to Provide for the Terms and Conditions of Retirement; to Proscribe Penalties for Violation of Terms of this Act; and for Other Purposes.

*Be It Enacted by the General Assembly of the State of Arkansas:*

**SECTION 1. DEFINITIONS.** (a) “System” means the Arkansas Public Employees Retirement System.

(b) “Employee” or “Employees” shall include all officers and employees of any office, agency, board, commission or department of the State of Arkansas whose compensation was or is payable from state appropriated funds, and in addition thereto the term “employee” shall include all employees of the Employment Security Division, Merit System Council, Health Department, State Welfare Department, Cancer Control Commission, Game and Fish Commission, and State Forestry Commission whose salaries were or are payable in whole or in part from Federal funds; and , shall also include the official court reporters or stenographers of the Circuit and Chancery Courts of this State. The term “employee” shall not include employees of the State of Arkansas who are members of, or who are eligible for membership in any retirement system or plan other than Social Security, which is authorized by the laws of this State or which retirement system was in existence at the time of the passage of this Act. Specifically, the term “employee” shall not include the following:

- (1) The employees of the Arkansas State Police Department who are members of or who are eligible for membership in the State Police Retirement System.
- (2) Employees of the University of Arkansas and other State-supported institutions of higher learning.
- (3) Employees of the State Department of Education and the Teacher Retirement System.
- (4) Judges of the Supreme Court, Circuit Courts and Chancery Courts.
- (5) Prosecuting Attorneys.
- (6) Employees of the General Assembly who are employed on less than a full-time regular annual salary basis.
- (7) Employees of the State Highway Department who are members of or eligible for Benefits under the State Highway Employees Retirement System.
- (8) Employees hired on a temporary basis.
- (9) Employees whose duties are seasonal or are employed less than 1,000 hours per annum.

(10) Employees of the State Penitentiary System covered by a retirement program.

(c) "Employer" means the State of Arkansas and boards, commissions, or other State-supported institutions who employ "employees" as defined in sub-section (b) of this Section.

(d) "Board" means the Arkansas State Employees Retirement System Board of Trustees, as created by this Act.

(e) "Member" means any person who has, by due process, had issued to him a certificate of membership in the Arkansas State Employees Retirement System.

(f) "Average Compensation" means average annual earned compensation of a member during the five years of creditable service for which he earned his greatest compensation from the State of Arkansas, but shall not exceed Six Thousand Dollars (\$6,000.00) per annum. Whenever any employee receives maintenance in addition to his regular salary, the amount of such maintenance shall be considered as part of his average compensation, provided, that no employee shall be permitted to compute an allowance for maintenance in any one year greater than the amount such employee is required to report upon his Federal Income Tax, and his regular earned compensation shall not exceed, for the purpose of this sub-section the sum of Six Thousand Dollars (\$6,000.00) per annum.

(g) "Salary or Compensation" means the total remuneration earned by an employee for services rendered during the fiscal year.

(h) "Accumulated Contributions" means the sum of all amounts deducted from the salary or wages of a member, or paid by a member, and credited to his individual account, together with any interest the Board may have authorized credited to such member's account.

(i) "Prior Service" means all service as an "employee" of the State of Arkansas prior to the date of the establishment of the System, which shall include all Service as an employee of the State of Arkansas that may have been rendered prior to the creation of any retirement system other than Social Security, for the benefits of the employees of any State agency or development, provided that such prior service is not or has not been claimed for benefit purposes under said retirement system.

Such prior service shall include the period of time during which the employee's services may have been interrupted for service in the Armed Forces of the United States during a national emergency, provided that no more than five (5) years' service in the Armed Forces of the United States may be included in prior service. Before any service in the Armed Forces of the United States can be claimed as prior service, under the provisions of this Act, the employee claiming credit for the same shall have been employed as an "employee" of the State of Arkansas immediately preceding his service in the Armed Forces and shall have been reemployed as an

“employee” of the State of Arkansas within six months from the date of his discharge from the Armed Forces of the United States.

Only those persons who are “employees” of the State of Arkansas, as defined in this Act, on July 1, 1957, shall be eligible for “prior service” credit as authorized hereinafter, it being the specific purpose and intent hereof that no credit for prior service shall be allowed employees of the State of Arkansas who were not bona fide employees of the State of Arkansas on July 1, 1957.

(j) “Current Service” means service as an employee of the State of Arkansas after the date of establishment of the System and shall be based upon elapsed time as reflected by payroll earnings expressed in months or decimals thereof.

(k) “Prior Service Earnings” means the authenticated record filed with and approved by the Board, setting forth the salary received by the employee for each fiscal year, or a portion thereof, of his prior service as an employee; beginning with his last year of prior service and continuing in reverse chronological order.

