State of Tennessee

PUBLIC CHAPTER NO. 259

SENATE BILL NO. 1005

By McNally, Kelsey, Mr. Speaker Ramsey

Substituted for: House Bill No. 948

By McManus; Madam Speaker Harwell; Sargent, Durham, Pody, Lundberg

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, Title 8, Chapter 36, is amended by adding a new part thereto as follows:

8-36-901. This part shall be known and may be cited as the "Hybrid Retirement Plan for State Employees and Teachers".

8-36-902.

(a) As used in this part, unless the context otherwise requires:

(1) "Hybrid plan" means a plan that provides a combination of a defined benefit plan and a defined contribution plan which, together, are intended to comply with the provisions of the Internal Revenue Code that are applicable to governmental plans;

(2) "Defined benefit component" means the portion of the hybrid plan that provides a defined benefit plan within the provisions of the retirement system, but which has its own vesting, benefit structure, and contribution requirements as set forth in this part;

(3) "Defined contribution component" means the portion of the hybrid plan that provides a defined contribution plan within the provisions of the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title;

(4) "Participant" means any state employee, teacher, or political subdivision employee participating in the hybrid plan;

(5) "Political subdivision" means any entity authorized to participate in the retirement system pursuant to chapter 35, part 2 of this title;

(6) "Political subdivision employee" means any person in the employ of a political subdivision, including a county judge, but does not include any person performing services on a contractual or percentage basis;

(7) "County judge" means a judge of a general sessions court, probate judge, or judge of a juvenile and/or domestic relations court;

(8) "State employee" means any person who is a state official, including members of the general assembly, the attorney general and reporter, district attorneys general, and district public defenders, or any person who is employed in the service of and whose compensation is payable by the state, or any person who is employed by the state whose compensation is paid in whole or in part from federal or other funds. "State employee" also means any person who is employed in the service of and whose compensation is payable by a public institution of higher education, or any person who is employed by a public institution of higher education whose compensation is paid in whole or in part from federal or other funds. For

purposes of this part, "state employee" does not include the governor or any person employed on a contractual or percentage basis. Any retirement allowances payable in respect of a former governor shall be as prescribed by the provisions of chapter 39, part 2 of this title in lieu of any other benefits to which the governor may otherwise be entitled under chapters 34 – 37 of this title;

(9) "State judge" has the meaning set forth in § 8-34-101(41); and

(10) "Teacher" has the meaning set forth in § 8-34-101(46)(B), but does not include any person employed by a public institution of higher education.

(b) Terms used in this part that are not otherwise defined shall have the same meaning ascribed to them in chapters 34 – 37 of this title.

8-36-903.

(a) Notwithstanding any other law to the contrary and except as provided in this section, any person otherwise eligible to participate in the retirement system who enters service as a state employee or teacher on or after July 1, 2014, shall participate in the hybrid plan established under this part. Provided, however, any person who enters service with a state-supported institution of higher education on or after July 1, 2014, and who is exempt from the Fair Labor Standards Act, compiled in 29 U.S.C. § 201 et seq., may elect membership in the optional retirement program as provided in § 8-36-923 in lieu of the hybrid plan. In all cases of doubt, the retirement system shall determine whether the person is eligible to participate in the optional retirement program.

(b) Any state employee or teacher who is a member of the retirement system on June 30, 2014, shall continue membership in the retirement system pursuant to the terms of chapters 34 – 37 of this title that were in effect on June 30, 2014. Any person who reenters service as a state employee or teacher on or after July 1, 2014, having previously served as a state employee or teacher prior to July 1, 2014, and who has not been refunded such previous service pursuant to § 8-37-210, shall continue membership in the retirement system pursuant to the terms of chapters 34 – 37 of this title that were in effect on June 30, 2014.

(c) Membership in the hybrid plan or the optional retirement program, as applicable, shall not be required for any part-time state employee or part-time teacher who would otherwise be covered under the provisions of this part, or for any state employee who has optional membership in the retirement system pursuant to chapters 34 – 37 of this title. Any election made by a state employee or teacher to become a participant shall be irrevocable and such employee or teacher shall thereafter be subject to the terms and conditions of the hybrid plan or the optional retirement program, as applicable, which are in effect at the time of the election.

(d) All provisions of chapters 34 – 37 of this title that are not inconsistent with the provisions of this part shall continue to apply, as applicable, to participants in the hybrid plan or the optional retirement program.

8-36-904.

(a) Participants in the hybrid plan shall be excluded from the noncontributory provisions of § 8-34-206 and shall be required to make employee contributions to the defined benefit component of the plan equal to five percent (5%) of the participant's earnable compensation.

