

REFERENCE TITLE: EORP; defined contribution retirement system

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

## HB 2713

Introduced by  
Representatives Williams, Ash, Goodale, Jones, Proud, Seel, Smith D, Vogt,  
Weiers J: Brophy McGee, Burges, Carter, Court, Fann, Fillmore, Forese,  
Harper, Judd, Lesko, McLain, Mesnard, Montenegro, Olson, Pratt, Stevens,  
Tobin, Ugenti, Urie

AN ACT

AMENDING SECTIONS 38-797 AND 38-804, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; RELATING TO THE ELECTED OFFICIALS' DEFINED CONTRIBUTION 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 38-727, Arizona Revised Statutes, is amended to  
3 read:

4 38-727. Eligibility; options

5 The following provisions apply to all employees hired on or after the  
6 effective date:

7 1. All employees and officers of this state and all officers and  
8 employees of political subdivisions establishing a retirement plan  
9 administered by the board pursuant to this article who as a result of state  
10 service or service for the political subdivision are included in agreements  
11 providing for their coverage under the federal old age and survivors  
12 insurance system are subject to this article, except that membership is not  
13 mandatory:

14 (a) On the part of any employee who is eligible and who elects to  
15 participate in the optional retirement programs established by the Arizona  
16 board of regents pursuant to the authority conferred by section 15-1628 or by  
17 a community college district board pursuant to authority conferred by section  
18 15-1451.

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

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

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

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

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

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

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

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

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

18           7. A state elected official who is subject to term limits and who is  
19 eligible for participation in ASRS because the state elected official elected  
20 not to participate in the elected officials' retirement plan as provided in  
21 section 38-804, subsection A may elect not to participate in ASRS. The  
22 election not to participate is specific for that term of office. The state  
23 elected official who is subject to term limits shall make the election in  
24 writing and file the election with ASRS within thirty days after the elected  
25 official's retirement plan mails the notice to the state elected official of  
26 the state elected official's eligibility to participate in ASRS. The  
27 election is effective on the first day of the state elected official's  
28 eligibility. If a state elected official who is subject to term limits fails  
29 to make an election as provided in this paragraph, the state elected official  
30 is deemed to have elected to participate in ASRS **BUT ONLY IF THE STATE**  
31 **ELECTED OFFICIAL WAS ELECTED OR APPOINTED BEFORE JANUARY 1, 2012.** The  
32 election not to participate in ASRS is irrevocable and constitutes a waiver  
33 of all benefits provided by ASRS for the state elected official's entire  
34 term, except for any benefits accrued by the state elected official in ASRS  
35 for periods of participation ~~prior to~~ **BEFORE** being elected to an office  
36 subject to term limits or any benefits expressly provided by law.

37           Sec. 2. Section 38-804, Arizona Revised Statutes, is amended to read:  
38           **38-804. Membership; termination; reinstatement of credited**  
39           **service**

40           A. All elected officials **WHO WERE ELECTED OR APPOINTED BEFORE JANUARY**  
41 **1, 2012** are members of the plan, except that a state elected official who is  
42 subject to term limits **AND WHO WAS ELECTED OR APPOINTED BEFORE JANUARY 1,**  
43 **2012** may elect not to participate in the plan. The state elected official  
44 who is subject to term limits **AND WHO WAS ELECTED OR APPOINTED BEFORE JANUARY**  
45 **1, 2012** shall make the election in writing and file the election with the

1 board within thirty days after the state elected official assumes office.  
2 The election is effective on the first day of the state elected official's  
3 eligibility for that term of office. The election not to participate is  
4 specific for that term of office. If a state elected official who is subject  
5 to term limits AND WHO WAS ELECTED OR APPOINTED BEFORE JANUARY 1, 2012 fails  
6 to make an election as provided in this subsection, the state elected  
7 official is deemed to have elected to participate in the plan. The election  
8 not to participate in the plan is irrevocable and constitutes a waiver of all  
9 benefits provided by the plan for the state elected official's entire term,  
10 except for any benefits accrued by the state elected official in the plan for  
11 periods of participation prior to being elected to an office subject to term  
12 limits or any benefits expressly provided by law. The state elected official  
13 who elects not to participate in the plan shall participate in the Arizona  
14 state retirement system unless the state elected official makes an  
15 irrevocable election not to participate in the Arizona state retirement  
16 system as provided in section 38-727.

17 B. If a member ceases to hold office for any reason other than death  
18 or retirement, within twenty days after filing a completed application with  
19 the board, the member is entitled to receive the following amounts, less any  
20 benefit payments the member has received and any amount the member may owe to  
21 the plan:

22 1. If the member has less than five years of credited service with the  
23 plan, the member may withdraw the member's accumulated contributions from the  
24 plan.