(l) “Creditable Service” means the current service of the member plus such prior service for which a member may be eligible for credit. Retirement benefits shall be computed upon the Creditable Service of the member. In arriving at the creditable service of a member, the following schedule shall govern: (1) eleven (11) months or more of service during any fiscal year shall constitute a year of service, (2) ten (10) days or more of service during any calendar month shall constitute a month of service, (3) no more than twelve (12) months of service may be credited in any fiscal year.

(m) “State of Arkansas” shall mean all agencies, offices, departments, boards, commissions or State-supported institutions that are duly constituted agencies of the State of Arkansas.

**SECTION 2.** There is hereby created and established as of July 1, 1957, a Retirement System for Employees of the State of Arkansas, to be known as the “Arkansas State Employees Retirement System,” all the business of which shall be transacted through a Board of Trustees as provided for in this Act. In order that the Board of Trustees may have sufficient time in which to prepare the necessary rules and regulations, forms and accounts necessary for the effective operation of the State Employees Retirement System, such Board shall be appointed immediately upon the effective date of this Act and shall commence to operate from the date of such appointment. Provided, that employee and employer contributions, provided for hereinafter, shall not be due or collected until after the effective date of the establishment of the System – July 1, 1957.

**SECTION 3.** (a) The administration and control of the System shall be vested in a Board known as the Board of Trustees of the Arkansas State Employees Retirement System of the State of Arkansas.

(b) The Board of Trustees shall consist of seven (7) members: The Governor, the State Auditor, the State Treasurer, and three regularly qualified members of the System, who have at least ten years of continuous State service, to be appointed by the Governor. Such appointed members of the Board shall serve three-year staggered terms, and the terms of the first three members appointed by the Governor shall be designated by the Governor in order that the terms may be for one, two and three years. If any appointed member of the Board shall leave State service or employment, his position on the Board shall be deemed vacant. All vacancies of appointed members on the Board shall be filled by appointment by the Governor for the unexpired portion of the term.

(c) The officer of the Board of Trustees shall be the chairman, vice chairman, and executive secretary; the first two of whom shall be selected annually from their own number by the Board. The State Comptroller shall serve as the executive secretary to the Board and shall perform such duties as are herein provided. The State Comptroller is hereby authorized and directed to designate such additional personnel within his office as may be necessary to assist him in performing the duties that are imposed on him by this Act.

Meetings of the Board of Trustees shall be held on call of the Chairman, or at such other times as may be designated by the Board of Trustees. A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of all business, and all actions by the Board of Trustees shall be by a majority vote of the members thereof.

(d) Duties of the Board of Trustees shall be:

1. To make all reasonable rules and regulations and change the same from time to time as the Board deems necessary for transacting its business and administering the System.
2. To provide administrative direction and control of the Executive Secretary and such clerical staff as may be from time to time required.
3. To provide for the actuarial evaluations if and when the Board deems such action is necessary.
4. To exercise discretionary power and authority in the investment and disbursement of the funds of the System subject to the conditions hereinafter prescribed.
5. To designate the necessary medical examiners for disabled members and hereinafter provided.
6. To serve without pay but to be reimbursed for all actual expenses when attending Board meetings.
7. To do any and all things necessary for the proper administration of this Act.

(e) The duties of the Executive Secretary shall be:

1. To keep all the minutes and other records as directed by the Board.
2. To set up and maintain separate accounts for each member of the System to show the payroll deductions and monthly to transmit to the State Treasurer, who shall be the custodian of all the funds of the System, all warrants and other instruments of payment covering all such withholdings.
3. To prepare and sign, as directed by the Board, all vouchers for all valid claims.
4. To perform such other administrative duties as may be directed by the Board for the carrying out the provisions of this Act.

**SECTION 4.** (a) There is hereby created in the State Treasury a Trust Fund to be known as the Arkansas State Employees Retirement System Fund, into which all funds provided for in this Act shall be paid.

(b) 1. The State Treasurer is hereby authorized to transfer from the respective State Treasury funds, out of which the employee's compensation is paid, to the State Employees Retirement System Fund, such sums of money as are necessary to match the employee's contribution as certified by the Executive Secretary and in accordance with the provision in this Act. A copy of such certification shall be retained in the State Comptroller's Office.

2. In the case of those employees receiving part or all of their compensation from Federal funds, the disbursing officer of the agency shall, monthly, transmit to the State Treasurer from the Federal funds of the agency an amount which is necessary to match the employer's contribution paid on the portion of the employee's salary, payable from Federal funds. All of such funds, upon receipt by the State Treasurer, shall be credited to the State Employees Retirement System Fund.

