



# State of Tennessee

## PUBLIC CHAPTER NO. 296

SENATE BILL NO. 1003

By McNally

Substituted for: House Bill No. 950

By McManus

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 25; Title 8, Chapter 34; Title 8, Chapter 35; Title 8, Chapter 36; Title 8, Chapter 37 and Title 49, Chapter 7, Part 2, relative to retirement.

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

SECTION 1. Tennessee Code Annotated, Section 8-25-104, is amended by adding the following language as new, appropriately designated subsections:

Notwithstanding any provision of the law to the contrary, the chair of the consolidated retirement board, with the concurrence of the commissioner of finance and administration, has the authority to implement an automatic deferred or tax-sheltered compensation plan. Such plan shall provide that any person who becomes a full-time state employee on or after the implementation date of the plan, including a full-time employee of an institution of higher education, who is eligible to participate in one of the deferred or tax-sheltered compensation plans established pursuant to parts 1 or 3 of this chapter shall participate in at least one of the plans as a condition of employment, unless such employee files with that person's employer a notice of that person's election not to participate.

Any notice of non-election shall be made in such format and through such medium as prescribed by the chair of the Tennessee consolidated retirement system and must be filed with that employee's employer by no later than thirty (30) calendar days from the date of the notice of automatic deferral letter. Any employee who does not file a notice of non-election within the prescribed period shall be automatically enrolled in the state's salary reduction plan established in part 3 of this chapter with a salary deferral of two percent (2%) of that employee's compensation. All contributions made by or on behalf of the employee shall be directed to such default option as shall be established by the chair of the consolidated retirement board until such time as the employee selects a different investment option or options. Notwithstanding any provision of this section or any other law to the contrary, future deferrals may be cancelled or adjusted at any time by the employee provided the employee notifies that employee's employer in such format and through such medium as may be prescribed by the chair of the Tennessee consolidated retirement system at least one month before the payday on which the cancellation or change is to be effective. Provided, however, any adjustment in the deferrals, other than a cancellation, cannot cause the amount of the deferrals to be less than twenty dollars (\$20.00) per month, or if the employee is paid twice a month, ten dollars (\$10.00) semimonthly, or such other lower amount as may be established under chapter 25, part 3 of this title. In addition, any adjustment in the deferrals cannot cause the amount of the deferrals to exceed the maximum allowed under the Internal Revenue Code.

Any employee who affirmatively declines to make employee deferrals after the first automatic enrollment contribution was made, may make an election to withdraw that employee's entire automatic enrollment contribution. This election must be submitted no later than ninety (90) calendar days after the payroll date in which the first automatic enrollment contribution is made on behalf of the employee. The amount of the distribution shall be the value of the automatic enrollment contributions plus or minus investment gains or losses as of the date the distribution is processed. Automatic enrollment contributions made after such date shall remain in the plan and shall be subject to the plan's regular distribution rules. Further, an employee who has made an election to withdraw and who thereafter leaves employment and is then rehired by the same employer as defined below or, by the same political subdivision in the case of a political subdivision employee, before a twelve (12) continuous month absence shall not be permitted to make another election to withdraw that

participant's automatic enrollment contribution. For purposes of this subdivision, "same employer" means the employer for which the person last worked prior to separation from covered employment. All departments, agencies and instrumentalities in the executive, legislative and judicial branches of state government, including public institutions of higher education, shall be deemed one and the same employer. All public schools within the Tennessee public school system, except for public institutions of higher education, shall be deemed one and the same employer. Notwithstanding the vesting provisions of the plan's document, the employer matching contributions described in § 8-25-303 that are attributable to the distribution of the automatic enrollment contributions shall be forfeited and placed in a forfeiture account. Amounts in the forfeiture account shall be used in the manner provided in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title. The employer matching contributions described in § 8-25-303 shall not be made if a permissible withdrawal is taken pursuant to this subsection before the date the matching contribution is allocated.

The initial two percent (2%) automatic enrollment contribution described in this section shall be subject to a percentage annual increase thereafter if provided for in the plan document established for the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title.

The automatic deferrals shall be contributed on a pre-tax basis and shall continue until the employee affirmatively elects otherwise.