25 2. If the member has five or more years of credited service with the  
26 plan, the member may withdraw the member's accumulated contributions plus an  
27 amount equal to the amount determined as follows:

28 (a) 5.0 to 5.9 years of credited service, twenty-five per cent of all  
29 member contributions deducted from the member's salary pursuant to section  
30 38-810, subsection A.

31 (b) 6.0 to 6.9 years of credited service, forty per cent of all member  
32 contributions deducted from the member's salary pursuant to section 38-810,  
33 subsection A.

34 (c) 7.0 to 7.9 years of credited service, fifty-five per cent of all  
35 member contributions deducted from the member's salary pursuant to section  
36 38-810, subsection A.

37 (d) 8.0 to 8.9 years of credited service, seventy per cent of all  
38 member contributions deducted from the member's salary pursuant to section  
39 38-810, subsection A.

40 (e) 9.0 to 9.9 years of credited service, eighty-five per cent of all  
41 member contributions deducted from the member's salary pursuant to section  
42 38-810, subsection A.

43 (f) 10.0 or more years of credited service, one hundred per cent of  
44 all member contributions deducted from the member's salary pursuant to  
45 section 38-810, subsection A.

1 C. If a member has more than ten years of credited service with the  
2 plan, leaves the monies prescribed in subsection B of this section on account  
3 with the plan for more than thirty days after termination of employment and  
4 after that time period requests a refund of those monies, the member is  
5 entitled to receive the amount prescribed in subsection B of this section  
6 plus interest at a rate determined by the board for each year computed from  
7 and after the member's termination of employment.

8 D. If the amount prescribed in subsection B or C of this section  
9 includes monies that are an eligible rollover distribution and the member  
10 elects to have the distribution paid directly to an eligible retirement plan  
11 or individual retirement account or annuity and specifies the eligible  
12 retirement plan or individual retirement account or annuity to which the  
13 distribution is to be paid, the distribution shall be made in the form of a  
14 direct trustee-to-trustee transfer to the specified eligible retirement plan.  
15 The distribution shall be made in the form and at the time prescribed by the  
16 board. A member who receives the amount prescribed in subsection B or C of  
17 this section from the plan or who elects a transfer pursuant to this  
18 subsection forfeits the member's credited service, and all rights to benefits  
19 under the plan and membership in the plan terminate.

20 E. In no case shall more than twelve months of credited service be  
21 credited on account of all service rendered by a member in any one year.

22 F. If an elected official who has terminated the member's membership  
23 in the plan pursuant to subsection B of this section is subsequently elected  
24 or otherwise becomes eligible for membership in the plan pursuant to  
25 subsection A of this section, credited service only accrues from the date of  
26 the member's most recent eligibility as an elected official.

27 ~~G. Notwithstanding subsection F of this section, if an elected~~  
28 ~~official files a written election form with the board within ninety days~~  
29 ~~after the day of the member's reemployment as an elected official and repays~~  
30 ~~the amount previously withdrawn pursuant to subsection B or C of this section~~  
31 ~~within one year after the date of the member's reemployment as an elected~~  
32 ~~official, with interest on that amount at the rate of nine per cent for each~~  
33 ~~year, compounded each year from the date of withdrawal to the date of~~  
34 ~~repayment, credited service shall be restored. Credited service shall not be~~  
35 ~~restored until complete repayment is made to the fund.~~

36 ~~H.~~ G. If a retired member subsequently becomes an elected official,  
37 contributions shall not be made by the retired member or the retired member's  
38 employer and credited service shall not accrue while the retired member is  
39 holding office.

40 ~~I.~~ H. In addition to subsection ~~H~~ G of this section, if a retired  
41 member subsequently becomes, by reason of election or reelection, an elected  
42 official of the same office from which the member retired within a time  
43 period following the member's retirement that is less than one full term for  
44 that office, the member shall not receive a pension. If the elected official  
45 ceases to hold the same office, the elected official is entitled to receive

1 the same pension the elected official was receiving when the elected  
2 official's pension was discontinued pursuant to this subsection. Nothing in  
3 this subsection prohibits a retired judge called by the supreme court to  
4 active duties of a judge pursuant to section 38-813 from receiving retirement  
5 benefits.

6 I. AN ELECTED OFFICIAL WHO IS ELECTED OR APPOINTED ON OR AFTER JANUARY  
7 1, 2012 IS SUBJECT TO ARTICLE 3.1 OF THIS TITLE.

8 Sec. 3. Title 38, chapter 5, Arizona Revised Statutes, is amended by  
9 adding article 3.1, to read:

10 ARTICLE 3.1. ELECTED OFFICIALS' DEFINED  
11 CONTRIBUTION RETIREMENT SYSTEM

12 38-831. Definitions

13 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

14 1. "ANNUITY ACCOUNT" MEANS AN ACCOUNT THAT IS ESTABLISHED FOR EACH  
15 MEMBER TO RECORD THE DEPOSIT OF MEMBER CONTRIBUTIONS AND EMPLOYER  
16 CONTRIBUTIONS AND INTEREST, DIVIDENDS OR OTHER ACCUMULATIONS CREDITED ON  
17 BEHALF OF THE MEMBER.

