

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Teacher Retirement System

Department Administration

Contact Clint Rhoden, Ex. Director E-mail clintr@artrs.gov Phone 501-682-1517

Statutory Authority for Promulgating Rules §24-7-305

Rule Title: Rule 4: Election of Board of Trustees

Intended Effective Date
(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

April 19, 2019

May 20, 2019

July 19, 2019

July 19, 2019

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Tammyp Porter

tammyp@artrs.gov

7-26-2019

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature

501-682-1517

Phone Number

clintr@artrs.gov

E-mail Address

Executive Director

Title

7-26-2019

Date

ATRS Rule 4

ELECTION OF BOARD OF TRUSTEES

A.C.A. §§ 24-7-301, 24-7-302

The general administration and proper operation of ATRS is vested in the Board of Trustees that consists of eleven (11) elected members and four (4) ex officio members. Pursuant to A.C.A. § 24-7-301, the Board shall adopt rules and regulations regarding the election of trustees and trustee vacancies.

I. General Rules for Candidacy and Voting in Trustee Elections

- A. For purposes of eligibility for an active member trustee position and voting, "active members" shall mean active members as defined in A.C.A. § 24-7-202 and members participating in T-DROP, if employed by a participating employer and receiving T-DROP plan deposits.
- B. If a candidate is employed in more than one position with a participating employer(s), eligibility shall be determined based on their primary position for which they receive the greater percentage of covered salary.
- C. For purposes of eligibility for an administrator trustee position or voting for that position, "administrator" shall mean a public school superintendent, assistant superintendent, principal, or vice-principal; a higher education president, chancellor or director; or a community college, vocational/technical or educational cooperative director, president, or vice president, who is employed by a participating employer; OR any employee of an education related agency participating in ATRS that is employed in a position grade GS13 or above or its equivalent, including unclassified employees.
- D. For purposes of eligibility for a licensed trustee position or voting for that position, "licensure" shall mean a person employed in a position requiring state teaching licensure or an education institution grade GS09-GS12 or its equivalent and who is not an administrator.
- E. For purposes of eligibility for a nonlicensed trustee position and voting for that position, "nonlicensed" shall mean a member employed in a position with a participating employer that does not require state licensure including employment in an educationally related agency in a position grade GS08 or below or its equivalent. Nonlicensed shall not include any position that is defined as an administrator or that requires licensure.
- F. Only members are authorized to vote in a trustee election. Guardians, attorneys-in-fact, or others may not vote on behalf of a member.
- G. Terms not defined in these rules shall have the meaning set forth in

A.C.A. § 24-7-202 et. seq.

- H. An employee working for ATRS is not eligible to be elected to the board, appointed to the board, or be a candidate to be elected or appointed to the board.

II. Qualifications and Voter Eligibility for Elected Trustee Positions

There shall be four (4) active member trustees each of whom will represent one of the four congressional districts in Arkansas.

A. Active Member Trustee Position Nos. 1-4 - Congressional Districts

1. Qualifications for Candidacy:

- a. Active member with a minimum of five (5) years of actual service.
- b. Employed by a participating employer located in the congressional district for which he/she is seeking election.
- c. Employed in a position requiring state teaching licensure or the equivalent under these rules.

2. Eligible Voters for Trustee Position Nos. 1-4

Active members, regardless of credited service, employed by participating employers located in the respective congressional districts and who are otherwise eligible to be a candidate under this subsection.

B. Active Administrator Trustee Position Nos. 5-6

There shall be two (2) active member trustees each of whom must be employed as an administrator as defined in these rules.

1. Qualifications for Candidacy:

- a. Active member with a minimum of five (5) years of actual service.
- b. As provided in A.C.A. § 24-7-301, at least one of the administrators serving as an active administrator trustee must be employed by a participating employer as an Arkansas school superintendent or educational cooperative director.
- c. If an election is being held for either position and the other administrator position is not held by a superintendent or educational cooperative director, candidates for the open position must be a superintendent or educational cooperative director and the notice of election shall so state that requirement.
- d. Candidates for Position No. 5 and Position No. 6 shall be licensed administrators employed by a participating employer.

2. Eligible Voters for Trustee Position Nos. 5-6

Eligible voters for Position Nos. 5 and 6 shall be active members, regardless of credited service, employed as licensed administrators.

C. Nonlicensed Trustee Position No. 7

1. Qualifications for Candidacy:

- a. Active member with a minimum of five (5) years of actual service.
- b. Employed in a position not requiring state licensure.

2. Eligible Voters for Trustee Position No. 7

Eligible voters for Position No. 7 shall be all active members, regardless of credited service, who are employed by participating employers in nonlicensed positions as defined these rules.

D. Minority Trustee Position No. 8

There shall be one (1) member trustee of a minority racial ethnic group.