SECTION 2. Tennessee Code Annotated, Section 8-25-111, is amended by adding the following language as a new, appropriately designated subsection:

A local board of education may elect to participate in the plan separately from the political subdivision with which it is associated. A political subdivision may elect to participate in the plan without extending coverage to the employees of the local board of education that is associated with the participating political subdivision. In the event that a political subdivision withdraws its participation in the deferred compensation plan, the local board of education, which is a part of the political subdivision, may continue its participation in the plan separately.

SECTION 3. Tennessee Code Annotated, Section 8-25-301, is amended by deleting the first sentence in this section in its entirety and by substituting instead with the following:

The state treasurer is directed to develop and obtain internal revenue service approval of a profit sharing or salary reduction plan for state employees as permitted by the internal revenue service.

SECTION 4. Tennessee Code Annotated, Section 8-25-304(a), is amended by deleting the subsection in its entirety and by substituting instead with the following:

(a) Any political subdivision or instrumentality of the state, by resolution or ordinance of its governing body, is authorized to make available to its employees a profit sharing or salary reduction plan approved by the internal revenue service.

SECTION 5. Tennessee Code Annotated, Section 8-34-101(34), is amended by deleting from the third sentence thereof the language "fifty dollars (\$50.00)" and by substituting instead the language "seventy-five dollars (\$75.00)".

SECTION 6. Tennessee Code Annotated, Section 8-34-101(34), is further amended by adding the following new sentence at the end thereof:

Notwithstanding this subdivision (34) to the contrary, any retirement allowance that equals ten dollars (\$10.00) or more per month but less than seventy-five dollars (\$75.00) per month shall be paid in a lump sum of equivalent actuarial value if such allowance is payable on account of a person who became a member of the retirement system on or after July 1, 2013;

SECTION 7. Tennessee Code Annotated, Section 8-35-201, is amended by adding a new, appropriately designated subsection as follows:

A local board of education may elect to participate in the retirement system separately from the political subdivision with which it is associated. If a local board of education elects to participate in the retirement system separately, the local board of education shall designate, by resolution, which city or the county shall accept financial responsibility for the liabilities associated with participation. The city or county that accepts the financial responsibility for the local board of education's participation in the retirement

system, through its chief legislative body, governing body or authorizing body shall, by resolution, authorize and approve the local board of education's participation and shall demonstrate the city or county's acceptance of the liability associated with that participation. A political subdivision may elect to participate in the retirement system without extending coverage to the employees of the local board of education that is associated with the participating political subdivision. In the event that a political subdivision withdraws its participation from the retirement system, the political subdivision may allow the local board of education, which is a part of the political subdivision, to continue its participation in the retirement system separately.

SECTION 8. Tennessee Code Annotated, Section 8-35-201, is amended by adding a new, appropriately designated subsection as follows:

All political subdivisions that participate in or desire to participate in the retirement system shall have a governing body and shall meet all applicable state and federal law requirements that are necessary for the retirement system to maintain its status as a qualified plan under the Internal Revenue Code

SECTION 9. Tennessee Code Annotated, Section 8-35-218(a), is amended by adding the following language as a new, appropriately designated subdivision:

A political subdivision that withdraws its participation from the retirement system and elects to participate in the state's deferred compensation plan pursuant to § 8-25-111, shall not be subject to the one (1) year's advance notice requirement in this section; instead, the political subdivision shall give the board of trustees at least six (6) months advance written notice of the effective date of the withdrawal. The political subdivision shall submit a withdrawal resolution, legally adopted by two-thirds (2/3) of the membership of the chief legislative body of the political subdivision, at least six (6) months in advance of the political subdivision's effective date of the withdrawal, which shall be submitted on the first day of any quarter following the six (6) months' minimum notice requirement. Such resolution to withdraw may be rescinded and withdrawn by a resolution legally adopted and approved by the chief legislative body of the political subdivision at any time prior to the expiration of the six (6) month notice period.

SECTION 10. Tennessee Code Annotated, Section 8-35-226(c), is amended by deleting the second sentence in the subsection in its entirety and by substituting instead with the following:

In no event shall the benefit payable on such service be less than that provided under § 8-36-209(a)(1)(A), (a)(1)(B), (a)(2)(A)(i) or (a)(2)(A)(ii), depending upon which option is exercised by the chief legislative body.

SECTION 11. Tennessee Code Annotated, Sections 8-35-227, 8-35-229 and 8-35-233, are amended by deleting them in their entirety.

