



State of Tennessee
PUBLIC CHAPTER NO. 939

SENATE BILL NO. 3216

By McNally, Kelsey

Substituted for: House Bill No. 3603

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 25, Part 1; Title 8, Chapter 25, Part 3; Title 8, Chapter 34; Title 8, Chapter 35; Title 8, Chapter 36 and Title 8, Chapter 37, relative to new retirement plan options for Tennessee political subdivisions.

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

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 35, Part 2, is amended by adding the following as new, appropriately designated sections:

8-35-2__.

(a) For purposes of this act, "political subdivision" means any entity authorized to participate in the retirement system pursuant to this part.

(b) The provisions of this act are not applicable to:

(1) State officials, including legislative officials elected by the general assembly, or who are employed in the service of, and whose compensation is payable in whole or in part by, the state, including employees under supervision of the state whose compensation is paid, in whole or in part, from federal or other funds;

(2) Employees of state-supported institutions of higher education; or

(3) Teachers as defined by § 8-34-101(46).

(c) The provisions of this act are applicable only to those employees that political subdivisions hire on or after the effective date of this act.

(d) It is the intent of the general assembly that there shall be multiple options for political subdivisions of the state to participate in the retirement system. It is further the intent of the general assembly that any political subdivision already participating in the retirement system on the effective date of this act may continue to do so without making any changes to its existing plan. Accordingly, the following additional plans are established and available for adoption by political subdivisions of the state on or after the effective date of this act, in accordance with § 8-35-201.

(e) With respect to any of the plans adopted by a political subdivision on or after the effective date of this act, the following provisions are applicable:

(1) A political subdivision may for employees hired on or after the effective date of this act, freeze, suspend or modify benefits, employee contributions, plan terms and design prospectively; provided, these actions are authorized by an enactment of the general assembly.

(2) Nothing under state law may confer to employees of a political subdivision who are hired on or after the effective date of this act or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever is later, an implied right to future retirement benefit arrangements. For such employees, a political subdivision may adjust retirement benefit formulas, cost of living adjustments, if allowable, contribution rates, and retirement eligibility ages in accordance with the provisions of this act, unless prohibited by federal law.

(3) Employees hired on or after the effective date of this act or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever occurs later, may not assert the indefinite continuation of the retirement formulas, contribution rates and eligibility ages in effect at the time of employment.

(4) For all employees hired on or after the effective date of this act or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever occurs later, the actuarial value of accrued benefits earned prior to any adjustment pursuant to subdivision (e)(2) above shall remain an enforceable right and may not be reduced without written consent of the employee unless the employee is subject to the forfeiture of the employee's retirement benefits in accordance with § 8-35-124.

(5) Benefits accrued under any of the plans adopted pursuant to this act shall be in accordance with the provisions of 26 U.S.C. § 411.

(f) Any political subdivision participating in any of the plans available to it shall be subject to the withdrawal provisions of § 8-35-211 and § 8-35-218. Notwithstanding any other provision of the law to the contrary, a political subdivision, by resolution legally adopted and approved by a majority of the membership of the chief governing body of the political subdivision, may change the plan in which it participates, prospectively. Any such resolution shall set forth the effective date of the change; provided, that the date shall be on the first day of any quarter following a minimum of six (6) months' notice to the retirement system.

(g) A political subdivision may change its plan and cost of living election, if allowable by the respective plan, no more frequently than once every two (2) years, but only for those employees hired on or after the effective date of this act or after the date the political subdivision authorizes its employees to participate in the retirement system in accordance with this part, whichever is later.

(h) Notwithstanding any provision of this act to the contrary and on or after the effective date of this act, a political subdivision may change its employee contribution rate within a plan as it applies to employees hired on or after the effective date of this act. A political subdivision may change its employee contribution rate no more frequently than once a year, or at such other intervals as the board may determine by rule.

(i) A political subdivision that provided notice of withdrawal pursuant to § 8-35-218 but whose effective withdrawal date is July 1, 2012, is not subject to the above-referenced six months' notice requirement in order to change plans, provided that the resolution to select an alternate plan is adopted prior to July 1, 2012.

8-35-2____.

(a) A political subdivision participating in the retirement system prior to the effective date of this act may continue to do so under the terms and conditions in effect on the effective date of this act without taking any additional action.

(b) Notwithstanding any other law to the contrary and only as it applies to new employees hired on or after the effective date of this act, the political subdivision may require employee contributions of zero percent (0%) of the employees' earnable compensation, or may require employee contributions of two and five-tenths percent (2.5%) of the employees' earnable compensation, or employee contributions of five percent (5%) of the employees' earnable compensation. Any employee contributions assumed or paid by a political subdivision on behalf of its employees shall not be credited to the individual account balances of the employees. In order to effectuate a change in the employee contributions, the political subdivision must pass a resolution legally adopted by a majority of the membership of the chief governing body of the subdivision. Any such resolution shall set forth the effective date of the change in employee contributions; provided, that the date shall be on the first day of any quarter following a minimum of three (3) months' notice to the retirement system.

