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Author: Lovas

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CHAPTER 44

HOUSE BILL 2050

AN ACT

AMENDING SECTION 38-727, ARIZONA REVISED STATUTES; REPEALING SECTION 38-728, ARIZONA REVISED STATUTES; AMENDING SECTIONS 38-729, 38-766.02 AND 38-797, ARIZONA REVISED STATUTES; REPEALING SECTIONS 38-955 AND 38-956, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-727, Arizona Revised Statutes, is amended to read:

38-727. Eligibility; options

A. The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article ~~who as a result of state service or service for the political subdivision are included in agreements providing for their~~

~~coverage under the federal old age and survivors insurance system~~ are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is elected or appointed before January 1, 2014, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this section.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits, who is elected or appointed before January 1, 2014 and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. Before July 1, 2015, a person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days of employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

| 9. THE FOLLOWING ARE INELIGIBLE FOR MEMBERSHIP IN ASRS:

(a) A PERSON WHO PERFORMS SERVICES IN A HOSPITAL, HOME OR OTHER INSTITUTION AS AN INMATE OR PATIENT AT THE HOSPITAL, HOME OR OTHER INSTITUTION.

(b) A PERSON WHO PERFORMS AGRICULTURAL LABOR SERVICES, AS DEFINED IN SECTION 210 OF THE SOCIAL SECURITY ACT.

(c) A PERSON WHO IS A NONRESIDENT ALIEN TEMPORARILY RESIDING IN THE UNITED STATES AND WHO HOLDS AN F-1, J-1, M-1 OR Q-1 VISA WHEN SERVICES ARE PERFORMED.

(d) A PERSON WHO PERFORMS SERVICES FOR A SCHOOL, COLLEGE OR UNIVERSITY IN THIS STATE AT WHICH THE PERSON IS ENROLLED AS A STUDENT, AS DEFINED BY THE EMPLOYING INSTITUTION. THE EMPLOYING INSTITUTION SHALL MAINTAIN AN APPEAL PROCESS FOR A PERSON WHO DISAGREES WITH THE EMPLOYING INSTITUTION'S DETERMINATION THAT THE PERSON IS A STUDENT AND NOT ELIGIBLE FOR MEMBERSHIP IN ASRS.

(e) A PERSON WHO PERFORMS SERVICES UNDER A PROGRAM DESIGNED TO RELIEVE THE PERSON FROM UNEMPLOYMENT.

B. The following elected officials are subject to this article if the member's employer is an employer under article 3 of this chapter and the member elects to participate in ASRS pursuant to subsection C of this section:

1. A state elected official who is subject to term limits, who is elected or appointed on or before December 31, 2013 and who is an active or inactive member of ASRS because the state elected official had previously elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A.

2. ~~Notwithstanding any exclusion from an agreement providing for coverage under the federal old age and survivors insurance system,~~ An elected official, as defined in section 38-831, who is an active or inactive member of ASRS, if the elected official's employer is a participating employer under this article.

C. If an elected official as described in subsection B of this section elects to continue or resume the member's participation in ASRS, the election shall be made in writing and filed with ASRS within thirty days after the elected official's term begins. The election is irrevocable for the remainder of the elected official's term for which the election was made. If the elected official does not make an election under this subsection, the elected official shall be enrolled in the

elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter.

Sec. 2. Repeal

Section 38-728, Arizona Revised Statutes, is repealed.

Sec. 3. Section 38-729, Arizona Revised Statutes, is amended to read:

38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision ~~who are included within agreements entered into between the governing body and the state agency providing for the extension of federal old age and survivors insurance benefits to the officers and employees.~~ The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the

political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amounts, as determined by the board, required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

Sec. 4. Section 38-766.02, Arizona Revised Statutes, is amended to read:

38-766.02. Retired members; return to work; employer contribution payments; definitions

A. Notwithstanding section 38-766.01, subsection D, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work in any capacity in a position ordinarily filled by an employee of the employer ~~who is~~

~~included in agreements providing for their coverage under the federal old age and survivors insurance system.~~ This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

B. The ASRS actuary shall determine the alternate contribution rate in an annual valuation performed as of June 30. For the fiscal year beginning on July 1 of the following calendar year, the valuation shall determine the percentage to be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than two per cent in any fiscal year. The alternate contribution rate is equal to the lesser of:

1. The employer contribution rate established by the ASRS actuary pursuant to section 38-737 plus the employer contribution rate established by the ASRS actuary pursuant to section 38-797.06.

2. The total past service funding requirement rate established by the ASRS actuary pursuant to section 38-737 plus the total past service funding requirement rate established by the ASRS actuary pursuant to section 38-797.06.

D. ASRS shall determine the schedule and method of payment of the alternate contribution rate. Subject to section 38-738, subsection A, all contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay the expenses of ASRS. Payments made pursuant to this section by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments as prescribed in section 38-711. ASRS may recover delinquent payments due under this section, together with interest charges as provided in this section, by action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, ASRS may deduct the delinquent payments and interest charges from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, utilization, efficacy or operation of the return to work program.

F. For the purposes of this section:

1. "Contract fee" means the gross amount paid to a retired member as an independent contractor minus an amount, not to exceed ten per cent, for an administrative fee.
2. "Gross salary" means the gross amount paid to a retired member by a leasing company as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered or that would have been paid to the retired member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes.

Sec. 5. Section 38-797, Arizona Revised Statutes, is amended to read:

38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" ~~means~~
 - ~~(a) has the same meaning prescribed in section 38-711.~~
 - ~~(b) Includes an employee described in section 38-956.~~

11. "Monthly compensation" means one-twelfth of a member's annual compensation paid and payable in the fiscal year during which a member becomes disabled.