18 2. "BOARD" MEANS THE BOARD OF TRUSTEES OF THE SYSTEM.

19 3. "COMPENSATION" MEANS THE FULL COMPENSATION ACTUALLY RECEIVED BY A  
20 MEMBER FOR SERVICE WHETHER OR NOT PART OF THE COMPENSATION IS RECEIVED FROM  
21 MONIES OTHER THAN THOSE PROVIDED BY THIS STATE OR A POLITICAL SUBDIVISION OF  
22 THIS STATE.

23 4. "DEFINED CONTRIBUTION SYSTEM" MEANS THE ELECTED OFFICIALS' DEFINED  
24 CONTRIBUTION RETIREMENT SYSTEM ESTABLISHED BY THIS ARTICLE.

25 5. "ELECTED OFFICIAL" MEANS:

26 (a) EVERY ELECTED OFFICIAL OF THIS STATE WHO IS ELECTED OR APPOINTED  
27 ON OR AFTER JANUARY 1, 2012.

28 (b) EVERY ELECTED OFFICIAL OF EACH COUNTY OF THIS STATE WHO IS ELECTED  
29 OR APPOINTED ON OR AFTER JANUARY 1, 2012.

30 (c) EVERY JUSTICE OF THE SUPREME COURT, EVERY JUDGE OF THE COURT OF  
31 APPEALS, EVERY JUDGE OF THE SUPERIOR COURT AND EVERY FULL-TIME SUPERIOR COURT  
32 COMMISSIONER WHO IS ELECTED OR APPOINTED ON OR AFTER JANUARY 1, 2012.

33 (d) THE ADMINISTRATOR OF THE BOARD IF THE ADMINISTRATOR IS A NATURAL  
34 PERSON WHO IS APPOINTED ON OR AFTER JANUARY 1, 2012.

35 (e) EACH ELECTED OFFICIAL OF AN INCORPORATED CITY OR TOWN WHOSE  
36 EMPLOYER HAS EXECUTED A PROPER JOINDER AGREEMENT FOR COVERAGE OF ITS ELECTED  
37 OFFICIALS AND WHO IS ELECTED OR APPOINTED ON OR AFTER JANUARY 1, 2012.

38 6. "EMPLOYER" MEANS A DEPARTMENT, AGENCY OR POLITICAL SUBDIVISION OF  
39 THIS STATE THAT MAKES EMPLOYER CONTRIBUTIONS TO THE DEFINED CONTRIBUTION  
40 SYSTEM ON BEHALF OF AN ELECTED OFFICIAL WHO PARTICIPATES IN THE DEFINED  
41 CONTRIBUTION SYSTEM.

42 7. "EMPLOYER CONTRIBUTION" MEANS AN AMOUNT DEPOSITED IN THE MEMBER'S  
43 INDIVIDUAL ANNUITY ACCOUNT ON A PERIODIC BASIS COINCIDING WITH THE EMPLOYEE'S  
44 REGULAR PAY PERIOD BY AN EMPLOYER FROM THE EMPLOYER'S OWN MONIES.



