

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

NOTICE OF INTENDED ATRS BOARD ACTION

At a meeting of the Board of Trustees of the Arkansas Teacher Retirement System (Board) to be held at **11:00 a.m. on Monday, February 5, 2024**, at 1400 West Third Street, Room 300, Little Rock, Arkansas 72201, the Board, pursuant to its authority under A.C.A. §§ 24-7-201– 24-7-1409, will consider the repeal and adoption of amendments to certain rules of the Arkansas Teacher Retirement System (ATRS).

Rules to be repealed:

- Rule 5-1: Investment Introduction
- Rule 5-2: Standard of Care
- Rule 5-3: Asset Allocation
- Rule 5-4: Investment Goals
- Rule 5-6: Investment Consultants
- Rule 5-7: Investment Managers
- Rule 5-8: Soft Dollars
- Rule 17-1: Manifest Injustice

Rules to be amended:

- Rule 0-1: ATRS Rules of Organization and Operation
- Rule 4: Election of Board of Trustees
- Rule 6: Membership and Employer Participation
- Rule 7: Service Credit, Contributions, Reporting, and Final Average Salary
- Rule 8: Free Service Credit, Purchasable Service Credit, and Purchase Accounts
- Rule 9: Retirement and Benefits
- Rule 10: Return to Service and Teacher Deferred Retirement Option Plan
- Rule 11: Survivors and Domestic Relations Orders
- Rule 12-1: Protection of “Qualified Trust” Status of ATRS Under IRS Code § 401(a)
- Rule 13-1: Administration Adjudications: Staff Determinations and Appeals
- Rule 14-1: Retirement Fund Asset Accounts
- Rule 15-1: Benefit Restoration Plan and Trust
- Rule 16: Cash and Savings Help (CASH) Program

Interested persons may submit their comments, orally or in writing, to the Executive Director of ATRS at the above address. Comments should be received no later than **Monday, January 22, 2024 at 4:30 p.m.** Requests for an oral hearing in accordance with A.C.A. § 25-15-204(a)(2)(B) should be submitted by **Wednesday, January 24, 2024**, in order for the oral hearing to be placed on the agenda.

The proposed amendments, along with the questionnaire, financial impact statement, and summaries of the changes, may be accessed on the ATRS website at <https://www.artsr.gov/board-rules>, or copies may be obtained by contacting the Executive Director’s office at (501) 588-4367. The current rules may also be viewed at <https://www.artsr.gov/board-rules> or at the ATRS office Monday through Friday from 8:00 a.m. to 4:30 p.m.

~~RULE 17-1~~

~~MANIFEST INJUSTICE~~

~~I. BACKGROUND AND PURPOSE.~~

The 89th General Assembly provided the ATRS Board the extraordinary remedy of waiving any rule, provision, or law that does not violate a federal law or rule in order to prevent a manifest injustice to a member, benefit participant, ATRS employer, or ATRS. Act 303 of 2013 grants that authority to the Board, and is codified at A.C.A. § 24-7-205 as follows:

*"(e) The board or its designee may waive or modify the impact of a rule, provision, or law that does not violate federal law or jeopardize the taxqualified status of the system to correct or prevent a **manifest injustice** (emphasis added) that would affect the system, benefit participant, or employer in a particular instance."*

The definition of manifest injustice can be found at Ark. Code. Ann 24-7202(40)(A) as follows:

"(40)(A) "Manifest injustice" means an obvious unfairness that has a direct and observable unconscionable effect that will occur as a result of a technical error or error of judgment, when the error made by the system, a benefit participant, or employer, and the disparity of outcome to the parties, when taken together and supported by clear and convincing evidence, show a great harm to the integrity of the system as a whole, the benefit participant, or an employer, unless the system is afforded the discretion to resolve the matter in a fair manner."

(B) In determining manifest injustice the system may consider:

- (i) The degree of fault of the system, benefit participant, or employer;*
- (ii) An ambiguity in the interpretation of the circumstances, rule, or law;*
- (iii) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;*

- (iv) Whether or not an expedited decision is in the public interest;*
- (v) The fundamental fairness of a remedy in a particular situation; and*
- (vi) Whether or not the status quo would result in an unconscionable outcome."*

II. GENERAL

~~The process of declaring a manifest injustice is a rare and extraordinary remedy that shall not be used as a routine method of addressing error, oversight, or simple mistake. As an extraordinary remedy, manifest injustice shall be cautiously and carefully used to prevent unfairness, to preserve the integrity of ATRS, and to avoid or correct unduly harsh or unconscionable outcomes.~~

III. DELEGATION TO ATRS EXECUTIVE DIRECTOR.

- ~~A. The ATRS Executive Director is hereby given authority to implement a resolution of a manifest injustice once a determination is made that a manifest injustice exists using the review process set forth herein. The Executive Director may implement a resolution of a manifest injustice of up to \$10,000 of direct financial impact to ATRS. The Executive Director is specifically prohibited from waiving any deadlines that may apply in the ATRS Rules or law. Any waiver of a deadline is exclusively a Board remedy and not a remedy available to the ATRS Executive Director. Provided however, if any resolution that has a direct financial impact of more than \$5,000, then ATRS Executive Director shall provide the Chair of the ATRS Board of Trustees written notice about the manifest injustice determination and proposed resolution prior to implementing the resolution.~~
- ~~B. The Executive Director is specifically prohibited from waiving any deadline that may apply in the ATRS Rules or law. A waiver of a deadline is exclusively a Board remedy and not a remedy available to the Executive Director.~~
- ~~C. The Executive Director shall provide a report to the Board at least biannually that outlines the facts and circumstances of each manifest injustice referral, sets forth the findings and recommendations of the Manifest Injustice Committee, and sets forth and explains the resolution of the manifest injustice, if a manifest injustice is found. Members' names or other information that is not material to the findings shall not be required in the report to the Board.~~