(b) Each employer shall pick up the employee contributions required under this section. The contributions so picked up shall be treated as employer contributions pursuant to § 414(h) of the Internal Revenue Code in determining tax treatment under said Code. The employee shall not have the option of choosing to receive the contributions in the form of cash or cash equivalents instead of having them paid by the employer into the hybrid plan benefits trust account created pursuant to § 8-36-920.

8-36-905. Any participant who desires to establish service credit pursuant to the provisions of chapters 34 – 37 of this title shall pay employee contributions to the defined benefit component of the plan equal to the amount of the employee contributions required

under the terms of the hybrid plan as they existed at the time the service was established, plus interest at the rate provided in § 8-37-214. In the case of refunded service, the amount shall be equal to the total amount that was previously withdrawn, plus interest at the rate provided in § 8-37-124. Any service established or reestablished pursuant to this section shall be credited under the terms of the hybrid plan as they existed at the time the service was established and not at the time the service was rendered.

8-36-906.

(a)(1) Except as otherwise provided in this section and in § 8-36-921, any participant shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of sixty-five (65) years of age and 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).

(2) Any participant serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for a service retirement allowance from the defined benefit component of the plan 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 participant 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 pursuant to § 8-36-211 shall be eligible for a service retirement allowance from the defined benefit component of the plan 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 participant was in a position covered by the mandatory retirement provisions shall be independent of all other creditable service for the purpose of calculating the participant's retirement allowance under § 8-36-907.

(b) Any participant serving as the attorney general and reporter, a district attorney general, district public defender, or state judge shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of sixty (60) years of age and upon completion of eight (8) years of creditable service, or upon the attainment of fifty-five (55) years of age and upon completion of twenty-four (24) years of creditable service.

(c) Any participant serving as a member of the general assembly shall be eligible for a service retirement allowance from the defined benefit component of the plan upon attainment of sixty (60) years of age and upon completion of four (4) years of creditable service.

8-36-907.

(a) Except as provided in §§ 8-36-908 and 8-36-909, the service retirement allowance payable to a participant under § 8-36-906 shall consist of a member annuity which shall be the actuarial equivalent of the participant's accumulated contributions in the defined benefit component of the plan at retirement, plus a state annuity which, when added to the member annuity, shall be equal to:

(1) In the case of a participant, other than those participants described in subdivision (a)(2) below, one percent (1.0%) of the participant's average final compensation, multiplied by the number of years of creditable service, unless reduced in accordance with § 8-36-921 or § 8-36-922; and

(2) In the case of a participant who is the attorney general and reporter, a district attorney general, district public defender, or state judge, one and six-tenths percent (1.6%) of the participant's average final compensation, multiplied by the number of years of creditable service, unless reduced in accordance with § 8-36-921 or § 8-36-922.

(b) Section 8-36-124 shall not apply in determining the retirement allowance payable under this section.

8-36-908.

(a) Notwithstanding any provision of the law to the contrary, the base annual service retirement allowance payable to a participant under the defined benefit

component of the plan shall not exceed the amount determined and in effect on July 1, 2014, pursuant to § 8-35-256(h). Provided, however, commencing on July 1, 2015, and on 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. Such participant's annual pension benefit shall be limited to the base benefit in effect at the time of the participant's retirement, but shall be subject to increase in accordance with the cost-of-living provisions of § 8-36-701(b)(1) and (b)(2).

(b) Notwithstanding subsection (a), the service retirement allowance payable under the provisions of this part shall not exceed ninety percent (90%) of the participant's average final compensation as may be adjusted by the cost-of-living provisions of § 8-36-701(b)(1) and (b)(2).

8-36-909.

(a) Notwithstanding § 8-36-209 or any other law to the contrary, there shall be no minimum service retirement allowance payable under the defined benefit component of the plan except as otherwise provided in subsections (b) and (c) below. Instead, the retirement allowance shall be determined in accordance with § 8-36-907.

(b)(1) The minimum service retirement allowance payable under the defined benefit component of the plan with respect to creditable service established pursuant to § 8-35-226 shall not be less than seven dollars ($7.00) per month for each year of such creditable service, except as provided in subsection (e) below.

(2) Notwithstanding subdivision (b)(1), the chief legislative body of any city, special school district or county may set the minimum service retirement allowance payable with respect to creditable service established pursuant to § 8-35-226 in the amount as determined and in effect pursuant to § 8-36-209(a)(2)(A)(i) or § 8-36-209(a)(2)(A)(ii). Such amount shall be adjusted on each July 1 thereafter pursuant to the cost-of-living provisions in § 8-36-701(b)(1) and (2).