1           38-831.03. Administration of the defined contribution system  
2           A. THE BOARD SHALL ADMINISTER THE DEFINED CONTRIBUTION SYSTEM.  
3           B. THE BOARD MAY SUE AND BE SUED, CONTRACT AND BE CONTRACTED WITH AND  
4 CONDUCT ALL OF THE BUSINESS OF THE DEFINED CONTRIBUTION SYSTEM IN THE NAME OF  
5 THE ELECTED OFFICIALS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.  
6           38-831.04. Powers and duties of the board  
7           A. THE BOARD HAS ALL OF THE POWERS NECESSARY TO EFFECTUATE THE  
8 PURPOSES OF THIS ARTICLE.  
9           B. THE BOARD SHALL:  
10           1. CONTRACT WITH A PRIVATE PENSION, INSURANCE, ANNUITY OR MUTUAL FUND  
11 OR ANY OTHER QUALIFIED COMPANY OR COMPANIES TO ADMINISTER THE DAY-TO-DAY  
12 OPERATIONS OF THE DEFINED CONTRIBUTION SYSTEM. IN SELECTING THE COMPANY OR  
13 COMPANIES THE BOARD SHALL TAKE INTO ACCOUNT AS ITS HIGHEST DUTY THE PROPER  
14 SAFEGUARD AND PROTECTION OF THE MEMBER AND EMPLOYER CONTRIBUTIONS, PROVIDING  
15 ELECTED OFFICIALS WITH INVESTMENT PRODUCTS AT THE LOWEST AVAILABLE COST AND  
16 PROVIDING ELECTED OFFICIALS WITH A BROAD RANGE OF INVESTMENT PRODUCTS THAT  
17 WILL MAXIMIZE THE INTEREST, DIVIDEND OR OTHER RETURN ON CONTRIBUTIONS.  
18           2. ADOPT RULES REGARDING THE PROPER INVESTMENT OF THE CONTRIBUTIONS.  
19           38-831.05. Participation in defined contribution system;  
20                                   limiting participation in existing retirement  
21                                   system  
22           A. BEGINNING JANUARY 1, 2012, THE DEFINED CONTRIBUTION SYSTEM IS THE  
23 SINGLE RETIREMENT PROGRAM FOR ALL NEW ELECTED OFFICIALS WHOSE EMPLOYMENT  
24 BEGINS ON OR AFTER THAT DATE. NO ADDITIONAL NEW ELECTED OFFICIALS EXCEPT AS  
25 MAY BE PROVIDED IN THIS SECTION MAY BE ADMITTED TO THE EXISTING RETIREMENT  
26 SYSTEM. MEMBERS OF THE EXISTING RETIREMENT SYSTEM WHOSE EMPLOYMENT CONTINUES  
27 BEYOND JANUARY 1, 2012 ARE NOT AFFECTED BY THIS ARTICLE AND ARE ENTITLED TO  
28 CONTINUE TO CONTRIBUTE AND PARTICIPATE IN THE EXISTING RETIREMENT SYSTEM  
29 WITHOUT A CHANGE IN PROVISIONS OR BENEFITS.  
30           B. NOTWITHSTANDING ARTICLE 3 OF THIS CHAPTER, ANY ELECTED OFFICIAL  
31 WHOSE EMPLOYMENT TERMINATES AFTER DECEMBER 31, 2011 AND WHO LATER BECOMES AN  
32 ELECTED OFFICIAL IS ELIGIBLE FOR MEMBERSHIP ONLY IN THE DEFINED CONTRIBUTION  
33 SYSTEM, EXCEPT THAT IF THE ELECTED OFFICIAL HAS NOT WITHDRAWN CONTRIBUTIONS  
34 FROM THE EXISTING RETIREMENT SYSTEM, THE EMPLOYEE IS ENTITLED TO READMISSION  
35 TO THE EXISTING RETIREMENT SYSTEM.  
36           C. AN ELECTED OFFICIAL WHOSE EMPLOYMENT IS SUSPENDED AS A RESULT OF AN  
37 APPROVED LEAVE OF ABSENCE IS ELIGIBLE FOR READMISSION TO THE EXISTING  
38 RETIREMENT SYSTEM IN WHICH THE EMPLOYEE WAS A MEMBER.  
39           D. THE BOARD SHALL RESOLVE ANY QUESTION THAT EXISTS REGARDING  
40 READMISSION TO MEMBERSHIP IN THE EXISTING RETIREMENT SYSTEM.  
41           38-831.06. Voluntary participation in defined contribution  
42                                   system  
43           A. ON WRITTEN ELECTION ON OR AFTER JANUARY 1, 2012, A MEMBER OF THE  
44 EXISTING RETIREMENT SYSTEM MAY VOLUNTARILY ELECT MEMBERSHIP IN THE DEFINED  
45 CONTRIBUTION SYSTEM ON A PROSPECTIVE BASIS UNDER EITHER OF THE FOLLOWING:

1           1. ALL BENEFITS EARNED BY AN ELECTED OFFICIAL UNDER THE EXISTING  
2 RETIREMENT SYSTEM BEFORE A VOLUNTARY ELECTION BY THE MEMBER SHALL BE FROZEN  
3 AND MADE AVAILABLE TO THAT MEMBER ON RETIREMENT AS PROVIDED BY THE EXISTING  
4 RETIREMENT SYSTEM. FOR THE PURPOSES OF THIS PARAGRAPH, "FROZEN" MEANS THAT  
5 THE MEMBER'S COMPENSATION, CREDITED SERVICE AND ANY OTHER FACTOR USED TO  
6 DETERMINE BENEFITS SHALL BE CALCULATED AS OF THE DATE THE MEMBER ELECTED  
7 MEMBERSHIP IN THE DEFINED CONTRIBUTION SYSTEM AND AFTER THAT DATE NO INCREASE  
8 IN COMPENSATION, CREDITED SERVICE OR ANY OTHER FACTOR MAY BE USED TO INCREASE  
9 THE MEMBER'S RETIREMENT BENEFIT ABOVE THE RETIREMENT BENEFIT THE MEMBER WOULD  
10 HAVE RECEIVED IF THE MEMBER HAD RETIRED ON THE DATE THE ELECTION WAS MADE.

