

REFERENCE TITLE: ASRS; eligibility; substitute teachers

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1040

Introduced by
Senator Harper

AN ACT

AMENDING SECTIONS 38-711 AND 38-727, ARIZONA REVISED STATUTES; RELATING TO
THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,
7 subdivision (b) of this section who satisfies the eligibility criteria
8 prescribed in section 38-727 and who is currently making member contributions
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate
11 amounts expected to be received under two different forms of payment, based
12 on mortality and interest rate assumptions approved from time to time by the
13 board.

14 3. "ASRS" means the Arizona state retirement system established by
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,
20 1984 and who left the member's contributions on deposit or reinstated
21 forfeited credited service pursuant to section 38-742 for a period of
22 employment that commenced before January 1, 1984, the monthly average of
23 compensation on which contributions were remitted during a period of sixty
24 consecutive months during which the member receives the highest compensation
25 within the last one hundred twenty months of credited service. Any month for
26 which no contributions are reported to ASRS or that falls within a period of
27 nonpaid or partially paid leave of absence or sabbatical leave shall be
28 excluded from the computation. The sixty consecutive months may entirely
29 precede, may be both before and after or may be completely after any excluded
30 months. If the member was employed for less than sixty consecutive months,
31 the average monthly compensation is based on the total consecutive months
32 worked. Payments for accumulated vacation or annual leave, sick leave,
33 compensatory time or other forms of termination pay which, ~~prior to the~~
34 ~~effective date of the amendment to this section~~ BEFORE AUGUST 12, 2005,
35 constitute compensation for members whose membership in ASRS commenced before
36 January 1, 1984, do not cease to be included as compensation if paid in the
37 form of nonelective employer contributions under a 26 United States Code
38 section 403(b) plan ~~so long as~~ IF all payments of employer and employee
39 contributions are made at the time of termination. Contributions shall be
40 made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

41 (b) Effective July 1, 1985, the monthly average of compensation on
42 which contributions were remitted during a period of thirty-six consecutive
43 months during which a member receives the highest compensation within the
44 last one hundred twenty months of credited service. Any month for which no
45 contributions are reported to ASRS or that falls within a period of nonpaid

1 or partially paid leave of absence or sabbatical leave shall be excluded from
2 the computation. The thirty-six consecutive months may entirely precede, may
3 be both before and after or may be completely after any excluded months. If
4 the member was employed for less than thirty-six consecutive months, the
5 average monthly compensation shall be based on the total consecutive months
6 worked. This subdivision applies only to members whose membership in ASRS
7 was effective after December 31, 1983 or who agree in writing as a binding
8 condition of eligibility for being granted the benefit advantages available
9 under this subdivision to have their benefit computed on the basis of the
10 definition of compensation.

11 6. "Board" means the ASRS board established in section 38-713.

12 7. "Compensation" means the gross amount paid to a member by an
13 employer as salary or wages, including amounts that are subject to deferred
14 compensation or tax shelter agreements, for services rendered to or for an
15 employer, or that would have been paid to the member except for the member's
16 election or a legal requirement that all or part of the gross amount be used
17 for other purposes, but does not include amounts paid in excess of
18 compensation limits established in section 38-746. Compensation includes
19 amounts paid as salary or wages to a member by a second employer.
20 Compensation, as provided in paragraph 5, subdivision (b) of this section,
21 does not include:

22 (a) Lump sum payments, on termination of employment, for accumulated
23 vacation or annual leave, sick leave, compensatory time or any other form of
24 termination pay whether the payments are made in one payment or by
25 installments over a period of time.

26 (b) Damages, costs, attorney fees, interest or other penalties paid
27 pursuant to a court order or a compromise settlement or agreement to satisfy
28 a grievance or claim even though the amount of the payment is based in whole
29 or in part on previous salary or wage levels, except that, if the court order
30 or compromise settlement or agreement directs salary or wages to be paid for
31 a specific period of time, the payment is compensation for that specific
32 period of time. If the amount directed to be paid is less than the actual
33 salary or wages that would have been paid for the period if service had been
34 performed, the contributions for the period shall be based on the amount of
35 compensation that would have been paid if the service had been performed.