12. "Normal retirement date":-

~~(a) has the same meaning prescribed in section 38-711 for members eligible pursuant to article 2 of this chapter.~~

~~(b) Means sixty five years of age for members eligible pursuant to section 38-956.~~

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

Sec. 6. Repeal

Sections 38-955 and 38-956, Arizona Revised Statutes, are repealed.

Sec. 7. Defined contribution plan termination; distribution; long-term disability

A. An employee who is participating in the defined contribution plan established pursuant to section 38-955, Arizona Revised Statutes, as repealed by this act, shall discontinue employee contributions to the plan and to the long-term disability program established by title 38, chapter 5, article 2.1, Arizona Revised Statutes, on the effective date of this act.

B. At the election of the employee, the Arizona state retirement system shall either distribute the balance of the employee's account under the defined contribution plan or transfer the balance of the employee's account to another eligible retirement plan as defined in section 401(a)(31)(E) of the United States internal revenue code. If the employee has not made an election within one hundred eighty days after the effective date of this section, the Arizona state retirement system shall transfer the balance of the employee's account to an individual retirement account as defined in section 408(a) of the United States internal revenue code and designate the employee as the account holder.

C. An employee who was participating in the defined contribution plan established pursuant to section 38-955, Arizona Revised Statutes, as repealed by this act, and who is receiving benefits pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, is subject to all of the provisions of that article and may continue to receive those benefits until the earliest of the following:

1. The date the member ceases to be totally disabled.

2. The date the member:

(a) Ceases to be under the direct care of a doctor.

(b) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the Arizona state retirement system board to administer the long-term disability program.

3. The later of the following:

(a) Age sixty-five.

(b) The month following sixty months of payments if the disability commences before the member reaches sixty-five years of age.

(c) The month after the member reaches seventy years of age if the disability commences when the member is at least sixty-five years of age.

(d) The month following twelve months of payments if the disability commences when the member is at least sixty-nine years of age.

4. If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

Sec. 8. Enrollment in ASRS; service purchase; definitions

A. An ASRS employer shall enroll an eligible employee in ASRS and the eligible employee may have the previous period of continuous employment credited to the employee's service credit for pension purposes if both of the following conditions are met:

1. The eligible employee elects to purchase eligible service credit within ninety days after the effective date of this act.

2. The eligible employee pays into the ASRS depository the amounts prescribed in this section

within one hundred eighty days after the effective date of this act.

B. If the eligible employee does not meet the requirements of subsection A of this section, the eligible employee may purchase the eligible service credit at a later date pursuant to section 38-743, Arizona Revised Statutes.

C. The eligible employee who is purchasing service credit pursuant to subsection A of this section shall pay the member contributions that would have been contributed by the employer on the employee's behalf as prescribed in section 38-736, Arizona Revised Statutes, plus interest, equal to the interest rate assumption approved by the ASRS board for actuarial equivalency, through the date of deposit in the ASRS depository. If the eligible employee pays less than the amount required by this subsection, ASRS shall proportionately reduce the amount of service credited to the member's account and the eligible employee may purchase the remaining amount of eligible service credit at a later date pursuant to section 38-743, Arizona Revised Statutes. For an eligible employee as defined in subsection F, paragraph 2, subdivision (a) of this section, interest is calculated from the date of the return of the employee's and employer's contributions to the employer through the date of the deposit in the ASRS depository. If an eligible employee as defined in subsection F, paragraph 2, subdivision (c) of this section transfers the balance of the employee's account under the defined contribution plan established pursuant to section 38-955, Arizona Revised Statutes, as repealed by this act, to ASRS and the amount transferred is less than the amount required to purchase the employee's service credit, the eligible employee may elect either to pay the difference or to accept a reduced amount of service credits.

D. The employer whose eligible employee is purchasing service credit pursuant to subsection A of this section shall pay the employer contributions that would have been contributed by the employer on behalf of the member as prescribed in section 38-737, Arizona Revised Statutes, except that the employer is required to pay for only the amount of service credit the eligible employee elects to purchase. The employer also shall pay interest, equal to the interest rate assumption approved by the board for actuarial equivalency, through the date of deposit into the ASRS depository. The employer shall pay the amounts prescribed in this subsection within twelve months after the eligible employee elects to purchase eligible service credit pursuant to subsection A, paragraph 1 of this section.

E. The employer whose eligible employee is purchasing service credit pursuant to subsection A of this section may elect to pay all or a portion of the interest due on the member contributions as prescribed in subsection C of this section.

F. For the purposes of this section:

1. "ASRS" means the Arizona state retirement system.

2. "Eligible employee" means one of the following:

(a) An employee who is currently employed by an ASRS employer, who was previously enrolled in ASRS but was disenrolled because the employee was not included in agreements providing for the employee's coverage under the federal old age and survivors insurance system as required in section 38-727, Arizona Revised Statutes, in effect before the effective date of this act, and who had the member and employer contributions to ASRS returned to the employer and the employee's service credit reduced.

(b) An employee who is currently employed by an ASRS employer and who was not enrolled in ASRS because the employee was not included in agreements providing for the employee's coverage under the federal old age and survivors insurance system as required in section 38-727, Arizona Revised Statutes, in effect before the effective date of this act.

(c) An employee who is currently employed by an ASRS employer and who was participating in the defined contribution plan established pursuant to section 38-955, Arizona Revised Statutes, as repealed by this act.