3. In the case of Circuit and Chancery Court reporters, the employer's contributions shall be paid monthly by the respective counties in the proportion that each of such counties pays the total salary of such Circuit and Chancery Court Reporters. In the event any county fails or refuses to pay the county's matching contributions as provided herein, the State Treasurer is hereby directed, upon certification of such fact by the Executive Secretary, to withhold from the next payment of State funds payable to the county an amount necessary to make the employer's contributions provided for herein, and the State Treasurer shall credit such amount withheld to the State Employees Retirement System.

(c) The State Treasurer shall serve as treasurer of said funds and be the legal custodian of all of the assets of the System.

(d) The Attorney General of the State shall serve as the legal advisor to the Board.

(e) It shall be the duty of the officer or official charged with the responsibility of auditing State departments and agencies to audit the finances of the System once a year or oftener if either he or she of the Board considers such action necessary.

**SECTION 5.** (a) The cost of the administration of the System shall be borne by the State and Federal agencies contributing to the fund on a proportionate basis.

(b) The Executive Secretary shall serve without additional compensation other than his compensation as State Comptroller. His bond to the State shall cover his liability for the faithful performance of his duties, including the correct accounting for all sums of money handled by him. Other employees working under his direction shall be required to make such bonds as in the judgment of the Board may appear necessary. Premiums of said bonds shall be paid out of the appropriation for the administration of the System.

(c) The State Treasurer shall pay retirement benefits, as herein defined, to members only on vouchers signed by the Executive Secretary of the System and on warrants issued thereon by the State Auditor.

(d) Any person who shall knowingly make any false statement, or shall falsify any record or records in an attempt to defraud the System as a result of such act, shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than \$100.00 or a maximum of six (6) months in jail, or both. Should any change or error in the records of the System result in any member receiving more or less than he would have been entitled to receive had the records been correct, the Board of Trustees shall, upon discovery of the error and so far as is practical, adjust the payments in such a manner that the benefit to which the member was justly entitled shall be paid. The Board of Trustees shall also have the right to recover from any member any amount of overpayment that may have resulted upon the misrepresentation of the employee or through error.

**SECTION 6.** All employees of the State of Arkansas, as defined in Section 1 (b) thereof, who are in service of the State of Arkansas at the time of the establishment of the System on July 1, 1957, or who are employed thereafter, shall, as a condition of continuing said employment or as a condition of obtaining employment with the State of Arkansas, become a member of the System.

**SECTION 7.** Membership in the System may be terminated by retirement, by permanent and total disability, by superannuation, by death or by withdrawal, either voluntary or involuntary, from active service in the State of Arkansas.

**SECTION 8.** (a) All members of the System shall be assessed three percent (3%) of the First Four Thousand Five Hundred Dollars (\$4,500.00) of their salaries and four percent (4%) of their salaries in excess of Four Thousand Five Hundred Dollars (\$4,500.00), but not to exceed Six Thousand Dollars (\$6,000.00) per annum. Such assessments shall be by payroll deductions. The

Executive Secretary shall set aside the amount of these assessments from the employee's salary and transmit them to the State Treasurer as provided for in Section 3 (e) of this Act.

(b) It is hereby expressly guaranteed that all member's contributions shall be held in trust for the exclusive benefit of the individual contributor, and no part of such funds shall ever be used for any other purpose.

**SECTION 9.** (a) The State shall match all member's contributions for service with a three percent (3%) contribution of the First Four Thousand Five Hundred Dollars (\$4,500.00) of each employee's salary and four percent (4%) of each employee's salary in excess of Four Thousand Five Hundred Dollars (\$4,500.00), but not to exceed Six Thousand Dollars (\$6,000.00). The State's matching contribution shall be from the State fund, Federal fund or from the county from which the member's salary is paid computed on the basis of the payroll earnings of the members of the System.

(b) In order that the General Assembly might be informed as to the amount of funds necessary to make the State's matching contributions under the provisions of this Act, the Board of Trustees, prior to each session of the Legislature, shall cause to be made appropriate studies of the ages service and compensation of the members as a means of determining the amount that is estimated to be drawn from the respective State funds in making the matching contributions herein.

**SECTION 10.** (a) A member may retire voluntarily at the age of sixty-five (65), or during any year thereafter until the year of compulsory retirement has been attained provided such member has a minimum of ten (10) years' creditable service in the State of Arkansas. Any member who has attained the age of sixty (60) years with a minimum of twenty (20) years of creditable service with the State of Arkansas may voluntarily retire. Any member of the System with not less than twenty (20) years of creditable service and whose employment with the State of Arkansas is terminated for any reason may leave the employee's contribution in the Arkansas State Employees Retirement System Fund and may upon reaching age sixty (60) receive retirement benefits the same as if such person had been an employee of the State of Arkansas on reaching age sixty (60).