1. Qualifications for Candidacy:

- a. An active or retiree member of ATRS with a minimum of five (5) years of actual service
- b. Member of a minority racial or ethnic group

2. Eligible Voters for Trustee Position No. 8

- a. All active members, regardless of credited service
- b. Retiree members

E. Retired Member Trustees (At-Large) - Position Nos. 9-11

There shall be three (3) retired member trustees who shall be "retirees" or "retirants" as defined under A.C.A. § 24-7-202.

1. Qualifications for Candidacy:

- a. Retiree member of ATRS
- b. Resident of the State of Arkansas

2. Eligible Voters for Trustee Position Nos. 9-11

All retirees of ATRS, regardless of present employment status or residency.

III. Rules on Elected Trustee Nominations

- A. During December in a year in which an elected trustee position is subject to election or to fill a vacancy in a special election, ATRS shall publish public notice of an upcoming trustee position election in a statewide newspaper for at least five (5) consecutive days. The notice will also be

sent to such persons or groups that have requested a notice of Trustee vacancies. The notice shall also be posted on the ATRS website from December until the closing of the nomination period.

- B. For all elected positions, a candidate must submit a petition signed legibly by at least twenty-five (25) ATRS members who are eligible to vote for the trustee position for which the member is seeking nomination. The petition must include the last four digits of each signatory's Social Security number for verification of the member's eligibility to vote for the position.
- C. The original petitions for nomination must be submitted to the ATRS Executive Director no later than January 10. Actual delivery must be made by January 10, regardless of postmark date or other methods to attempt delivery.
- D. Upon receipt of a petition, ATRS will confirm its receipt and verify the eligibility of the candidate for the trustee position under A.C.A. § 24-7-301. ATRS will verify the member's signatures signing the petition as eligible voters.
- E. The candidates submitting a petition for nomination will receive notice by ATRS if the petition is accepted and will receive a list of other members who were certified to participate in the election for the trustee position for which they seek nomination.
- F. Prior to ballots being mailed, ATRS or its designee will conduct a random drawing for ballot position. At least two (2) independent witnesses shall be present to certify the drawing of the ballot position. Candidates will be notified of the order in which they will be listed on the ballot.
- G. Upon request of a candidate, ATRS will provide a list of mailing addresses of eligible voters for the distribution of a candidate's campaign materials. The candidate's message shall not contain information that would constitute defamation of another candidate. Campaign materials will be mailed by the election vendor from its place of business. All postage for such materials shall be the candidate's sole expense.

IV. Rules on Trustee Elections

- A. ATRS shall employ an independent election vendor to conduct the trustee elections.
- B. If any position receives only one nomination and the position is not contested, the Board at its next regular or special meeting may certify the nomination and declare the candidate duly elected as a trustee prior to the commencement of the trustee's term.
- C. ATRS shall publish ballots that shall be submitted to the election vendor for mailing on March 15 to the member's address of record.

- D. Completed ballots must be received by the election vendor on or before April 15 to be counted. The vendor shall only count such ballots that are correctly completed.
- E. Results for positions not subject to a run-off election shall be certified to ATRS by April 20.
- F. If upon certification of the outcome of a trustee election by the vendor, if no candidate receives at least 50% of the votes cast by eligible voters, a runoff election will be held between the two (2) candidates receiving the highest number of votes for the position. The run-off ballots will be mailed by the election vendor to eligible voters on or before May 1.
- G. Completed ballots for a run-off election must be received by the election vendor on or before June 1 to be counted.
- H. Upon the completion of the run-off election, results shall be certified by the election vendor to ATRS by June 5.
- I. Any candidate included on the ballot may submit a challenge to the election vendor's certified results for an elected trustee position by submitting a written challenge to the ATRS Executive Director. A challenge must be received within five (5) calendar days of the certification of the elections results for the position at issue. If a candidate challenges the election results, the election process will be suspended for the same number of days that the resolution of the challenge requires, and the remaining election schedule will be adjusted accordingly.
- J. Upon receipt of a challenge, the ATRS Board will hold a special meeting to consider the challenge. The Executive Director will issue an ATRS recommendation to the Board along with the administrative record relating to the position being challenged.
- K. For any fixed date in the election schedule that falls on a holiday or a weekend, the official date shall become the next business day.
- L. Upon completion of an election, all elected trustee terms, except for special elections, begin on July 1 following the election.