(3) To set the minimum service retirement allowance under either § 8-36-209(a)(2)(A)(i) or § 8-36-209(a)(2)(A)(ii), the chief legislative body of the respective city, special school district or county must pass a resolution authorizing the provisions of either § 8-36-209(a)(2)(A)(i) or § 8-36-209(a)(2)(A)(ii) and accepting the liability therefore. Any such resolution shall apply to current and future retirees of the hybrid plan and shall become effective on the first day of any quarter following the filing of the resolution with the retirement system. No retroactive benefits shall be paid under the provisions of subdivision (b)(2).

(c)(1) The minimum retirement allowance payable under the defined benefit component with respect to creditable service rendered as a member of the general assembly shall not be less than fifty-five dollars ($55.00) per month for each year of creditable service adjusted effective July 1, 2015, and on each July 1 thereafter pursuant to the cost-of-living provisions in § 8-36-701(b)(1) and (2) except as provided in subsection (e).

(2) Any recipient eligible for a benefit pursuant to subdivision (c)(1) may elect to receive an amount less than the amount that the recipient is otherwise eligible to receive; provided that the election is in writing and irrevocable.

(d) Section 8-36-124 shall not apply in determining the retirement allowance payable under this section.

(e) In no event shall the minimum retirement allowance payable hereunder exceed ninety percent (90%) of the participant's average final compensation as may be adjusted by the cost-of-living provisions of § 8-36-701(b)(1) and (b)(2).

For purposes of determining the limitations on the amount of the retirement allowance as provided in this subsection (e), the average final compensation for service granted under § 8-35-226 shall be independent of the average final compensation calculation on any other creditable service in the retirement system, and the average final compensation for service granted as a member of the general assembly shall be independent of the average final compensation calculation on any other creditable service in the retirement system.

8-36-910.

(a) Except as otherwise provided in this section and in § 8-36-921, any participant shall be eligible for an early service retirement allowance from the defined benefit component of the plan upon attainment of sixty (60) years of age and completion of five (5) years of creditable service, or upon attainment of a combination of age and years of creditable service as to equal eighty (80).

(b) Any participant serving in a position covered by the mandatory retirement provisions of § 8-36-205 shall be eligible for an early service retirement allowance from the defined benefit component of the plan upon attainment of fifty-five (55) years of age and upon completion of five (5) years of creditable service, or at any age upon completion of twenty-five (25) years of creditable service.

(c) Any participant serving as the attorney general and reporter, a district attorney general, district public defender, state judge, or as a member of the general assembly shall not be eligible for an early service retirement allowance under the defined benefit component of the plan. Instead, such participants shall be eligible for a retirement allowance from the defined benefit component of the plan upon meeting the applicable conditions set forth in § 8-36-906.

8-36-911.

(a) Except as provided in § 8-36-912, the early service retirement allowance payable to a participant under § 8-36-910 shall be computed as a service retirement allowance in accordance with § 8-36-907, but reduced by an actuarially determined factor as set by the board from time to time.

(b) Section 8-36-124 shall not apply in determining the retirement allowance payable under this section. Further, Section 8-36-211(a)(2) shall not apply in calculating the supplemental bridge benefit for participants covered by the mandatory retirement provisions of § 8-36-205(a)(1) who retire on an early service retirement allowance pursuant to this section, nor shall § 8-36-211(b)(2) apply in calculating the supplemental bridge benefit for participants covered by the mandatory retirement provisions of § 8-36-205(a)(2) who retire on an early service retirement allowance pursuant to this section and whose employer adopted the provisions of this part. Instead, the supplemental bridge benefit shall be equal to three-fourths of one percent (0.75%) of the participant's average final compensation, multiplied by the participant's years of creditable service when the participant was in a position covered by the mandatory retirement provisions of § 8-36-205, but reduced by an actuarially determined factor as set by the board from time to time.

8-36-912. The minimum early service retirement allowance payable under the defined benefit component of the plan pursuant to § 8-36-911 shall be the minimum service retirement allowance computed in accordance with § 8-36-909 on the basis of the participant's creditable service at the time of early retirement, reduced by an actuarially determined factor as set by the board from time to time. Section 8-36-124 shall not apply in determining the retirement allowance payable under this section.

8-36-913. Any participant may apply for a disability retirement benefit pursuant to the provisions and criteria set forth in part 5 of this chapter. All provisions of part 5 of this chapter 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 § 8-36-907 and as may be further reduced in accordance with part 5 of this chapter. Sections 8-36-124 and 8-36-209 shall not apply in determining any disability retirement benefit allowance payable under this section. The minimum disability retirement allowance, if applicable, shall be computed in accordance with § 8-36-909.

8-36-914. Sections 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 participant'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.