Except in the instance of a member with twenty (20) years creditable service, as herein above mentioned, no member shall be eligible for retirement benefits unless such member was an employee as defined herein for a period of not less than eighteen (18) months during the twenty-four (24) calendar months immediately preceding the date of retirement. Benefits payable under this Act shall date from the time of application therefor.

(b) No member may accrue more than thirty-five (35) years of creditable service in the System, provided that as to those State employees who become members of the System on the effective date of this Act, employee and employer contributions as provided for herein shall be made until said employees retire, or upon the expiration of thirty-five (35) years in current service

from the effective date of this Act, whichever period of time is less. Any person who has made employee contributions to the System for a period of thirty-five (35) years of current service shall not thereafter make further contributions to the System but shall be eligible for full retirement benefits upon reaching retirement age.

(c) Retirement from the System shall be compulsory to all members on July 1, following their seventieth (70<sup>th</sup>) birthday, except that any person who becomes a member of the System on the effective date of this Act maybe permitted to maintain membership beyond the seventieth (70<sup>th</sup>) birthday if authorized in writing and filed with the Board of Trustees by the head of the agency with which said person is employed. Said permission to maintain an employee on the payroll beyond his seventieth (70<sup>th</sup>) birthday shall be for no greater period than one year with the right by said head of the agency to extend such period on a year-by-year basis thereafter.

(d) In determining the creditable service which an employee may have accrued, said employee shall be allowed credit for his authenticated prior service as defined in Section 1 hereof. The Board may require an employee to furnish any reasonable information which the Board deems necessary in order to establish the years of service, the rate of pay, and such other information as the Board may deem necessary in determining the actual prior service of an employee.

(e) A member shall be eligible for disability retirement benefits after ten (10) or more years of creditable service with the State of Arkansas, provided that no member shall be eligible to receive benefits for disability incurred prior to his becoming a member of the System. No member may be retired on account of a disability until sufficient evidence based on proper medical examination has been submitted to the Board that the member is disabled to the extent that his disability is total and permanent and that he can no longer engage in any suitable occupation. A member who is retired because of a disability shall be required to undergo periodical medical examination at the discretion of the Board. If and when a medical examination shows the disability has been removed to the extent that the member may engage in suitable employment, disability retirement benefits shall cease. The medical examination provided for in this Section shall be made by a medical board of three (3) doctors, to be chosen by the Board of Trustees, and the cost of such medical examination shall be borne by the funds of the System.

**SECTION 11.** (a) Any member retired for the reasons set forth in Section 10 is thereafter eligible for annual retirement benefits based on three-fourths of one per cent ( $\frac{3}{4}$  of 1%) of the average compensation as defined in Section 1 (f) hereof, times the number of years of prior service in the State of Arkansas, plus one and one-fourth ( $1\frac{1}{4}$ %) of the average compensation as defined in Section 1 (f) hereof, times the number of years of current service in the State of Arkansas, payment to be made in equal monthly installments at the end of each month. Provided, that the annual retirement benefits of the members of the General Assembly shall be computed as follows: Any member of the General Assembly may retire at the age of sixty-five (65), or during any year thereafter provided such member has a minimum of ten (10) years service as a member of the

General Assembly, and upon retirement such member shall be entitled to an annual retirement benefit equal to one-half (½) the biennial salary payable to such member at the time of retirement. Such retirement benefits shall be payable monthly. Provided, further, that the provisions of this Act relative to compulsory retirement age shall not be applicable to any member of the General Assembly or any other elected State official.

(b) In the case of death prior to retirement of a member his accumulated contributions shall become payable to his designated beneficiary, which beneficiary may be changed by the member in the manner prescribed by the Board of Trustees, but the beneficiary shall have no legal claim on any contribution made by the State with a view to the retirement of the member. If a retired member dies before he has been paid benefits equivalent to his contributions to the System, the differences between the benefits received and his contributions while an active member in the System, together with any other balance to his credit in the System, shall be paid to his designated beneficiary. In the event there is no designated beneficiary, refund of the unpaid balance shall be paid to his or her spouse, children or parents under the law of decent and distribution. Payment of such refund shall be made in full, or in installments as determined by the Board of Trustees, provided such benefits may be paid directly to a curator or guardian, to an administrator or administratrix, to an executor or executrix, authorized to receive such payments wherever such representative may be, without the appointment of a representative in the State.

