



State of Tennessee

PUBLIC CHAPTER NO. 421

SENATE BILL NO. 1355

By McNally

Substituted for: House Bill No. 513

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 25; Title 8, Chapter 34; Title 8, Chapter 35; Title 8, Chapter 36 and Title 8, Chapter 37, relative to retirement.

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

SECTION 1. Tennessee Code Annotated, Section 8-34-301, is amended by deleting the section and substituting instead the following:

(a) The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of chapters 34–37 of this title are hereby vested in a board of trustees.

(b) The board of trustees may delegate to the state treasurer the duty to carry out the day-to-day operations and responsibilities for the administration of the retirement system, including, but not limited to, complying with all applicable state and federal laws and rules.

SECTION 2. Tennessee Code Annotated, Section 8-34-303, is amended by deleting the section and substituting instead the following:

In the event of death, disability, resignation, or ineligibility of a board member who is a state employee, the board of trustees is authorized to appoint a member from the group represented by the member to fill the member's unexpired term. In the event of the death, disability, resignation, or ineligibility of a board member who was appointed as a teacher trustee or the retired teacher trustee, the speaker of the senate or the speaker of the house of representatives who appointed the member shall appoint a trustee to fill the member's unexpired term.

SECTION 3. Tennessee Code Annotated, Section 8-34-320(b), is amended by deleting the subsection and substituting instead the following:

(b) If the initial order of the administrative judge is appealed to the board of trustees, the executive committee established in § 8-34-322 shall hear the appeal.

SECTION 4. Tennessee Code Annotated, Section 8-34-322, is amended by adding the following as a new, appropriately designated subsection:

() Notwithstanding this title to the contrary, the executive committee shall have the power to commence litigation or any legal action on behalf of the retirement system. The executive committee shall also have the power to delegate to the state treasurer the authority to respond to, defend, direct the course of, and settle any litigation, legal action, or regulatory proceeding on behalf of the retirement system. The authority may include, but not be limited to, litigation holds, amending pleadings, engaging expert witnesses, discovery, motions, tolling agreements, settlement agreements, waivers, attachments, releases, and stipulations.

SECTION 5. Tennessee Code Annotated, Section 8-34-625, is amended by deleting the section and substituting instead the following:

(a) Subject to the approval of the board of trustees, any member, other than an employee of a political subdivision, who receives temporary disability benefits under a

workers' compensation program administered by or on behalf of an employer as defined in § 8-34-101 shall be entitled to establish retirement credit at any time during or after the period of disability.

(b) The member's employing department or agency shall provide certification, in a manner prescribed by the state treasurer, of the period of disability and salary in effect immediately prior to the disability. Contributions by, or on behalf of, the member on the basis of the member's salary in effect immediately prior to the period of disability, plus interest at the rate provided in § 8-37-214, if applicable, shall be remitted to the retirement system in a manner prescribed by the state treasurer.

(c) No member shall be credited with the temporary disability as creditable service at a rate exceeding one (1) year per occurrence of temporary disability.

(d) Participating political subdivisions may adopt the provisions of this section; provided, that the chief governing body of the political subdivision passes a resolution authorizing the provisions of this subsection (d) for the employees and accepting the liability therefor.

SECTION 6. Tennessee Code Annotated, Section 8-36-113, is amended by deleting the section and substituting instead the following:

(a) Notwithstanding § 8-36-111, the board may withhold payment of a member's accumulated contributions and interest or monthly benefit upon:

- (1) The filing of criminal charges or a civil suit against a member relating to the member's employment with an employer;
- (2) An audit finding from the comptroller of the treasury relating to the member's employment with an employer; or
- (3) An affidavit submitted by the employer to the director of the retirement system containing the employee's actions that the employer asserts could constitute a crime.

(b) The board may withhold payment of the member's contributions and interest or monthly benefit until such time as the charges have been dismissed or the charges have resulted in a determination that the member owes money to the employer. Should a member not be charged criminally or civilly, the member may appeal the decision to withhold the member's accumulated contributions and earnings or monthly benefit based on an audit finding or affidavit by submitting an appeal request to the director of the retirement system.

(c) If the service of any member is terminated, for any reason, and such member is found to owe money to an employer participating in the retirement system, the employer shall be entitled to claim from the member's accumulated contributions such amounts as are owed to the employer upon the application to withdraw the member's accumulated contributions. The claim shall be made in writing to the director of the retirement system by the appropriate party of the employer involved and must specify the reason for the claim and the amount involved. After the employer's claim is satisfied from the contributions, the member may withdraw any portion of the member's remaining contributions.

(d) Should the member elect not to withdraw the accumulated contributions, no claim on the contributions shall be enforceable under this section.