8-35-2____.

(a) There is established an alternate defined benefit plan that shall offer a service retirement allowance of one and four-tenths percent (1.4%) of the member's average final compensation, multiplied by the number of years of creditable service.

(b) A political subdivision may, by resolution legally adopted and approved by the chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the alternate defined benefit plan.

(c) Except as otherwise provided in this subsection (c), any member in the alternate defined benefit plan shall be eligible for service retirement upon attainment of age sixty-five (65) and upon completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal ninety (90). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for service retirement upon attainment of sixty (60) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of thirty (30) years of creditable service. Further, any member who has creditable service in a position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service; provided, that the service rendered while the member was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under subsection (a) above. The provisions of § 8-36-211(b)(2) shall not apply in calculating the supplemental bridge benefit for members covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this subsection (c). Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the member's average final compensation, multiplied by the member's years of creditable service when the member was in a position covered by the mandatory retirement provisions of § 8-36-205(a)(2), but reduced by an actuarially determined factor as set by the board from time to time.

(d) Except as otherwise provided in this subsection (d), any member in the alternate defined benefit plan shall be eligible for early service retirement upon attainment of age sixty (60) with twenty (20) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for early service retirement upon attainment of age fifty-five (55) and upon completion of five (5) years of creditable service. The early service retirement allowance calculated under this subsection (d) shall be computed as a service retirement allowance in accordance with subsection (a) but reduced by an actuarially determined factor as set by the board from time to time.

(e) Any member may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in Title 8, Chapter 36, Part 5. All provisions of Title 8, Chapter 36, Part 5 shall be applicable, except that the disability retirement allowance shall be equal to nine-tenths (9/10) of a service retirement allowance as computed in subsection (a) above and as may be further reduced in accordance with Title 8, Chapter 36, Part 5.

(f) Any reference in Title 8, Chapters 34-37 to the eligibility requirements for an early or service retirement allowance shall for purposes of this section mean the eligibility requirements set forth in subsections (c) and (d) above. Any reference in Title 8, Chapters 34-37 to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance, shall for purposes of this section mean the applicable formula as set out in subsections (a), (d) or (e) above.

(g) The provisions of §§ 8-36-109(b)(1)(C) and 8-36-123(a)(2) shall not apply in determining the retirement allowance payable under § 8-36-109(b) or under § 8-36-123(a) to a deceased member's surviving spouse, if any. Instead, the retirement allowance payable under such sections shall be reduced by an actuarially determined factor as set by the board from time to time.

(h) In no event shall any member in this alternate defined benefit plan receive a base annual pension benefit of more than eighty thousand dollars (\$80,000) beginning July 1, 2012. Each July 1 thereafter, this amount shall be increased or decreased in accordance with the consumer price index as defined in § 8-36-701(c), and the amount of increase or decrease shall be based on the prior calendar year. The member's annual pension benefit shall be limited to the base benefit in effect at

the time of the member's retirement. This provision does not preclude any cost of living adjustments authorized pursuant to § 8-36-701(b)(1).

(i) A political subdivision electing to participate in the retirement system pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation, except that §§ 8-36-124 and 8-36-209 shall not apply and shall not be optional. Notwithstanding the foregoing, the following provisions shall remain optional to the political subdivision:

- (1) Employee contributions as provided in this section;
- (2) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621;
- (3) Mandatory retirement in accordance with § 8-36-205;
- (4) Cost of living increase allowance in accordance with § 8-36-701.

(j) Any member who desires to establish service credit pursuant to the provisions of Title 8, Chapters 34-37 shall pay employee contributions equal to the amount the member would have paid had such member been a member of the system during the period claimed, plus interest at the rate provided in § 8-37-214. Any such service shall be credited to the plan in existence at the time the service is established, provided such plan is with the political subdivision for which the service was rendered.

8-35-2____.

(a)(1) There is established a hybrid plan which consists of a defined benefit plan with a defined contribution plan. The defined benefit plan shall offer a service retirement allowance of one percent (1.0%) of the member's average final compensation, multiplied by the number of years of creditable service. The defined contribution plan shall be a plan that conforms to all applicable laws, rules and regulations of the Internal Revenue Service governing such plans, may be any plan selected by the political subdivision, and may be acquired from any source. Notwithstanding any provision of law to the contrary, a political subdivision electing to participate in the hybrid plan authorized in this section shall provide a cost of living increase allowance pursuant to § 8-36-701(b).