V. Board Procedures to Fill Unexpired Terms for Elected Trustees

ATRS staff shall notify the Board of all resignations and vacancies by other causes in any Trustee position as soon as possible after staff has knowledge of the vacancy. The Board shall take appropriate action authorized by law to fill the vacancy. The Board may by majority vote appoint a trustee until the next ATRS election. In the event the Board by majority vote determines that the vacancy should be filled by a special election, then a special election shall be scheduled as follows:

If an elected trustee position is declared vacant by the Board and is to be filled by a special election then, in accordance with this rule, ATRS shall publish notice as set out in Section III.A. that a special election will be held and will announce the schedule for the special election, which will include the following: 1) the date the vacancy occurred and position being vacated; 2) the time period for circulating petitions for nominating signatures; 3) the deadline for filing petitions with ATRS; 4) the date ATRS will verify the validity of petitions; 5) the date ballots will be sent to eligible voters; 6) the election date; and 7) the date the term shall begin.

VI. Term of Elected Trustee Office and Vacancies

- A. The term of office of each elected trustee shall be six (6) years.
- B. Each trustee shall continue to serve as trustee until their term expires unless they resign or is otherwise ineligible under these rules.
- C. In a year in which a six (6) year term of a trustee expires, the position shall be filled under the regular election schedule in this rule.
- D. A trustee elected to fill an unexpired term in a special election will serve for the remainder of the six (6) year term of the vacating trustee.

VII. Rules on Elected Trustee Vacancies

- A. An active member trustee shall be ineligible to serve after becoming inactive or retiring.
- B. An active member trustee shall be ineligible to serve if he or she changes employment category during his or her term of office and the employment category is a requirement of the trustee position, i.e., an administrator becomes a classroom teacher.
- C. A retiree member trustee shall be ineligible to serve after becoming active.
- D. A trustee vacancy may occur if the trustee is absent from meetings.
 - 1. The Board of Trustees or its designee will notify the Board member after the second consecutive absence.
 - 2. A vacancy shall occur if the Board votes to declare a position vacant due to one of the following:
 - a. A trustee is absent for three (3) consecutive regular Board meetings and the absences are not excused by the Board. An absence that is excused by a majority of the members of the Board shall not be counted towards a vacancy. Attendance on either day of a two-day Board meeting is sufficient to meet the attendance requirement for that meeting;
 - b. A trustee is ineligible due to a change in status under A.C.A. § 24-

7-302 resulting in three (3) consecutive absences at regular Board meetings prior to the expiration of the trustee's term; or

- c. Resignation or death of a trustee which will create three (3) or more consecutive absences at regular Board meetings prior to the expiration of the trustee's term.

If the Board declares a vacancy by resolution under the section above, the Board may vote to hold a special election to fill an unexpired term under the Board procedures to fill unexpired terms for elected trustees. If the Board does not certify a vacancy under this section, the vacancy will be filled during the next annual ATRS election held upon expiration of an elected trustee's term, utilizing approved election procedures for that position.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Teacher Retirement System
DIVISION Administration
PERSON COMPLETING THIS STATEMENT Laura Gilson, General Counsel
TELEPHONE NO. (501) 682-1266 FAX NO. (501) 682-2663 EMAIL: laurag@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ATRS Rule 4 -ELECTION OF BOARD OF TRUSTEES

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☐ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☐ No ☐

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>

Total N/A

Total N/A

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>N/A</u>

Next Fiscal Year

General Revenue	<u>N/A</u>
Federal Funds	<u>N/A</u>
Cash Funds	<u>N/A</u>
Special Revenue	<u>N/A</u>
Other (Identify)	<u>N/A</u>
Total	<u>N/A</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☐

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Summary of Proposed Rule Change

Arkansas Teacher Retirement System Rule 4 Board of Trustees Composition and Elections

SUBSTANTIVE CHANGES: NONE

- Although this is technically a "new" rule because the rule has been renumbered and renamed, the language of the new rule is almost entirely imported from existing language in ATRS Rules 4-1 and 4-2.¹
- ATRS reformatted and reorganized the existing two (2) rules into one rule for consistency and professionalism.
- The existing rules 4-1 and 4-2 are, therefore, proposed to be stricken and repealed, and replaced with new ATRS Rule 4 - Board of Trustees Composition and Elections.

NON-SUBSTANTIVE CHANGES:

- To replace obsolete OPM classifications with the current OPM classifications for candidacy and voting eligibility
- To equate "educational cooperative director" with "superintendent" as service as an ATRS administrator trustee consistent with A.C.A. § 24-7-301.
- To reorganize Section D on page 4-6 to group all of the rules regarding trustee attendance and vacancies into the same section.
- To correct formatting issues, renumbering, grammar, and spelling, where appropriate.
- To recapture previously promulgated language inadvertently omitted in a 2015 filing so the language in this new rule accurately reflects the rule as promulgated.

¹ Language in the new rule that remains the same as the existing rules is highlighted in blue. Any language that is different or has been relocated from its original order in the existing rules, is *italicized* and appears in black font color, for easier identification