SECTION 12. Tennessee Code Annotated, Section 8-35-253(f), is amended by adding the language "for employees hired on or after the effective date of this act", after the word "prospectively" in the second sentence in this subsection.

SECTION 13. Tennessee Code Annotated, Section 8-35-255(d), is amended by deleting the language "twenty (20) years" and substituting instead the language "five (5) years".

SECTION 14. Tennessee Code Annotated, Section 8-35-256(d), is amended by deleting the language "twenty (20) years" and substituting instead the language "five (5) years".

SECTION 15. Tennessee Code Annotated, Title 8, Chapter 35, Part 3, is amended by adding the following language as a new, appropriately designated section:

8-35-3 \_\_\_\_.

Notwithstanding any provision of this chapter to the contrary, no entity shall be eligible to participate in the retirement system if the chair of the Tennessee consolidated retirement system determines, in the chair's sole discretion, that the entity's participation could have a potentially adverse effect on the retirement system's status as a qualified plan under the Internal Revenue Code, codified in U.S.C. title 26, and regulations. In making such determination, the chair may rely on the advice of a nationally recognized counsel in the area of government employee benefit plans.

SECTION 16. Tennessee Code Annotated, Title 8, Chapter 36, Part 1, is amended by adding a new, appropriately designated section as follows:

8-36-1 \_\_\_\_.

The retirement system shall honor claims under a qualified domestic relations order at a time designated by the state treasurer. For purposes of this section, "qualified domestic relations order" has the same meaning as provided in §414(p) of the Internal Revenue Code of 1986, codified in 26 U.S.C. §414(p); provided, that such order may only relate to the provision of marital property rights relating to the retirement system for the benefit of the retirement system member's former spouse.

SECTION 17. Tennessee Code Annotated, Section 8-36-101, is amended by deleting the language contained in this section and inserting it in Section 8-36-601 as new subsections (c) and (d).

SECTION 18. Tennessee Code Annotated, Section 8-36-116, is amended by adding a new subsection (6) as follows:

(6) In the event that a retired member receives an overpayment in retirement benefits from the retirement system and that member returns to service, the retirement system may initiate an automatic payroll deduction to recoup the overpaid amount. The employer shall comply with the retirement system's request for an automatic payroll deduction.

SECTION 19. Tennessee Code Annotated, Title 8, Chapter 36, Part 2, is amended by adding the following language as a new, appropriately designated section:

8-36-2 \_\_\_\_.

(a) Notwithstanding any provision of the law to the contrary, no benefit shall be paid to a member from the retirement system in excess of benefit limitations established in 26 U.S.C. §415 and applicable federal rules and regulations.

(b) The board may establish a separate qualified excess benefit arrangement ("QEBA") pursuant to 26 U.S.C. §415(m) solely for the purpose of providing eligible members with retirement system benefits that are in excess of the benefit limits established in 26 U.S.C. §415. For purposes of this section, "eligible member" means any person included in the membership of the retirement system as provided in chapter 35, part 1 of this title who is entitled to receive a retirement benefit in excess of the limits imposed by 26 U.S.C. §415.

(c) The board shall have the authority to adopt a plan document and a trust agreement as well as administer, maintain, modify, terminate or reestablish the QEBA, and may, in its discretion, delegate its authority to the state treasurer.

(d) On or after the date that the QEBA is established, the retirement system shall pay from the QEBA to each eligible member or beneficiary a supplemental retirement allowance equal to the difference between the eligible member's monthly benefit otherwise payable from the applicable retirement system prior to any reduction or limitation because of 26 U.S.C. §415 and the actual monthly benefit payable from the retirement system as limited by 26 U.S.C. §415. The retirement system shall compute and pay the supplemental retirement allowance in the same form, at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under the retirement system except for 26 U.S.C. §415 limitations.

(e) The retirement system shall determine the amount of an eligible member's benefits that cannot be provided to the member or beneficiary because of limitations established by 26 U.S.C. §415, and the amount of employer contributions that must be made to the QEBA as a separate fund, separate and apart from the retirement system, for each eligible member whose retirement allowance would exceed federal law limitations. The retirement system shall engage actuarial services required to make these determinations.

(f) The eligible member's employer shall pay the excess benefits for an eligible member to the separate QEBA fund when the retirement system makes the assessment that the member's retirement allowance would exceed federal law limitations established by 26 U.S.C. §415. An employer's contribution to the QEBA shall be a separate contribution from the employer contributions made pursuant to chapter 35 of this title.