SECTION 7. Tennessee Code Annotated, Section 8-36-114, is amended by deleting the section and substituting instead the following:

If any member found to owe funds to an employer participating in the retirement system, within the meaning of § 8-36-113, elects to retire, the member's debt to the employer may be satisfied from the member's monthly benefit.

SECTION 8. Tennessee Code Annotated, Section 8-36-601, is amended by adding the following as a new, appropriately designated subsection:

() Notwithstanding this section or any other law to the contrary, the amount of survivor benefits payable to a beneficiary under one (1) of the optional allowances provided for in subsection (b) shall not exceed the maximum amount determined under the applicable incidental death benefits regulations of the Internal Revenue Code, unless the retired member's surviving spouse is the member's sole beneficiary. Benefits shall be adjusted as necessary to satisfy those regulations.

SECTION 9. Tennessee Code Annotated, Section 8-36-601(d), is amended by deleting the words "This section" in the first sentence of the subsection and substituting instead the words "Subsection (c)".

SECTION 10. Tennessee Code Annotated, Section 8-36-923(a), is amended by deleting the language "§ 8-36-403" and substituting instead the language "§ 8-35-403".

SECTION 11. Tennessee Code Annotated, Section 8-37-108(c), is amended by deleting the subsection and substituting instead the following:

(c) Additional Appointments. In addition to the members appointed pursuant to subsection (a), the treasurer may, at the treasurer's discretion, appoint two (2) additional members to the investment advisory council. One (1) of the additional members shall be of a racial minority, and the other shall be female. Both members shall have at least five (5) years' professional experience as a portfolio manager, economist, or investment manager in any field for which investments of Tennessee consolidated retirement system funds are authorized, or as a teacher at the postsecondary level in accounting, economics, finance, or other related field. Any appointment made pursuant to this subsection (c) shall be made with the advice and consent of the board of trustees. The terms of office of the additional members shall be for three (3) years, with the terms beginning on July 1 and ending on June 30 of the appropriate years.

SECTION 12. Tennessee Code Annotated, Title 8, Chapter 37, Part 1, is amended by adding the following as a new, appropriately designated section:

The funds created by this chapter and chapters 34–36 of this title shall be deemed to be the funds of the retirement system and not state funds.

SECTION 13. Tennessee Code Annotated, Section 8-37-502, is amended by deleting the section and substituting instead the following:

(a) Monthly Report of Salaries and Contributions. For the purpose of ascertaining the amount of contributions payable under this chapter and chapters 34–36 of this title, it shall be the duty of the employer on or before the tenth day of each month to transmit to the state treasurer, in the manner prescribed by the state treasurer, the gross salary and amount of contributions deducted, if any, from the compensation of employees and contributions of the employer payable under this chapter and chapters 34–36 of this title during the preceding calendar month. The board of trustees is authorized to promulgate substantive and procedural rules requiring that all or a portion of the information described in § 8-35-105(a) is provided in such manner.

(b) Transmission of Contributions with Monthly Report. At the time of transmitting the information required pursuant to subsection (a) to the state treasurer in the manner prescribed by the state treasurer, the employer shall remit to the state treasurer therewith the amount of contributions due under the applicable provisions of this chapter and chapters 34–36 of this title, and failure to so remit such contributions shall cause the contributions to become delinquent and a liability of the employer.

SECTION 14. Tennessee Code Annotated, Section 8-36-920, is amended by adding the following new subsection:

(g) Notwithstanding subdivision (d)(1)(A), deposits of employer contributions into the stabilization reserve trust account shall be suspended effective July 1 of any given year next following the most recent actuarial valuation for an employer whose stabilization reserve trust account equals or exceeds a certain maximum amount that is determined by the board of trustees. The amount shall be expressed in dollars, as a percentage, or other form as shall be determined at the sole discretion of the board. The board, in consultation with the actuary, shall establish the methodology and procedures to be used in ascertaining the maximum amount. Deposits into the stabilization reserve trust account shall be reinstated for the employer effective July 1 of any given year next following the most recent actuarial valuation when the total amount in the employer's stabilization reserve trust account is less than the maximum amount adopted by the board pursuant to this subsection.

SECTION 15. Tennessee Code Annotated, Section 8-36-922(a), is amended by adding the following new subdivisions:

(3) Notwithstanding this section or any other law to the contrary, should employer contributions attributable to federal funds not be deposited into the stabilization reserve trust account pursuant to § 8-36-920(d)(2), the board may, at its sole discretion and in

consultation with the actuary, modify the employer contribution rate set forth in subdivision (a)(1).