8-36-915. Except as otherwise provided in this part, administration of the defined benefit component of the hybrid plan and the optional retirement program shall be governed by the provisions of chapters 34 – 37 of this title. Provided, however, any reference in chapters 34 – 37 of this title to the eligibility requirements for an early or service retirement allowance under the hybrid plan shall for purposes of this part mean the eligibility

requirements set forth in §§ 8-36-906 and 8-36-910. Any reference in chapters 34 – 37 of this title to the formula for computing an early or service retirement allowance, or for computing a disability retirement allowance under the hybrid plan shall for purposes of this part mean the applicable formula as set out in §§ 8-36-907 – 8-36-909 and §§ 8-36-911 – 8-36-913.

8-36-916.

(a) There is established the defined contribution component of the hybrid plan that provides a defined contribution plan within the provisions of the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title and as supplemented pursuant to this part.

(b)(1) Any person who becomes a participant in the hybrid plan shall have an initial two percent (2%) of that participant's compensation automatically deferred into the defined contribution component of the plan during the initial year of participation, unless such participant files with that participant's employer a notice of that participant's election not to contribute. Any notice of non-election shall be made in such format and through such medium as prescribed by the retirement system and must be filed with that participant's employer by no later than thirty (30) calendar days from the date of the notice of automatic deferral letter.

(2) All contributions made by or on behalf of a participant to the defined contribution component of the plan who does not file a notice of non-election within the prescribed period shall be directed to the default option established by the trustees of the profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title until such time as the participant 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 a participant provided the participant notifies that participant's employer in such format and through such medium as may be prescribed by the 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.

(3) Any participant who affirmatively declines to make employee deferrals after the first automatic enrollment contribution was made, may make an election to withdraw that participant'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 participant. 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 defined contribution component of the plan and shall be subject to the plan's regular distribution rules. Further, a participant 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 subsection (d) below, the employer matching contributions described in subsection (c) 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 subsection (c) shall not be made if a permissible withdrawal is taken pursuant to this subsection before the date the matching contribution is allocated.

(4) The initial two percent (2%) automatic enrollment contribution described in this subsection 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.

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

(c)(1) Notwithstanding § 8-35-111, each employer shall make a mandatory contribution to the defined contribution component of the plan on behalf of each of its employees participating in the hybrid plan, regardless of whether the employees make any employee contributions pursuant to subsection (b). Employer contributions for kindergarten through twelfth grade teachers shall be paid by the respective local education agency for which the teachers are employed. The amount of the contribution shall be five percent (5%) of the respective employee's salary. The mandatory contributions required in this subdivision (c)(1) shall be in addition to any match provided for in § 8-25-303 to participants who otherwise participate in the profit sharing and/or salary reduction plan under chapter 25, part 3 of this title; provided that the total combined employer contributions to all defined contribution plans on behalf of a single employee 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 governing profit sharing and/or salary reduction plans for governmental employees. If the employer contributions to all such plans combined exceed such amount, the employer shall reduce its contributions to any other defined contribution plans such that the contributions to the defined contribution component of the plan and to the other plans do not exceed the limit.

(2) Each participant who affirmatively elects to make employee deferrals shall select the investment option or options in which the contributions made by or on behalf of such participant are to be directed. Should a participant fail to select an investment option, the contributions attributable to the participant shall be directed to the default option established for the defined contribution component of the plan until such time as the person selects a different investment option or options.

(d) The total amount contributed by the employee and employer under this section shall vest to the participant's benefit immediately.

(e) The state treasurer may offer financial educational services for participants in the defined contribution component of the hybrid plan. The services may include, but are not limited to, offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, asset allocation, and other topics regarding investing, generally.

8-36-917. Except as otherwise provided in part 8 of this chapter, any retired participant who returns to service in a position covered by the retirement system shall have such participant's retirement allowance under the defined benefit component of the plan suspended while so employed. The participant shall be subject to the provisions of §§ 8-36-801 – 8-36-804. Provided, however, reemployment in a covered position shall have no effect on a payment under the defined contribution component of the plan.

8-36-918.

(a) Notwithstanding § 8-35-124 or any other law to the contrary, an employee or elected or appointed official of this state, an employee or elected or appointed official of any political subdivision thereof, or a teacher employed with a local education agency who is convicted in any state or federal court of a felony arising out of that employee's or official's employment or official capacity constituting malfeasance in office shall forfeit that person's retirement benefits under the defined benefit component of the plan.

(b) Upon initial conviction, or upon a plea of guilty or nolo contendere, any person subject to the provisions of this section shall:

(1) Have the employee's or official's benefit stopped immediately, if the employee or official is receiving a benefit under the defined benefit component of the plan; and

(2) Receive a refund of the employee contributions and interest credited to the employee's or official's account, less any benefits received, unless the person elected to have a monthly retirement allowance paid upon such person's death in accordance with subsection (e).

(c) The employing agency is responsible for immediately notifying the administrator of the retirement system of the conviction of any person subject to the provisions of this section.