36 (c) Payment, at the member's option, in lieu of fringe benefits that
37 are normally paid for or provided by the employer.

38 (d) Merit awards pursuant to section 38-613 and performance bonuses
39 paid to assistant attorneys general pursuant to section 41-192.

40 8. "Contingent annuitant" means the person named by a member to
41 receive retirement income payable following a member's death after retirement
42 as provided in section 38-760.

43 9. "Credited service" means, subject to section 38-739, the number of
44 years standing to the member's credit on the books of ASRS during which the
45 member made the required contributions.

- 1 10. "Current annual compensation" means the greater of:
2 (a) Annualized compensation of the full pay period immediately before
3 the date of a request to ASRS to purchase credited service pursuant to
4 section 38-743 or 38-745.
5 (b) Annualized compensation of the partial year if the member has less
6 than twelve months total credited service on the date of a request to
7 purchase credited service pursuant to section 38-743 or 38-745.
8 (c) The sum of the twelve months of compensation immediately before
9 the date of a request to ASRS to purchase credited service pursuant to
10 section 38-743 or 38-745.
11 (d) The sum of the thirty-six months of compensation immediately
12 before the date of a request to ASRS to purchase credited service pursuant to
13 section 38-743 or 38-745 divided by three.
14 (e) If the member has retired one or more times from ASRS, the average
15 monthly compensation that was used for calculating the member's last pension
16 benefit times twelve.
17 11. "Early retirement" means retirement before a member's normal
18 retirement date after five years of total credited service and attainment of
19 age fifty.
20 12. "Effective date" means July 1, 1970, except with respect to
21 employers and members whose contributions to ASRS commence thereafter, the
22 effective date of their membership in ASRS is as specified in the applicable
23 joinder agreement.
24 13. "Employer" means:
25 (a) This state.
26 (b) Participating political subdivisions.
27 (c) Participating political subdivision entities.
28 14. "Employer contributions" means all amounts paid into ASRS by an
29 employer on behalf of a member.
30 15. "Fiscal year" means the period from July 1 of any year to June 30
31 of the following year.
32 16. "Inactive member" means a member who previously made contributions
33 to ASRS and who satisfies each of the following:
34 (a) Has not retired.
35 (b) Is not eligible for active membership in ASRS.
36 (c) Is not currently making contributions to ASRS.
37 (d) Has not withdrawn contributions from ASRS.
38 17. "Interest" means the assumed actuarial investment earnings rate
39 approved by the board.
40 18. "Internal revenue code" means the United States internal revenue
41 code of 1986, as amended.
42 19. "Investment management" means the persons, companies, banks,
43 insurance company investment funds, mutual fund companies, management or any
44 combinations of those entities that are appointed by ASRS and that have
45 responsibility and authority for investment of the monies of ASRS.