(4) Notwithstanding this section or any other law to the contrary, employer contributions shall be based solely on subdivision (a)(1)(A) on July 1 of any given year for an employer whose deposits into the stabilization reserve trust account are suspended pursuant to § 8-36-920(g). Nothing in this subdivision (a)(4) shall be deemed to give any participating employer or any participant a valid claim or cause of action for refund or credit for any sum or sums paid or to be paid to the hybrid plan.

SECTION 16. Tennessee Code Annotated, Section 8-36-922(b), is amended by deleting the first two sentences thereof and by substituting instead the following:

The actuary of the retirement system shall compute the normal contribution rate and the accrued liability contribution rate payable to the defined benefit component of the plan for each account described in § 8-36-920(e); provided, however, the computation shall not include the stabilization reserve trust account and shall be made by an actuarial valuation in the manner provided by chapter 37, part 3 of this title; provided, further, that the entry age actuarial cost method, as defined by the Actuarial Standards Board, shall be used in determining normal costs and contributions for unfunded accrued liabilities.

SECTION 17. Tennessee Code Annotated, Section 8-35-203(a), is amended by deleting the subsection and by substituting instead the following:

(a)(1) Membership in the retirement system for employees of employers that are admitted as provided in this part shall be:

(A) Optional for all employees in the service of the employer on the date the approval is given except as provided in subdivision (a)(1)(C);

(B) Mandatory for all eligible employees entering the service of the employer thereafter; and

(C)(i) If the employer continues to maintain a pre-existing pension plan that is closed to new membership on the date of the employer's participation date in the retirement system, the employer may, by resolution duly adopted by its chief legislative body, authorize its current employees who participate in the pre-existing plan the choice of maintaining membership in the pre-existing plan or joining the retirement system; provided, that allowing such choice meets all applicable state and federal requirements, including § 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), that are necessary for the retirement system to maintain its status as a qualified plan under the Internal Revenue Code.

(ii) The election to join the retirement system shall be on a form prescribed by the retirement system and shall be filed with the retirement system. Any such election shall be irrevocable.

(iii) Notwithstanding § 8-37-202 or any other law to the contrary, any employer described in subdivision (a)(1)(C)(i) may elect to set the employee contribution rate for its employees at the same rate as required under the employer's pre-existing plan. The election must be made by the employer prior to the employer's effective date of participation in the retirement system and must be approved by the board of trustees.

(2) Credit for such periods of previous service as shall be certified as creditable service by the employer for service rendered to the employer or its predecessor, or in any other capacity approved by the employer and the board, for which the employer is willing to make accrued liability contributions shall be credited to employees who meet all of the following conditions:

(A) The employee must have been employed by the employer on the date the approval is given and continuously for the thirty (30) days immediately preceding that date; provided, that in the event the employee was not continuously employed by the employer from the period of previous service claimed through and including the date the approval is given, the employee must have been employed by the employer on the date the

approval is given and continuously for the six (6) months immediately preceding or after that date;

(B) The employee must have become a member of the retirement system within thirty (30) days after the approval is given;

(C) The employee must pay whatever back contributions and interest is due to establish service authorized by the employer. Subject to subdivision (a)(2)(D), such payment may be funded in whole or in part from amounts transferred from any pre-existing pension plan maintained on behalf of the employee by the employer, from other eligible retirement accounts as defined in § 8-37-220, or from other funds available to the employee; and

(D)(i) If the employer maintained a pre-existing public employee retirement system as defined in § 8-35-111 on behalf of the employee during any period of the previous service authorized by the employer under this subdivision (a)(2), then the employee shall have six (6) months from the employer's participation date in the retirement system to elect to establish the previous service rendered while a participant in the pre-existing plan by making the required payment and by forfeiting the employee's right to any employer contributions and interest thereon, and to any service credit in the pre-existing plan if any part of the service credit was funded through contributions made by the employer.

(ii) Any employee who fails to make the election provided for in subdivision (a)(2)(D)(i) shall not later be eligible to establish the previous service rendered while a participant in the pre-existing plan.

(3) After becoming a member, service by such employee for which contributions are made shall be considered creditable service.

SECTION 18. Tennessee Code Annotated, Section 8-35-255(i)(1), is amended by deleting the language "this section" and by substituting instead the language "§ 8-35-203(a)(1)(C)(iii), § 8-35-254, or § 8-37-202, as applicable".

SECTION 19. Tennessee Code Annotated, Section 8-35-256(i)(1), is amended by deleting the language "this section" and by substituting instead the language "§ 8-35-203(a)(1)(C)(iii), § 8-35-254, or § 8-37-202, as applicable".