11           2. WITHDRAWAL OF THE MEMBER'S CONTRIBUTIONS TO THE EXISTING RETIREMENT  
12 SYSTEM PLUS EMPLOYER CONTRIBUTIONS AND INTEREST ON THOSE CONTRIBUTIONS AS  
13 DETERMINED PURSUANT TO SECTION 38-804 AS IF THE MEMBER IS TERMINATING  
14 EMPLOYMENT AND DEPOSIT OF THAT WITHDRAWN AMOUNT IN THE DEFINED CONTRIBUTION  
15 SYSTEM.

16           B. IF A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP IN  
17 THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO SUBSECTION A, PARAGRAPH 2 OF THIS  
18 SECTION, THE MEMBER'S YEARS OF CREDITED SERVICE IN THE EXISTING RETIREMENT  
19 SYSTEM SHALL BE APPLIED TOWARD YEARS OF EMPLOYMENT SERVICE REQUIRED BY  
20 SECTION 38-831.09.

21           C. THE BOARD SHALL ALLOW AN ELECTION UNDER THIS SECTION ON A  
22 RETROACTIVE BASIS TO JANUARY 1, 2012.

23           D. AFTER A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP  
24 IN THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO THIS SECTION, THE MEMBER SHALL  
25 NOT CHANGE THE ELECTION OR AGAIN BECOME A MEMBER OF THE EXISTING RETIREMENT  
26 SYSTEM.

27           38-831.07. Member contributions: annuity account: 414(h)  
28 pick-up

29           A. EACH ELECTED OFFICIAL WHO IS A MEMBER OF THE DEFINED CONTRIBUTION  
30 SYSTEM MAY CONTRIBUTE A PERCENTAGE RANGING FROM ZERO PER CENT TO A MAXIMUM OF  
31 FIFTEEN PER CENT OF THE MEMBER'S GROSS COMPENSATION BY SALARY REDUCTION,  
32 EXCEPT THAT THE AMOUNT CONTRIBUTED EACH YEAR SHALL NOT BE MORE THAN THE  
33 MAXIMUM AMOUNT ALLOWED UNDER THE INTERNAL REVENUE CODE.

34           B. THE EMPLOYER SHALL MAKE SALARY REDUCTIONS AT THE NORMAL PAYROLL  
35 INTERVALS AND SHALL REMIT THIS AMOUNT WITHIN FIVE WORKING DAYS TO THE PRIVATE  
36 PENSION, INSURANCE, ANNUITY OR MUTUAL FUND OR ANY OTHER QUALIFIED COMPANY OR  
37 COMPANIES DESIGNATED BY THE BOARD TO ADMINISTER THE DAY-TO-DAY OPERATIONS OF  
38 THE DEFINED CONTRIBUTION SYSTEM.

39           C. ALL MEMBER CONTRIBUTIONS SHALL BE DEPOSITED IMMEDIATELY IN AN  
40 ACCOUNT OR ACCOUNTS ESTABLISHED IN THE NAME OF THE MEMBER AND SHALL BE HELD  
41 IN TRUST FOR THE BENEFIT OF THE MEMBER. AN ACCOUNT AGREEMENT SHALL BE ISSUED  
42 TO EACH MEMBER PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH CONTRIBUTIONS  
43 ARE RECEIVED AND THE INVESTMENT AND RETIREMENT OPTIONS AVAILABLE TO THE  
44 MEMBER. ON OR BEFORE DECEMBER 31, 2011, THE BOARD SHALL ADOPT RULES DEFINING  
45 THE MINIMUM REQUIREMENTS FOR THE INVESTMENT AND RETIREMENT OPTIONS TO BE

1 PROVIDED TO THE MEMBERS. THE RULES, TO THE EXTENT NOT INCONSISTENT WITH THE  
2 APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE, SHALL PROVIDE FOR VARIED  
3 RETIREMENT OPTIONS, INCLUDING:

- 4 1. LUMP SUM DISTRIBUTIONS.
- 5 2. JOINT AND SURVIVOR ANNUITIES.
- 6 3. OTHER ANNUITY FORMS IN THE DISCRETION OF THE BOARD.
- 7 4. VARIABLE ANNUITIES THAT GRADUALLY INCREASE MONTHLY RETIREMENT  
8 PAYMENTS, EXCEPT THAT INCREASED PAYMENTS SHALL BE FUNDED SOLELY BY THE  
9 EXISTING CURRENT VALUE OF THE MEMBER'S ACCOUNT AT THE TIME THE MEMBER'S  
10 RETIREMENT PAYMENTS COMMENCE AND NOT, TO ANY EXTENT, IN A MANNER THAT WOULD  
11 REQUIRE ADDITIONAL EMPLOYER OR EMPLOYEE CONTRIBUTIONS TO ANY MEMBER'S ACCOUNT  
12 AFTER RETIREMENT OR CESSATION OF EMPLOYMENT.
- 13 5. THE INSTANCES IN WHICH, IF ANY, DISTRIBUTIONS OR LOANS CAN BE MADE  
14 TO MEMBERS FROM THEIR ANNUITY ACCOUNT BALANCES BEFORE THE MEMBER ATTAINS  
15 FIFTY-FIVE YEARS OF AGE.