- 1 20. "Late retirement" means retirement after normal retirement.
2 21. "Leave of absence" means any unpaid leave authorized by the
3 employer, including leaves authorized for sickness or disability or to pursue
4 education or training.
5 22. "Life annuity" means equal monthly installments payable during the
6 member's lifetime after retirement.
7 23. "Member":
8 (a) Means any employee of an employer on the effective date.
9 (b) Means all employees of an employer who are eligible for membership
10 pursuant to section 38-727 and who are engaged to work at least twenty weeks
11 in each fiscal year and at least twenty hours each week.
12 (c) Means any person receiving a benefit under ASRS.
13 (d) Means any person who is a former active member of ASRS and who has
14 not withdrawn contributions from ASRS pursuant to section 38-740.
15 (e) Does not include any employee of an employer who is otherwise
16 eligible pursuant to this article and who begins service in a limited
17 appointment for not more than eighteen months on or after July 1, 1979. If
18 the employment exceeds eighteen months, the employee shall be covered by ASRS
19 as of the beginning of the nineteenth month of employment. In order to be
20 excluded under this subdivision, classifications of employees designated by
21 employers as limited appointments must be approved by the director.
22 (f) Does not include any leased employee. For the purposes of section
23 414(n) of the internal revenue code, "leased employee" means an individual
24 who:
25 (i) Is not otherwise an employee of an employer.
26 (ii) Pursuant to a leasing agreement between the employer and another
27 person, performs services for the employer on a substantially full-time basis
28 for at least one year.
29 (iii) Performs services under the primary direction or control of the
30 employer.
31 (g) DOES NOT INCLUDE ANY EMPLOYEE OF A SCHOOL DISTRICT WHO IS EMPLOYED
32 AS A SUBSTITUTE TEACHER, WHO IS AT LEAST SIXTY-TWO YEARS OF AGE, WHO IS
33 RECEIVING SOCIAL SECURITY RETIREMENT BENEFITS AND WHO ELECTS NOT TO
34 PARTICIPATE IN ASRS AS PROVIDED IN SECTION 38-727.
35 24. "Member contributions" means all amounts paid to ASRS by a member.
36 25. "Normal costs" means the sum of the individual normal costs for all
37 active members for each fiscal year. The normal cost for an individual
38 active member is the cost that is assigned to the fiscal year using the
39 projected unit credit method.
40 26. "Normal retirement age" means the age at which a member reaches the
41 member's normal retirement date.
42 27. "Normal retirement date" means the earliest of the following:
43 (a) A member's sixty-fifth birthday.
44 (b) A member's sixty-second birthday and completion of at least ten
45 years of credited service.

1 (c) The first day that the sum of a member's age and years of total
2 credited service equals eighty.

3 28. "Political subdivision" means any political subdivision of this
4 state and includes a political subdivision entity.

5 29. "Political subdivision entity" means an entity:

6 (a) That is located in this state.

7 (b) That is created in whole or in part by political subdivisions,
8 including instrumentalities of political subdivisions.

9 (c) Where a majority of the membership of the entity is composed of
10 political subdivisions.

11 (d) Whose primary purpose is the performance of a government related
12 service.

13 30. "Retired member" means a member who is receiving retirement
14 benefits pursuant to this article.

15 31. "Service year" means fiscal year, except that:

16 (a) If the normal work year required of a member is less than the full
17 fiscal year but is for a period of at least nine months, the service year is
18 the normal work year.

19 (b) For a salaried member employed on a contract basis under one
20 contract, or two or more consecutive contracts, for a total period of at
21 least nine months, the service year is the total period of the contract or
22 consecutive contracts.

23 (c) In determining average monthly compensation pursuant to paragraph
24 5 of this section, the service year is considered to be twelve months of
25 compensation.

26 32. "State" means this state, including any department, office, board,
27 commission, agency, institution or other instrumentality of this state.

28 33. "SUBSTITUTE TEACHER" MEANS A PERSON WHO HOLDS A VALID SUBSTITUTE
29 TEACHER'S CERTIFICATE FROM THE DEPARTMENT OF EDUCATION AND WHO IS EMPLOYED BY
30 A SCHOOL DISTRICT AS A SUBSTITUTE TEACHER FOR LESS THAN FORTY HOURS EACH
31 WEEK.

32 ~~33-~~ 34. "Vested" means that a member is eligible to receive a future
33 retirement benefit.

34 Sec. 2. Section 38-727, Arizona Revised Statutes, is amended to read:

35 ~~38-727.~~ Eligibility; options

36 The following provisions apply to all employees hired on or after the
37 effective date:

38 1. All employees and officers of this state and all officers and
39 employees of political subdivisions establishing a retirement plan
40 administered by the board pursuant to this article who as a result of state
41 service or service for the political subdivision are included in agreements
42 providing for their coverage under the federal old age and survivors
43 insurance system are subject to this article, except that membership is not
44 mandatory:

1 (a) On the part of any employee who is eligible and who elects to
2 participate in the optional retirement programs established by the Arizona
3 board of regents pursuant to the authority conferred by section 15-1628 or by
4 a community college district board pursuant to authority conferred by section
5 15-1451.