SECTION 20. Tennessee Code Annotated, Section 8-36-919(a)(1), is amended by deleting the language "; and" and by substituting instead the language "except as provided in subdivision (a)(3);".

SECTION 21. Tennessee Code Annotated, Section 8-36-919(a)(2), is amended by deleting the period "." at the end of the subdivision and by substituting instead the language "; and".

SECTION 22. Tennessee Code Annotated, Section 8-36-919(a), is amended by adding the following new subdivision:

(3)(A) If the political subdivision continues to maintain a pre-existing pension plan that is closed to new membership on the date of the political subdivision's participation date in the hybrid plan, the political subdivision may, by resolution duly adopted by its chief legislative body, authorize its current employees who participate in the pre-existing plan the choice of maintaining membership in the pre-existing plan or joining the hybrid plan; provided, that allowing such choice meets all applicable state and federal requirements, including § 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), that are necessary for the hybrid plan to maintain its status as a qualified plan under the Internal Revenue Code.

(B) The election to join the hybrid plan shall be on a form prescribed by the retirement system and shall be filed with the retirement system. Any such election shall be irrevocable.

(C) Notwithstanding § 8-36-904 or any other law to the contrary, any political subdivision described in subdivision (a)(3)(A) may elect to set the employee contribution rate for its employees at the same rate as required under the political subdivision's pre-existing plan. The election must be made by the political subdivision prior to the political subdivision's effective date of participation in the hybrid plan and must be approved by the board of trustees. If the approved employee contribution

rate is set at an amount less than five percent (5%) of the employees' earnable compensation, the four percent-employer contribution rate described in § 8-36-922 shall be increased by the percentage difference between five percent (5%) and the approved employee contribution rate.

SECTION 23. Tennessee Code Annotated, Section 8-36-919(b), is amended by deleting from the first sentence the language "Any political subdivision" and by substituting the language "Except as otherwise specifically provided in this part, any political subdivision".

SECTION 24. Tennessee Code Annotated, Section 8-36-922(c)(1)(D), is amended by deleting the language "from five percent (5%) to six percent (6%)" and by substituting instead the language "by one percent (1%)".

SECTION 25. Tennessee Code Annotated, Section 8-36-922(d)(1)(D), is amended by deleting the language "from five percent (5%) to six percent (6%)" and by substituting instead the language "by one percent (1%)".

SECTION 26. Tennessee Code Annotated, Section 8-36-903, is amended by adding the following as a new subsection (d) and by redesignating existing subsection (d) accordingly:

(d) Any teacher as defined in § 8-34-101(46)(B) who is a member of the retirement system pursuant to § 8-35-101 shall have the option to transfer from the retirement system to the hybrid plan on a prospective basis; provided, that allowing such choice meets all applicable state and federal requirements, including § 414(h) of the Internal Revenue Code (26 U.S.C. § 414(h)), that are necessary for the retirement system to maintain its status as a qualified plan under the Internal Revenue Code. The election to transfer shall be made on a form prescribed by the retirement system and filed with the retirement system. Any such election shall become effective on the first day of the month next following the month the form is filed with the retirement system, and shall be irrevocable. The actuarial value of accrued benefits earned prior to the effective date of the transfer shall be determined under the applicable provisions of the retirement system in effect on the date of the transfer. The teacher shall thereafter be subject to the applicable provisions of this part.

SECTION 27. Tennessee Code Annotated, Title 8, Chapter 25, Part 3, is amended by adding the following as a new, appropriately designated section:

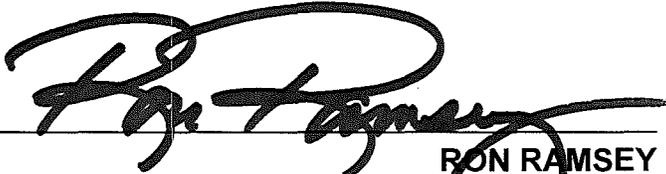
The state treasurer, with the approval of the commissioner of finance and administration, may adopt a new feature to the plan that would provide for an alternative social security replacement plan that satisfies the requirements of Internal Revenue Code § 3121(b)(7)(F), as may be amended, and any rules and regulations promulgated thereunder for any classes of state employees, including employees of institutions of higher education, whose service is not covered by an agreement entered into under § 8-38-103. Any such plan may require the withholding as deferred compensation from the wages otherwise payable to those employees of up to seven and one-half percent (7½%) of wages, as the term "wages" is defined for social security purposes, or such other amount as may be required as an alternative to social security contributions.

SECTION 28. If any provision 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 the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 29. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1355

PASSED: April 20, 2015



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 20th day of May 2015



BILL HASLAM, GOVERNOR