(g) Payments under a QEBA are exempt from garnishment, assignment, alienation, judgments, and other legal processes to the same extent as the retirement allowance under the retirement system.

(h) An eligible member shall not elect to defer the receipt of all or any part of the payments due under a QEBA.

(i) The board shall have the authority to promulgate rules as may be necessary to implement a QEBA plan as provided in this section.

SECTION 20. Tennessee Code Annotated, Section 8-36-204(b)(2), is amended by adding the following language after the first sentence in the subdivision:

Subsequent to an employer's election to decrease the required years of service from ten (10) to five (5) years, the employer, through a resolution passed by the employer's chief governing body, may then increase the required years of service from five (5) to ten (10) for employees hired on or after the increase in the years of service, without any limit to the number of increases or decreases that an employer may make by resolution from its chief governing body; provided that, any increases in the number of required years of service shall be applied prospectively for employees hired on or after the increase in the years of service.

SECTION 21. Tennessee Code Annotated, Section 8-36-801(a), is amended by deleting the language in the subsection in its entirety and substituting instead the following:

(a) Except as provided in this part, any retired member of the Tennessee consolidated retirement system, or of any superseded system, or of any local retirement fund established pursuant to chapter 35, part 3 of this title who accepts employment in a position covered by the Tennessee consolidated retirement system shall, as a condition of such employment, cease to draw the member's retirement allowance during the period of the employment; however, the member shall keep his or her retirement benefit in the month that he or she returns to work.

SECTION 22. Tennessee Code Annotated, Section 8-36-801(b), is amended by deleting the third sentence thereof in its entirety and by substituting it instead with the following:

Any retiree restored to employment who reenrolls as an active member of the retirement system shall be treated as voiding any optional benefit previously elected under § 8-36-601 for purposes of in-service death benefits.

SECTION 23. Tennessee Code Annotated, Section 8-36-804, is amended by deleting this section in its entirety and by substituting instead the following:

No member shall be entitled to establish retirement credit for any period during which the member received a retirement allowance; however, should a member return to a position covered by the retirement system, the member shall be able to obtain retirement credit for the month in which he or she returns to work even though the member shall keep his or her retirement benefit in the month that the member returns to work as provided in § 8-36-801(a).

SECTION 24. Tennessee Code Annotated, Section 8-37-108, is amended by adding a new subsection (d) and renumbering the subsequent subsections accordingly:

(d) The council shall annually elect a chair and vice chair from its membership.

SECTION 25. Tennessee Code Annotated, Section 8-37-220(a), is amended by deleting this subsection in its entirety and by substituting instead the following:

(a) Subject to the conditions set forth in this section, the board of trustees may promulgate substantive and procedural rules to permit members, including retired members, to establish the retirement credit authorized in chapters 34-37 of this title through equal monthly installments over a period not to exceed five (5) years from the date the first monthly installment payment is due and payable. Any rules promulgated under this section shall set forth the date on which the retirement system may begin accepting monthly installment payments pursuant hereto. Nothing in this section shall be construed to allow a member or retired member to establish retirement credit unless such member otherwise meets all the eligibility requirements to establish the credit.

SECTION 26. Tennessee Code Annotated, Section 8-37-220(c), is amended by deleting the second sentence in the subsection and by substituting instead the following:

Each installment shall be due and payable on the first business day of each calendar month during the payment period or on a date designated by the member. If a member does not designate a date, then the date that each installment shall be due and payable will default to the first business day of each calendar month during the payment period.

SECTION 27. Tennessee Code Annotated, Section 49-7-205(d), is amended by deleting subdivisions (d)(1) and (d)(2) in their entirety.

SECTION 28. This act shall take effect immediately upon becoming a law, the public welfare requiring it.

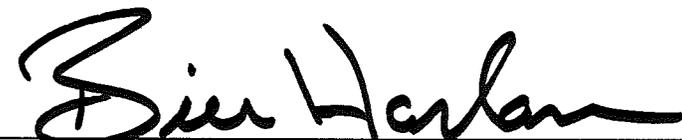
SENATE BILL NO. 1003

PASSED: April 15, 2013

  
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RON RAMSEY  
SPEAKER OF THE SENATE

  
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BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 29<sup>th</sup> day of April 2013

  
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BILL HASLAM, GOVERNOR