16 D. ALTHOUGH DESIGNATED AS EMPLOYEE CONTRIBUTIONS, ALL EMPLOYEE  
17 CONTRIBUTIONS MADE TO THE DEFINED CONTRIBUTION SYSTEM SHALL BE PICKED UP AND  
18 PAID BY THE EMPLOYER IN LIEU OF CONTRIBUTIONS BY THE EMPLOYEE. THE  
19 CONTRIBUTIONS PICKED UP BY AN EMPLOYER MAY BE MADE THROUGH A REDUCTION IN THE  
20 EMPLOYEE'S COMPENSATION OR AN OFFSET AGAINST FUTURE COMPENSATION INCREASES,  
21 OR A COMBINATION OF BOTH. AN EMPLOYEE PARTICIPATING IN THE DEFINED  
22 CONTRIBUTION SYSTEM DOES NOT HAVE THE OPTION OF CHOOSING TO RECEIVE THE  
23 CONTRIBUTED AMOUNTS DIRECTLY INSTEAD OF THE EMPLOYER PAYING THE AMOUNTS TO  
24 THE DEFINED CONTRIBUTION SYSTEM. IT IS INTENDED THAT ALL EMPLOYEE  
25 CONTRIBUTIONS THAT ARE PICKED UP BY THE EMPLOYER AS PROVIDED IN THIS  
26 SUBSECTION SHALL BE TREATED AS EMPLOYER CONTRIBUTIONS UNDER SECTION 414(h) OF  
27 THE INTERNAL REVENUE CODE, SHALL BE EXCLUDED FROM EMPLOYEES' GROSS INCOME FOR  
28 FEDERAL AND STATE INCOME TAX PURPOSES AND ARE INCLUDABLE IN THE GROSS INCOME  
29 OF THE EMPLOYEES OR THEIR BENEFICIARIES ONLY IN THE TAXABLE YEAR IN WHICH  
30 THEY ARE DISTRIBUTED. THE SPECIFIED EFFECTIVE DATE OF THE PICKUP PURSUANT TO  
31 THIS SUBSECTION SHALL NOT BE BEFORE THE DATE THE DEFINED CONTRIBUTION SYSTEM  
32 RECEIVES NOTIFICATION FROM THE INTERNAL REVENUE SERVICE THAT ALL EMPLOYEE  
33 CONTRIBUTIONS THAT ARE PICKED UP BY THE EMPLOYER AS PROVIDED IN THIS  
34 SUBSECTION SHALL BE TREATED AS EMPLOYER CONTRIBUTIONS PURSUANT TO SECTION  
35 414(h) OF THE INTERNAL REVENUE CODE. UNTIL NOTIFICATION IS RECEIVED, ANY  
36 EMPLOYEE CONTRIBUTIONS MADE UNDER THIS ARE MADE WITH AFTER-TAX CONTRIBUTIONS.

37 38-831.08. Employer contributions

38 A. EACH PARTICIPATING EMPLOYER SHALL ANNUALLY MAKE A CONTRIBUTION  
39 EQUAL TO ONE HUNDRED PER CENT OF EACH MEMBER'S CONTRIBUTION, EXCEPT THAT THE  
40 EMPLOYER'S CONTRIBUTION SHALL NOT BE MORE THAN FIVE PER CENT OF EACH MEMBER'S  
41 GROSS COMPENSATION. THE PRO RATA SHARE OF THIS AMOUNT SHALL BE PAID ON EACH  
42 DATE THAT A MEMBER CONTRIBUTION IS MADE AND SHALL BE REMITTED AS PROVIDED FOR  
43 IN SECTION 38-831.07 FOR CREDIT TO THE MEMBER'S ANNUITY ACCOUNT.

44 B. EACH PARTICIPATING EMPLOYER HAS A FIDUCIARY DUTY TO ITS EMPLOYEES  
45 TO ENSURE THAT THE EMPLOYER CONTRIBUTIONS ARE MADE IN A TIMELY MANNER.

1           38-831.09. Termination of membership; suspension account

2           A. AN ELECTED OFFICIAL WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER  
3 TERMINATES AFTER THE COMPLETION OF FOUR COMPLETE YEARS OF EMPLOYMENT SERVICE  
4 IS ELIGIBLE TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A  
5 DISTRIBUTION OF ALL MONIES CONTRIBUTED AND ACCUMULATED IN THE MEMBER'S  
6 ANNUITY ACCOUNT.

7           B. A MEMBER WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER TERMINATES  
8 BEFORE THE COMPLETION OF FOUR COMPLETE YEARS OF EMPLOYMENT SERVICE IS  
9 ELIGIBLE TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A DISTRIBUTION  
10 FROM THE MEMBER'S ANNUITY ACCOUNT IN AN AMOUNT EQUAL TO THE MEMBER'S  
11 CONTRIBUTION PLUS ANY EARNINGS ON THE CONTRIBUTIONS.

