

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

SENATE BILL 239

5 By: Senator E. Cheatham  
6

## For An Act To Be Entitled

8 AN ACT TO DEFINE "MANIFEST INJUSTICE" UNDER THE  
9 ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO  
10 AMEND THE LAW CONCERNING THE BOARD OF TRUSTEES OF THE  
11 ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND FOR  
12 OTHER PURPOSES.  
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## Subtitle

15 TO DEFINE "MANIFEST INJUSTICE" UNDER THE  
16 ARKANSAS PUBLIC EMPLOYEES' RETIREMENT  
17 SYSTEM; AND TO AMEND THE LAW CONCERNING  
18 THE BOARD OF TRUSTEES OF THE ARKANSAS  
19 PUBLIC EMPLOYEES' RETIREMENT SYSTEM.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 24-4-101, concerning definitions pertaining  
26 to the Arkansas Public Employees' Retirement System, is amended to add an  
27 additional subdivision to read as follows:

28 (46) "Manifest injustice" means an obvious unfairness that has a  
29 direct and observable unconscionable effect that will occur as a result of a  
30 technical error or error of judgment, when the error is made by the system, a  
31 benefit participant, or employer, and the disparity of outcome to the  
32 parties, when taken together and supported by clear and convincing evidence,  
33 shows a great harm to the integrity of the system as a whole, the benefit  
34 participant, or an employer, unless the system is afforded the discretion to  
35 resolve the matter in a fair manner.  
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1 SECTION 2. Arkansas Code § 24-4-105, concerning meetings, powers, and  
2 duties of the Board of Trustees of the Arkansas Public Employees' Retirement  
3 System, is amended to add an additional subsection to read as follows:

4 (c)(1) The board or its designee may waive or modify the impact of a  
5 rule, provision, or law that does not violate federal law or jeopardize the  
6 tax-qualified status of the system to correct or prevent a manifest injustice  
7 that would affect the system, benefit participant, or employer in a  
8 particular instance.

9 (2) In determining manifest injustice the system may consider:

10 (A) The degree of fault of the system, benefit  
11 participant, or employer;

12 (B) An ambiguity in the interpretation of the  
13 circumstances, rule, or law;

14 (C) The cost to the system of correcting the error that is  
15 far outweighed by the benefit afforded to the system, benefit participant, or  
16 employer;

17 (D) Whether or not an expedited decision is in the public  
18 interest;

19 (E) The fundamental fairness of a remedy in a particular  
20 situation; and

21 (F) Whether or not the status quo would result in an  
22 unconscionable outcome.

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24 SECTION 3. DO NOT CODIFY. Retroactivity.

25 This act applies retroactively to January 1, 2017.  
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