(c) In the case of withdrawal from the service within five (5) years after becoming a member of the System, the Board upon request shall pay to the member all of his accumulated contribution without interest. If the withdrawal occurs after five (5) years of membership in the System, the Board upon request shall pay to the member all of his accumulated contributions plus interest as determined by the Board, not in excess of the earnings on the employee's contribution, with the further provision that the member so reimbursed shall have no legal claim on any contribution made by the State with a view to his or her retirement. Payments to a member under the conditions set forth in this Section shall be made as may be provided by the Board of Trustees. A member's interest in the System shall be exempt from attachment, garnishment and execution.

Whenever any employee shall withdraw from the service of the State of Arkansas, either voluntary or involuntary, and withdraws his contributions from the System, said person shall have the privilege of repaying the amount of said contributions into the System, plus six (6) per cent interest from the date of separation from State service, if said person is re-employed as an employee of the State of Arkansas within five (5) years from the date of separation of State service. The payment of such contribution, plus six (6) percent interest upon re-employment as an employee within five (5) years from the date of separation of State service shall entitle said employee to claim his authenticated prior service to the same extent as if he had never been separated from State service. If the employee does not elect to repay his contributions, plus interest, upon being re-employed by the State of Arkansas within five years of separation from State service, said

employee shall lose any prior service or current service credit for which he would otherwise have been entitled prior to the date of re-employment by the State of Arkansas. Whenever any employee withdraws his contribution to the System and is not re-employed in State service within five (5) years thereafter, said employee shall not thereafter be entitled to any credit for prior service or current service accumulated up to the time of separation from State service, nor shall he be permitted to repay the amount of his withdrawal.

**SECTION 12.** The promulgation of this Act shall constitute an offer of the State to serve as trustee for the funds collected under the provisions hereof and a guarantee of the disbursement thereof under the retirement plan and none of such funds shall ever be used except for the purposes of this Act. If, during any fiscal year, it shall become apparent that the fund of the System shall not be adequate to meet the valid claims for retirement benefits under the System for said fiscal year, the Board may upon resolution duly passed by the Board, increase employee's and employer's contribution on the first Four Thousand Five Hundred Dollars (\$4,500.00) of the employee income per year from the three (3) percent contribution as herein provided, to four (4) percent of the first Four Thousand Five Hundred Dollars (\$4,500.00) of the employee income. If the additional amount accruing to the System under the increased employee and employer contribution as herein provided shall not be adequate to meet the commitments of the System for the fiscal year, or if the Board shall not elect to increase said contributions for the employee and employer during said fiscal year, then in said event the benefits to be payable to all persons receiving benefits under the System shall be pro rata reduced in such amount which will be within the anticipated funds available in the System for said fiscal year.

It shall be the duty of the Board to keep the General Assembly informed of the condition of the State Employees Retirement System Fund and of any changes in the law covering said System and the benefits payable thereunder that the Board deems necessary or advisable to call to the attention of the General Assembly.

**SECTION 13.** The Board of Trustees is hereby empowered to invest such portions of the Retirement Fund as in its judgment may not be required for immediate use, subject to existing laws regulating the investment of State Funds and subject to the provision that the funds of the system shall be invested only in direct general obligations of the United States of America or of the State of Arkansas. All earning on such investments shall be deposited in the State Treasury to the credit of the Arkansas State Employees Retirement System Fund. The Board of Trustees is further authorized to sell from time to time any part or all of such securities for reinvestment in order to improve the System's financial position.

**SECTION 14.** No retirement benefits or disability benefits shall be due or payable to any member of the System with less than eighteen (18) months of current service in the System, nor shall any benefits become due before January 1, 1959. Provided, that if the Board determines that the physical condition of any employee who is seventy (70) years of age or over, on the effective

date of the establishment of the System, is such that the employee will be unable to continue his or her employment for a period of eighteen (18) months after the date of establishment of the System, the Board may commence to pay retirement benefits to said employee at any time after the establishment of the System if he employee is otherwise qualified for retirement benefits.

**SECTION 15.** If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**SECTION 16.** All laws and parts of laws in conflict herewith are hereby repealed, provide, however, persons retired under the terms of Act 25 of the Acts of 1947 shall continue to receive the same benefits acquired pursuant thereto.

**SECTION 17.** It is hereby determined by the General Assembly that the establishment of a State Employee Retirement System is necessary in order to retain and recruit efficient and skilled state employees and that the immediate passage of this Act is necessary in order that the Board of Trustees herein created be appointed, organize and establish the necessary rules and forms to be followed upon the establishment of the retirement system herein created on July 1, 1957. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

**APPROVED: March 7, 1957.**