(d) In the event the conviction of such person is later overturned in any court and such person is acquitted, or is granted a full pardon, the person shall be restored to all rights, privileges and benefits as if the conviction had never occurred.

(e) Any person convicted of a felony as provided in this section may elect, within six (6) months of the person's conviction, to have a monthly retirement allowance paid to whomever that person had designated as beneficiary on file with the retirement system at the time of that person's conviction; provided, that, such beneficiary must have been that person's spouse or child at the time of that person's conviction. The amount of any allowance payable hereunder shall be equal to the retirement allowance which would have been payable under the defined benefit component of the plan had the person retired under an effective election of Option 1 as provided in part 6 of this chapter. The benefits shall be paid to such beneficiary following the person's death and upon meeting all other eligibility requirements applicable to a beneficiary.

8-36-919.

(a) A political subdivision that is not otherwise participating under any of the plans afforded under chapters 34 – 37 of this title may, by resolution legally adopted and approved by its 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. Membership in the hybrid plan for employees of political subdivisions that are admitted into the hybrid plan pursuant to this subsection shall be:

(1) Optional for all employees in the service of the political subdivision on the date the approval is given; and

(2) Mandatory for all eligible employees entering the service of the political subdivision thereafter. Provided, however, membership shall not be required for any part-time employee who would otherwise be covered under the provisions of this part, or for any employee who has optional membership in the retirement system pursuant to chapters 34 – 37 of this title. Any election made by an employee to become a participant shall be irrevocable and such employee shall thereafter be subject to the terms and conditions of the hybrid plan.

(b) Any political subdivision electing to participate in the hybrid plan pursuant to this section shall participate in the provisions of the plan as they exist for state employees on the date of participation or at any other given time pursuant to any changes made pursuant to §§ 8-36-921 and 8-36-922. Provided, however, any subsequent changes that increase the liability of a participating political subdivision within the meaning of Article II, Section 24 of the Tennessee Constitution shall not apply to the political subdivision unless the chief governing body of the political subdivision agrees to such changes and accepts the liability therefore. Notwithstanding this subsection, the following provisions shall remain optional to political subdivisions:

(1) Part-time, seasonal, or temporary employee service credit in accordance with § 8-34-621; and

(2) Mandatory retirement in accordance with § 8-36-205.

(c) A political subdivision already participating in the retirement system under one of the additional plans afforded under chapters 34 – 37 of this title may change from that plan to the hybrid plan on a prospective basis by passage of a resolution pursuant to subsection (a) above. 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. The actuarial value of accrued benefits earned by employees of the political subdivision prior to the effective date of the change shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the employee or in accordance with § 8-35-124.

(d) Any political subdivision that participates in the hybrid plan shall have the right to change from the hybrid plan to any of the additional plans afforded to the political subdivision under chapters 34 – 37. Any such change shall be in accordance with and subject to the terms and conditions of §§ 8-35-253 – 8-35-256. In addition, any political subdivision that participates in the hybrid plan shall be subject to the withdrawal provisions of §§ 8-35-211 and 8-35-218. Benefits accrued under the hybrid plan or under any of the plans adopted pursuant to §§ 8-35-253 – 8-35-256 shall be in accordance with 26 U.S.C. § 411. Notwithstanding this section or any other law to the contrary, the cost-of-living provisions of § 8-36-701 shall not be deemed an accrued benefit and may be subject to change pursuant to this section and §§ 8-36-921 and 8-36-922.

(e) Notwithstanding this section or any other law to the contrary, a political subdivision may authorize its county judges to participate in the hybrid plan under the same provisions governing state judges as set forth in this part provided the political subdivision authorizes and pays for the cost of an actuarial study to determine the liability associated with such membership and, following review of the cost of such membership, the chief governing body of the political subdivision passes a resolution authorizing the membership and accepting the liability therefor. In addition, a political subdivision may authorize its county judge to participate in the hybrid plan under the provisions of this subsection (e) without extending retirement coverage to its other employees provided the political subdivision authorizes and pays for the cost of an actuarial study to determine the liability associated with such membership and, following review of the cost of such membership, the chief governing body of the political subdivision passes a resolution authorizing the membership and accepting the liability therefor. The retirement system shall not be liable for the payment of retirement allowances or other payments on account of such membership for which reserves have not been previously created from funds contributed by the political division and/or its county judges. It is the legislative intent that the state shall realize no increased cost as a result of this section. All costs associated with retirement coverage, including administrative costs, shall be the responsibility of the political subdivision.