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

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

16 (d) ON THE PART OF ANY EMPLOYEE OF A SCHOOL DISTRICT WHO IS EMPLOYED
17 AS A SUBSTITUTE TEACHER, WHO IS AT LEAST SIXTY-TWO YEARS OF AGE, WHO IS
18 RECEIVING SOCIAL SECURITY RETIREMENT BENEFITS AND WHO ELECTS NOT TO
19 PARTICIPATE IN ASRS. THE ELECTION NOT TO PARTICIPATE IS SPECIFIC FOR THAT
20 TERM OF EMPLOYMENT AS A SUBSTITUTE TEACHER WITH THAT SCHOOL DISTRICT. THE
21 SUBSTITUTE TEACHER SHALL MAKE THE ELECTION IN WRITING AND FILE THE ELECTION
22 WITH ASRS WITHIN THIRTY DAYS AFTER THE SCHOOL DISTRICT MAILES THE NOTICE TO
23 THE SUBSTITUTE TEACHER OF THE SUBSTITUTE TEACHER'S ELIGIBILITY TO PARTICIPATE
24 IN ASRS. THE ELECTION IS EFFECTIVE ON THE FIRST DAY OF THE SUBSTITUTE
25 TEACHER'S ELIGIBILITY. IF A SUBSTITUTE TEACHER WHO IS HIRED BY A SCHOOL
26 DISTRICT FAILS TO MAKE AN ELECTION AS PROVIDED IN THIS SUBDIVISION, THE
27 SUBSTITUTE TEACHER IS DEEMED TO HAVE ELECTED TO PARTICIPATE IN ASRS. THE
28 ELECTION NOT TO PARTICIPATE IN ASRS IS IRREVOCABLE AND CONSTITUTES A WAIVER
29 OF ALL BENEFITS PROVIDED BY ASRS FOR THE SUBSTITUTE TEACHER'S DURATION OF
30 EMPLOYMENT WITH THE SCHOOL DISTRICT, EXCEPT FOR ANY BENEFITS ACCRUED BY THE
31 SUBSTITUTE TEACHER IN ASRS FOR PERIODS OF PARTICIPATION BEFORE BEING HIRED AS
32 A SUBSTITUTE TEACHER WITH THAT SCHOOL DISTRICT OR ANY BENEFITS EXPRESSLY
33 PROVIDED BY LAW.

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

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

42 4. Employees and officers shall not become members of ASRS and, if
43 they are members immediately before becoming employed as provided by this
44 section, shall have their membership status suspended while they are employed
45 by state departments paying the salaries of their officers and employees

1 wholly or in part from monies received from sources other than appropriations
2 from the state general fund for the period or periods payment of the employer
3 contributions is not made by or on behalf of the departments.

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

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

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

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

21 7. A state elected official who is subject to term limits and who is
22 eligible for participation in ASRS because the state elected official elected
23 not to participate in the elected officials' retirement plan as provided in
24 section 38-804, subsection A may elect not to participate in ASRS. The
25 election not to participate is specific for that term of office. The state
26 elected official who is subject to term limits shall make the election in
27 writing and file the election with ASRS within thirty days after the elected
28 official's retirement plan mails the notice to the state elected official of
29 the state elected official's eligibility to participate in ASRS. The
30 election is effective on the first day of the state elected official's
31 eligibility. If a state elected official who is subject to term limits fails
32 to make an election as provided in this paragraph, the state elected official
33 is deemed to have elected to participate in ASRS. The election not to
34 participate in ASRS is irrevocable and constitutes a waiver of all benefits
35 provided by ASRS for the state elected official's entire term, except for any
36 benefits accrued by the state elected official in ASRS for periods of
37 participation ~~prior to~~ BEFORE being elected to an office subject to term
38 limits or any benefits expressly provided by law.