12           C. NOTWITHSTANDING SUBSECTIONS A AND B OF THIS SECTION, ON THE DEATH  
13 OR PERMANENT, TOTAL DISABILITY OF ANY MEMBER, THAT MEMBER OR THE MEMBER'S  
14 BENEFICIARY IS ELIGIBLE TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE  
15 ALL MONIES CONTRIBUTED TO OR ACCUMULATED IN THE MEMBER'S ANNUITY ACCOUNT.

16           D. THE REMAINING BALANCE, IF ANY, IN THE MEMBER'S ACCOUNT AFTER THE  
17 DISTRIBUTION PURSUANT TO THIS SECTION SHALL BE REMITTED AND PAID INTO A  
18 SUSPENSION ACCOUNT THAT IS ADMINISTERED BY THE BOARD. THE BOARD SHALL ADOPT  
19 RULES REGARDING THE DISTRIBUTION OF ANY BALANCE IN THE SUSPENSION ACCOUNT.  
20 ANY MONIES IN THE SUSPENSION ACCOUNT SHALL BE USED SOLELY FOR THE PURPOSE OF  
21 REDUCING EMPLOYER CONTRIBUTIONS IN FUTURE YEARS.

22           E. THE BOARD SHALL MAINTAIN ANY ACCOUNT BALANCES REMITTED TO THE  
23 SUSPENSION ACCOUNT IN THE NAME OF THE TERMINATED EMPLOYEE FOR FIVE YEARS  
24 AFTER INITIAL REMITTANCE TO THE SUSPENSION ACCOUNT. AT THE END OF FIVE YEARS  
25 FOR EACH TERMINATED EMPLOYEE, THE BOARD SHALL CERTIFY IN WRITING TO EACH  
26 CONTRIBUTING EMPLOYER THE AMOUNT OF THE ACCOUNT BALANCES PLUS EARNINGS ON THE  
27 ACCOUNT BALANCES ATTRIBUTABLE TO EACH SEPARATE CONTRIBUTING EMPLOYER'S  
28 PREVIOUSLY TERMINATED EMPLOYEES' ACCOUNTS THAT HAVE BEEN IRREVOCABLY  
29 FORFEITED DUE TO EXPIRATION OF FIVE YEARS SINCE TERMINATION PURSUANT TO  
30 SECTION 38-831.14.

31           F. ON CERTIFICATION TO THE SEVERAL CONTRIBUTING EMPLOYERS OF THE  
32 AGGREGATE ACCOUNT BALANCES PLUS EARNINGS ON THE ACCOUNT BALANCES THAT HAVE  
33 BEEN IRREVOCABLY FORFEITED PURSUANT TO THIS SECTION, THE SEVERAL CONTRIBUTING  
34 EMPLOYERS MAY REDUCE IN THE NEXT SUCCEEDING FISCAL YEAR OR YEARS THEIR TOTAL  
35 AGGREGATE CONTRIBUTION REQUIREMENTS PURSUANT TO SECTION 38-831.08 FOR THE  
36 CURRENT FISCAL YEAR BY AN AMOUNT EQUAL TO THE AGGREGATE AMOUNTS IRREVOCABLY  
37 FORFEITED AND CERTIFIED AS SUCH TO EACH CONTRIBUTING EMPLOYER.

38           G. ON THE USE OF THE AMOUNTS IRREVOCABLY FORFEITED TO ANY CONTRIBUTING  
39 EMPLOYER AS A REDUCTION IN THE CURRENT FISCAL YEAR CONTRIBUTION OBLIGATION  
40 AND ON NOTIFICATION PROVIDED BY THE SEVERAL CONTRIBUTING EMPLOYERS TO THE  
41 BOARD OF THEIR INTENTION TO USE IRREVOCABLY FORFEITED AMOUNTS, THE BOARD  
42 SHALL DIRECT THE DISTRIBUTION OF THE IRREVOCABLY FORFEITED AMOUNTS FROM THE  
43 SUSPENSION ACCOUNT TO BE DEPOSITED ON BEHALF OF THE CONTRIBUTING EMPLOYER TO  
44 THE MEMBER ANNUITY ACCOUNTS OF ITS CURRENT EMPLOYEES PURSUANT TO SECTION  
45 38-831.08.

1           38-831.10. Retirement; commencement of annuity payments

2           A. AT ANY TIME AFTER A MEMBER ATTAINS FIFTY-FIVE YEARS OF AGE, THE  
3 MEMBER MAY ELECT TO TAKE RETIREMENT BY NOTIFYING THE BOARD OR ITS DESIGNEE IN  
4 WRITING OF THE MEMBER'S INTENTION AT LEAST SIXTY DAYS BEFORE THE EFFECTIVE  
5 DATE OF RETIREMENT.