(f) Notwithstanding this part or any law to the contrary, a political subdivision that extends retirement coverage to its employees under this section may elect to provide its own profit sharing and/or salary reduction plan that is authorized under § 401(k) of the Internal Revenue Code in lieu of participating in the state's profit sharing and/or salary reduction plan established under chapter 25, part 3 of this title; provided that the political subdivision makes mandatory contributions to such plan on behalf of each of its employees participating in the hybrid plan, regardless of whether the employees make any employee contributions to that plan. The amount of the employer contributions shall be five percent (5%) of the respective employee's salary unless suspended or reduced pursuant to § 8-36-922.

8-36-920.

(a) There shall be established in the retirement system trust fund a hybrid plan benefits trust account into which contributions made to the defined benefit component of the plan shall be deposited.

(b) All interest and dividends earned on the funds of the defined benefit component of the hybrid plan shall be credited to the hybrid plan benefits trust account.

(c) Within the hybrid plan benefits trust account created pursuant to this section, there shall be established a reserve trust account, which shall consist of two (2) subaccounts as follows:

(1)(A) An employer reserve trust account into which shall be deposited:

(i) The employer contributions as determined by the actuary pursuant to § 8-36-922(b) and any payments made to establish service credit in the hybrid plan that result from employer contributions rolled over or otherwise transferred from another qualified plan;

(ii) All amounts transferred from the participants' reserve trust account pursuant to subdivision (c)(2)(B) below;

(iii) Transfers from the stabilization reserve trust account pursuant to subdivision (d)(2) below;

(iv) A pro rata share of the interest and dividends earned on the funds of the defined benefit component of the hybrid plan; and

(v) Any penalties assessed against an employer pursuant to § 8-37-504;

(B) All costs of administering the hybrid plan, and all retirement allowances and other benefits payable under the defined benefit component of the hybrid plan other than those payable from the participants' reserve trust account established in subdivision (c)(2) below shall be paid from the employer reserve trust account.

(2)(A) A participants' reserve trust account shall also be established within the reserve trust account into which shall be deposited:

(i) The contributions deducted from the compensation of participants to provide for their member annuities, together with any contributions of participants and interest thereon to establish service credit in the hybrid plan; and

(ii) All amounts transferred from the employer reserve trust account pursuant to subdivision (2)(C) below.

(B) The accumulated contributions of a participant that are withdrawn by the participant, or paid to the participant's designated beneficiary or to the participant's estate pursuant to § 8-36-120, shall be paid from the participants' reserve trust account. Upon the retirement of a participant, or if a retirement allowance becomes payable on account of the participant's death prior to retirement, the participant's accumulated contributions shall be transferred from the participants' reserve trust account to the employer reserve trust account.

(C) The board of trustees shall annually show interest at such rate or rates as it shall determine from time to time on the individual accounts of participants in the participants' reserve trust account and shall transfer such amounts from the employer reserve trust account.

(d)(1) Unless prohibited by an agency of the federal government or contrary to the advice of competent legal counsel or government accounting professionals, there shall be established within the hybrid plan benefits trust account a stabilization reserve trust account into which shall be deposited:

(A) All employer contributions made in excess of the actuarial rate determined pursuant to § 8-36-922(b); and

(B) A pro rata share of the interest and dividends earned on the funds of the defined benefit component of the hybrid plan.

(2) If in any given year the total amount in the employer reserve account is not sufficient to meet the benefit liabilities of the defined benefit component of the plan as determined by the most recent actuarial study, then such amount as may be necessary to fund the benefits shall be transferred from the stabilization reserve trust account to the employer reserve trust account.

(e)(1) For accounting purposes only, the reserve trust account and the stabilization reserve trust account created by this section shall each consist of the following individual separate accounts for the purpose of accounting for:

(A) The benefits payable to state employees other than those described in subdivisions (1)(B) and (1)(C) below;

(B) The benefits payable to the attorney general and reporter, district attorneys general, district public defenders and state judges;

(C) The supplemental bridge benefits payable to state employees pursuant to § 8-36-211; and

(D) The benefits payable to teachers.

(2) In addition and for accounting purposes only, the reserve trust account and the stabilization reserve trust account shall each consist of individual separate accounts established in the name of each political subdivision participating under the provisions of this part. Each political subdivision shall have the following three (3) separate subaccounts for the purpose of accounting for:

(A) The benefits payable to employees of the political subdivision other than those described in subdivisions (2)(B) and (2)(C) below;

(B) The benefits payable to its county judges pursuant to § 8-36-919(e); and

(C) The supplemental bridge benefits payable to its employees pursuant to § 8-36-211.

(f) All monies deposited into the hybrid benefits plan trust account shall be used exclusively for the purposes set forth in this section.