(2) Notwithstanding § 8-35-111 or any other law to the contrary, a political subdivision that adopts the hybrid plan authorized in this section may make employer contributions to the defined contribution plan component of the hybrid plan and to any one or more additional tax deferred compensation or retirement plans provided that the total combined employer contributions to such defined contribution plans on behalf of an employee shall not exceed seven percent (7%) of the employee's salary.

(3) Notwithstanding this or any other provision of law to the contrary, the amount of any employer matching shall not exceed the maximum allowed under the Internal Revenue Code, and shall conform to all applicable laws, rules and regulations of the Internal Revenue Service.

(b) A political subdivision may, by resolution legally adopted and approved by the chief governing body and in accordance with the procedure set out in § 8-35-201, authorize its employees in all of its departments or instrumentalities to become eligible to participate in the hybrid plan.

(c) Except as otherwise provided in this subsection (c), any member in the hybrid plan shall be eligible for service retirement upon attainment of age sixty-five (65) and upon completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal ninety (90). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for service retirement upon attainment of sixty (60) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of thirty (30) years of creditable service. Further, any member who has creditable service in a position covered by the mandatory retirement provisions of § 8-36-205 and who is entitled to the supplemental bridge benefit established pursuant to § 8-36-211 shall be eligible for service retirement upon attainment of fifty-five (55) years of age and upon completion of twenty-five (25) years of creditable service;

provided, that the service rendered while the member was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the member's retirement benefits under subsection (a) above. The provisions of § 8-36-211(b)(2) shall not apply in calculating the supplemental bridge benefit for members covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this subsection (c). Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the member's average final compensation, multiplied by the member's years of creditable service when the member was in a position covered by the mandatory retirement provisions of § 8-36-205(a)(2), but reduced by an actuarially determined factor as set by the board from time to time.

(d) Except as otherwise provided in this subsection (d), any member in the hybrid plan shall be eligible for early service retirement upon attainment of age sixty (60) with twenty (20) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80). Any member serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for early service retirement upon attainment of age fifty-five (55) and upon completion of five (5) years of creditable service. The early service retirement allowance calculated under this subsection (d) shall be computed as a service retirement allowance in accordance with subsection (a) but reduced by an actuarially determined factor as set by the board from time to time.

(e) Any member may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in Title 8, Chapter 36, Part 5. All provisions of Title 8, Chapter 36, Part 5 shall be applicable, except that the disability retirement allowance shall be equal to nine-tenths (9/10) of a service retirement allowance as computed in subsection (a) above and as may be further reduced in accordance with Title 8, Chapter 36, Part 5.

(f) Any reference in Title 8, Chapters 34-37 to the eligibility requirements for an early or service retirement allowance shall for purposes of this section mean the eligibility requirements set forth in subsections (c) and (d) above. Any reference in Title 8, Chapters 34-37 to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance, shall for purposes of this section mean the applicable formula as set out in subsections (a), (d) or (e) above.

(g) The provisions of §§ 8-36-109(b)(1)(C) and 8-36-123(a)(2) shall not apply in determining the retirement allowance payable under § 8-36-109(b) or under § 8-36-123(a) to a deceased member's surviving spouse, if any. Instead, the retirement allowance payable under such sections shall be reduced by an actuarially determined factor as set by the board from time to time.

(h) In no event shall any member in this hybrid plan receive a base annual pension benefit of more than eighty thousand dollars (\$80,000) beginning July 1, 2012. Each July 1 thereafter, this amount shall be increased or decreased in accordance with the consumer price index as defined in § 8-36-701(c), and the amount of increase or decrease shall be based on the prior calendar year. The member's annual pension benefit shall be limited to the base benefit in effect at the time of the member's retirement, but shall be subject to increase in accordance with the cost of living provisions of § 8-36-701(b)(1).

(i) A political subdivision electing to participate in the retirement system pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation, except that §§ 8-36-124 and 8-36-209 shall not apply and shall not be optional. Notwithstanding the foregoing, the following provisions shall remain optional to the political subdivision:

- (1) Employee contributions as provided in this section;
- (2) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621;
- (3) Mandatory retirement in accordance with § 8-36-205.

(j) Any member who desires to establish service credit pursuant to the provisions in Title 8, Chapters 34-37 shall pay employee contributions equal to the

amount the member would have paid had such member been a member of the system during the period claimed, plus interest at the rate provided in § 8-37-214. Any such service shall be credited to the plan in existence at the time the service is established, provided such plan is with the political subdivision for which the service was rendered.

SECTION 2. 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 which 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 3. The board may promulgate rules, including emergency rules, in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, that the board deems necessary to effectuate this part.

SECTION 4. This act shall take effect immediately for purposes of rulemaking and for all other purposes on July 1, 2012, the public welfare requiring it.

SENATE BILL NO. 3216

PASSED: April 24, 2012



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 10th day of May 2012



BILL HASLAM, GOVERNOR