6           B. RETIREMENT PAYMENTS SHALL BEGIN WITHIN THIRTY DAYS AFTER A MEMBER'S  
7 RETIREMENT DATE UNDER THE PAYMENT OPTION OR OPTIONS PROVIDED BY THE BOARD AND  
8 ELECTED BY THE MEMBER.

9           38-831.11. Amount of annuity payments

10          A. THE AMOUNT OF ANNUITY PAYMENTS A RETIRED MEMBER RECEIVES SHALL BE  
11 BASED SOLELY ON THE BALANCE IN THE MEMBER'S ANNUITY ACCOUNT AT THE DATE OF  
12 RETIREMENT, THE RETIREMENT OPTION SELECTED OR, IF AN ANNUITY OPTION IS  
13 SELECTED, THE ACTUARIAL LIFE EXPECTANCY OF THE MEMBER AND SUCH OTHER FACTORS  
14 AS NORMALLY GOVERN ANNUITY PAYMENTS.

15          B. ON RETIREMENT OF A MEMBER AND WITH THE APPROVAL OF THAT MEMBER, THE  
16 BOARD OR ITS DESIGNEE MAY PURCHASE AN ANNUITY WITH THE BALANCE OF THE  
17 MEMBER'S ACCOUNT. ON DELIVERY OF THE ANNUITY TO THE MEMBER ON THE MEMBER'S  
18 RETIREMENT, THE MEMBER SHALL EXECUTE A RELEASE SURRENDERING ANY CLAIM THE  
19 MEMBER MAY HAVE AGAINST THE RETIREMENT TRUST.

20          38-831.12. Supplemental annuity contracts

21          THE BOARD SHALL AUTHORIZE THE PRIVATE PENSION, INSURANCE, ANNUITY OR  
22 MUTUAL FUND OR OTHER QUALIFIED COMPANY OR COMPANIES WITH WHICH IT CONTRACTS  
23 TO MAKE AVAILABLE TO MEMBERS SUCH SUPPLEMENTAL ANNUITY OPTIONS, DISABILITY  
24 AND OTHER INSURANCE OR BENEFITS AS THE BOARD DEEMS APPROPRIATE, EXCEPT THAT  
25 SUPPLEMENTAL ANNUITIES, INSURANCE AND BENEFITS SHALL BE FUNDED SOLELY FROM  
26 EMPLOYEE CONTRIBUTIONS.

27          38-831.13. Account statements

28          ON AN ANNUAL BASIS THE BOARD SHALL PREPARE OR CAUSE TO BE PREPARED AN  
29 ACCOUNT STATEMENT FOR EACH MEMBER'S ANNUITY ACCOUNT. THE STATEMENT SHALL  
30 INCLUDE A STATEMENT OF THE CURRENT MARKET VALUE OF THE MEMBER'S ACCOUNT. THE  
31 BOARD SHALL PRESCRIBE THE FORM AND CONTENT OF THE ACCOUNT STATEMENT NOT  
32 INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

33          38-831.14. Years of employment service

34          A MEMBER OF THE DEFINED CONTRIBUTION SYSTEM WHO TERMINATES EMPLOYMENT  
35 WITH A PARTICIPATING EMPLOYER AND DOES NOT REMOVE ANY MONIES FROM THE  
36 MEMBER'S ANNUITY ACCOUNT AND BECOMES REEMPLOYED WITH A PARTICIPATING EMPLOYER  
37 WITHIN FIVE YEAR RETAINS THE MEMBER'S PREVIOUS YEARS OF EMPLOYMENT SERVICE  
38 FOR PURPOSES OF SECTION 38-831.09.

39          38-831.15. Right to benefits not subject to execution

40          A. THE RIGHT OF ANY PERSON TO A BENEFIT PROVIDED FOR IN THIS ARTICLE  
41 IS NOT SUBJECT TO EXECUTION, ATTACHMENT, GARNISHMENT, THE OPERATION OF  
42 BANKRUPTCY OR INSOLVENCY LAWS OR ANY OTHER PROCESS.

43          B. ANY ASSIGNMENT OF THE RIGHT OF ANY PERSON TO A BENEFIT PROVIDED FOR  
44 IN THIS ARTICLE IS NOT ENFORCEABLE IN ANY COURT.

1           38-831.16. Reservation to legislature  
2           THE RIGHT TO MODIFY, AMEND OR REPEAL THIS ARTICLE, OR ANY PROVISION OF  
3 THIS ARTICLE, IS RESERVED TO THE LEGISLATURE.  
4           Sec. 4. Modification of contract  
5           The board of trustees of the public safety personnel retirement system  
6 and each appropriate political subdivision of this state shall modify the  
7 existing joinder agreements entered into pursuant to section 38-815, Arizona  
8 Revised Statutes, to reflect this act.