8-36-921. The general assembly shall have the right to freeze, suspend, or modify benefits, employee and employer contributions, plan terms, and design of the hybrid plan on a prospective basis through amendments to or repeals of chapters 34 – 37 of this title. Nothing under state law may confer to participants in the hybrid plan an implied right to future retirement benefit arrangements and such participants may not assert the indefinite continuation of the retirement formulas, contribution rates, eligibility ages, or any other provision of the plan. Provided, however, the actuarial value of accrued benefits earned by participants prior to the effective date of any such amendment or repeal shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the participant or in accordance with § 8-36-918. Notwithstanding this section or any other law to the contrary, the cost-of-living provisions of § 8-36-701 shall not be deemed an accrued benefit and may be subject to change pursuant to this section and § 8-36-922.

8-36-922.

(a) Every employer participating in the hybrid plan shall contribute to the hybrid plan benefits trust account each year a sum equal to the greater of (i) the normal contribution rate and the accrued liability contribution rate as determined pursuant to subsection (b) below, multiplied by the earnable compensation of all its participating employees, or (ii) four percent (4%) of the earnable compensation of all its participating employees. Employer contributions for kindergarten through twelfth grade teachers shall be paid by the respective local education agency for which the teachers are employed.

(b) 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). The computation shall be made by an actuarial valuation in the manner provided by chapter 37, part 3 of this title; provided, 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. Level dollar amortization of unfunded accrued liabilities shall be used over a period of time as set by the board, but not to exceed twenty (20) years. The asset valuation method shall be based on the market value of plan assets and provide for smoothing of investment gains and losses over a period of time established by the board, but not to exceed ten (10) years. In addition,

the actuarial demographic assumptions shall include projections of mortality improvement.

(c)(1) Notwithstanding this part or any other law to the contrary, if the actuarial valuation as of any year establishes a normal contribution rate and an accrued liability contribution rate, combined, that exceeds four percent (4%), the following steps in the order provided below shall automatically take effect the next July 1 immediately following the actuarial valuation as determined by the actuarial valuation process:

(A) Transfer such amounts as may be necessary from the stabilization reserve trust account created in § 8-36-920 to the reserve trust account to fund the increase in the employer contribution rate;

(B) Suspend or reduce, as necessary, the three percent (3%) maximum cost-of-living adjustment as provided for in § 8-36-701(b)(1). Any such suspension or reduction shall begin on the July 1 next following the actuarial valuation;

(C) Suspend or reduce, as necessary, the amount of employer contributions required to the defined contribution component of the plan and redirect such amount to the reserve trust account to fund the increase in the employer contribution rate;

(D) Increase the employee contributions required in § 8-36-904 from five percent (5%) to six percent (6%) of the participant's earnable compensation;

(E) Reduce the retirement allowance formulas in § 8-36-907 from one percent (1.0%) and one and six-tenths percent (1.6%) to such lesser amount as is necessary to reduce the employer contribution rate to four percent (4%). The reduction in formulas shall only apply to future service accruals; and

(F) If the employer contribution rate still exceeds four percent (4%) after taking the above steps, then the hybrid plan shall be suspended for future service accruals until such time as the employer rate equals four percent (4%) or lower.

(2) If the actuarial valuation as of any year establishes a normal contribution rate and an accrued liability contribution rate, combined, that equals four percent (4%) or lower, the above steps in the reversed order as provided above shall automatically take effect the next July 1 immediately following the actuarial valuation as determined by the actuarial valuation process.

(d)(1) The actuary of the retirement system shall determine the amount of the unfunded accrued liability for the defined benefit component of the hybrid plan. If the unfunded liability exceeds the maximum unfunded liability, the following steps in the order provided below shall automatically apply on the effective date that the maximum unfunded liability has been reached. The unfunded liability shall be determined by the calculation of the net pension liability in accordance with the standards and other pronouncements issued by the governmental accounting standards board. For purposes of this section, "maximum unfunded liability" means with respect to state employees an unfunded liability of no greater than twelve and one-half percent (12½%) of a five-year moving market average of the general obligation debt of the state of Tennessee, including its commercial paper. With respect to teachers, "maximum unfunded liability" means an unfunded liability of no greater than twelve and one-half percent (12½%) of a five-year moving market average of the general obligation debt of the state of Tennessee, including its commercial paper. With respect to political subdivision employees, "maximum unfunded liability" means an unfunded liability of no greater than the amount as determined by the employees' respective employer and as shall be set forth in the political subdivision's participation resolution.