IV. ~~MANIFEST INJUSTICE COMMITTEE.~~

- A. ~~The ATRS General Counsel, Assistant Director of Fiscal Affairs, and Member Services Administrator shall act as a 3-person Manifest Injustice Committee (the "Committee") to review all manifest injustice referrals.~~
- i. ~~The Committee will meet on a reasonable schedule or as needed to review any referral.~~
 - ii. ~~A majority vote of the Committee shall constitute a recommendation on the referral.~~
 - iii. ~~The Committee shall make an initial recommendation to the Executive Director based upon its review of the referral regarding whether or not a manifest injustice exists. If a manifest injustice exists, then the Committee shall propose a resolution of the manifest injustice to the Executive Director.~~
- B. ~~If the Committee determines that no manifest injustice exists in a referral, then the Executive Director shall review the referral and the Committee's basis for the recommendation. The Executive Director may either accept the recommendation or return the referral to the Committee for further consideration.~~
- i. ~~If the Executive Director accepts the recommendation from the Committee, the discretionary review is officially ended and the matter is to be considered officially closed.~~
 - ii. ~~If the referral is returned to the Committee, the Committee shall consider the matter again in light of any additional information provided by the Executive Director. If the Committee's recommendation remains that no manifest injustice exists, the matter shall be considered officially closed, unless referred to the Board.~~
- C. ~~If the Committee determines that a manifest injustice does exist, then the Executive Director may implement the resolution suggested by the Committee or adopt an alternate resolution that falls within the Executive Director's delegated authority.~~
- D. ~~If the Executive Director disagrees with the Committee's determination that a manifest injustice exists, then the Executive Director may return the referral~~

~~for further consideration. If the Committee maintains the determination that a manifest injustice exists after the return of the referral, and the Executive Director continues to disagree, then the Executive Director may place the item on the Board agenda for the Board to consider and resolve, with input from both the Committee and Executive Director concerning the referral.~~

- ~~E. If a member of the Committee has a conflict or otherwise cannot act on a manifest injustice referral due to absence, sickness, or work load, a Committee member may appoint a representative from their Staff for a committee meeting.~~
- ~~F. A party may not administratively appeal a determination of a referral of manifest injustice, regardless of whether the determination occurs from the Executive Director's decision or through the Board's decision.~~

- ~~V. The Executive Director may suspend an Executive Director Review if a manifest injustice determination might resolve the issue within the Executive Director review. The Executive Director review shall not be suspended absent the consent of the affected party/parties in the Executive Director review.~~

VI. REFERRALS.

- ~~A. A referral of a potential or alleged manifest injustice may be made to the Executive Director by any:~~

- ~~i. ATRS Trustee; ii. ATRS Staff member, including the Executive Director; iii. Benefit Participant; iv. Beneficiary;~~
- ~~v. ATRS-covered Employer; or vi. Other interested party such as guardian or fiduciary.~~

- ~~B. A referral shall be made to the Executive Director in order to create and preserve an appropriate record with ATRS.~~

- ~~i. Each referral shall be given a number and a year designation. For _____ example: "2013-MI-1, 2013-MI-2, 2013-MI-3" and so forth.~~

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- ~~ii. The Executive Director shall submit all referrals to the Committee.~~

- VII.** ~~The Committee or the Executive Director may request that a party to a manifest injustice referral provide information or input concerning the referral. A party is not required to provide information.~~
- VIII.** ~~A Board decision on a manifest injustice referral is a final discretionary decision and is not subject to further review.~~

Approved by Board: ~~July 26, 2013~~

Adopted: ~~October 9, 2013~~

Effective: ~~November 8, 2013~~

FINANCIAL IMPACT STATEMENT**PLEASE ANSWER ALL QUESTIONS COMPLETELY.****DEPARTMENT** Legal**BOARD/COMMISSION** Arkansas Teacher Retirement System**PERSON COMPLETING THIS STATEMENT** Jennifer Liwo**TELEPHONE NO.** (501) 682-1517 **EMAIL** jenniferl@artrs.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Rule 17-1: Manifest Injustice

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 no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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? n/a

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

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

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00

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

Current Fiscal Year

\$ 0.00

n/a

Next Fiscal Year

\$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ 0.00

n/a

Next Fiscal Year

\$ 0.00

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.

December 20, 2023

Executive Summary
Proposed Rule Repeal
ATRS Rule 17-1 – Manifest Injustice

I. Purpose

The Arkansas Teacher Retirement System (“ATRS” or “System”) requests the review and approval of the proposed repeal of ATRS Rule 17-1 – Manifest Injustice (“Rule 17-1”).

On December 4, 2023, the Board of Trustees of the Arkansas Teacher Retirement System (“Board”) voted to proceed with the repeal of Rule 17-1.

II. Authority

A.C.A. § 24-7-301 provides that the Board is responsible for the general administration and proper operation of the System and for implementing the Arkansas Teacher Retirement System Act, A.C.A. § 24-7-201 et seq.

A.C.A. § 24-7-305(b) gives the Board the authority to promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the System.

III. Repeal

Rule 17-1 will be repealed and any provisions necessary to maintain will be transferred to Rule 13-1.

IV. Recommendation

The System recommends that the proposed repeal of Rule 17-1 be approved.