(A) Transfer such amounts as may be necessary from the stabilization reserve trust account created in § 8-36-920 to the reserve trust account to fund the increase in the maximum unfunded liability;

(B) Suspend or reduce, as necessary, the three percent (3%) maximum cost-of-living adjustment as provided for in § 8-36-701(b)(1). Any such suspension or reduction shall begin on the July 1 next following the actuarial valuation;

(C) Suspend or reduce, as necessary, the amount of employer contributions required to the defined contribution component of the plan and redirect such amount to the reserve trust account to fund the increase in the maximum unfunded liability;

(D) Increase the employee contributions required in § 8-36-904 from five percent (5%) to six percent (6%) of the participant's earnable compensation;

(E) Reduce the retirement allowance formulas in § 8-36-907 from one percent (1.0%) and one and six-tenths percent (1.6%) to such lesser amount as is necessary to reduce the unfunded liability to the maximum unfunded liability. The reduction in formulas shall only apply to future service accruals; and

(F) If the maximum unfunded liability is still exceeded, then the hybrid plan shall be suspended for future service accruals until such time as the unfunded liability equals or is less than the maximum unfunded liability.

(2) If the unfunded liability equals or is less than the maximum unfunded liability, the above steps in the reversed order as provided above shall automatically apply on the effective date that the unfunded liability equals or is less than maximum unfunded liability.

8-36-923.

(a) Notwithstanding any other law to the contrary and except as otherwise provided in § 8-36-903(c), any person who enters service with a state-supported institution of higher education on or after July 1, 2014, and who is exempt from the Fair Labor Standards Act, compiled in 29 U.S.C. § 201 et seq., may elect membership in the optional retirement program established in part 4 of this chapter in lieu of the hybrid plan. The election shall be made on election forms as shall be prescribed by the retirement system and shall be filed with the retirement system and with the institution of higher education where the employee is employed. The election shall be made within the time frame described in § 8-36-403. In all cases of doubt, the retirement system shall determine whether the person is eligible to participate in the optional retirement program.

(b) Any employee participating in the optional retirement program as provided in this part who attains either five (5) or more but less than six (6) years of creditable service in the optional retirement program, or five (5) or more but less than six (6) years of creditable service in the retirement system and the optional retirement program combined, shall have the option of transferring membership from the optional retirement program to the hybrid plan under the terms and conditions prescribed in § 8-35-403. The amount paid by the employee pursuant to § 8-35-403 shall be credited to the individual account of the employee in an amount equal to the employee contributions, if any, that were in the employee's optional retirement accounts immediately before the transfer, plus any difference between the amount paid and the employee's account balance in the optional retirement program immediately before the transfer. All other sums shall be credited to the employer reserve trust account established in § 8-36-920.

(c) Any person who elects to participate in the optional retirement program as provided in subsection (a) shall participate in the program under the provisions of part 4 of this chapter except as otherwise provided in subsection (d) below.

(d) The employer and employee contribution provisions of § 8-35-404(b)(1) shall not apply. Instead, the employer shall make employer contributions on behalf of each such eligible employee at the rate of nine percent (9%) of the employee's earnable compensation, or such alternate amount as may be prescribed in the general appropriations act each year. In addition, each such eligible employee shall contribute five percent (5%) of the employee's earnable compensation to the optional

retirement program. The contributions made by such employees shall be treated as employer contributions pursuant to § 8-36-904(b).

(e) The general assembly shall have the right to freeze, suspend, or modify benefits, employee and employer contributions, plan terms, and design of the optional retirement program on a prospective basis through amendments to or repeals of chapters 34 – 37 of this title. Nothing under state law may confer to participants in the optional retirement program an implied right to future retirement benefit arrangements and such participants may not assert the indefinite continuation of the retirement formulas, contribution rates and eligibility ages in effect at the time of employment. Provided, however, the actuarial value of accrued benefits earned by participants prior to the effective date of any such amendment or repeal shall remain an enforceable right and may not be reduced or otherwise forfeited except by the consent of the employee.

SECTION 2. Tennessee Code Annotated, Section 8-25-105, is amended by adding the following language as a new second sentence:

It is the intent of the general assembly that a variety of investment options be offered to participants in the plan, which may include one or more comingled funds whereby assets in the custody of the state treasurer are pooled.

SECTION 3. Tennessee Code Annotated, Section 8-25-301, is amended by adding the following new sentence at the end thereof:

It is the intent of the general assembly that a variety of investment options be offered to participants in the plan, which may include one or more comingled funds whereby assets in the custody of the state treasurer are pooled.

SECTION 4. Tennessee Code Annotated, Section 8-37-104, is amended by adding the following as a new, appropriately designated subsection:

(_) The board may authorize assets of the funds of the retirement system to be pooled for investment purposes with any assets under the custody of the state treasurer.

SECTION 5. 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 6. 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 7. This act shall take effect immediately for purposes of rulemaking and for all other purposes on July 1, 2014, the public welfare requiring it.

SENATE BILL NO. 1005

PASSED: April 11, 2013

RON RAMSEY
SPEAKER OF THE SENATE

BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of April 2013

BILL HASLAM, *GOVERNOR*