

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# SENATE BILL 1106

AN ACT

AMENDING SECTIONS 38-711, 38-744 AND 38-745, 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 higher of either:

23 (i) The monthly average of compensation that is calculated pursuant to  
24 subdivision (b) of this paragraph.

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

43 (b) For a member whose membership in ASRS commenced on or after  
44 January 1, 1984 but before July 1, 2011, the monthly average of compensation  
45 on which contributions were remitted during a period of thirty-six

1 consecutive months during which a member receives the highest compensation  
2 within the last one hundred twenty months of credited service. Any month for  
3 which no contributions are reported to ASRS or that falls within a period of  
4 nonpaid or partially paid leave of absence or sabbatical leave shall be  
5 excluded from the computation. The thirty-six consecutive months may  
6 entirely precede, may be both before and after or may be completely after any  
7 excluded months. If the member was employed for less than thirty-six  
8 consecutive months, the average monthly compensation shall be based on the  
9 total consecutive months worked.

10 (c) For a member whose membership in ASRS commenced on or after July  
11 1, 2011, the monthly average of compensation on which contributions were  
12 remitted during a period of sixty consecutive months during which a member  
13 receives the highest compensation within the last one hundred twenty months  
14 of credited service. Any month for which no contributions are reported to  
15 ASRS or that falls within a period of nonpaid or partially paid leave of  
16 absence or sabbatical leave shall be excluded from the computation. The  
17 sixty consecutive months may entirely precede, may be both before and after  
18 or may be completely after any excluded months. If the member was employed  
19 for less than sixty consecutive months, the average monthly compensation  
20 shall be based on the total consecutive months worked.

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

22 7. "Compensation" means the gross amount paid to a member by an  
23 employer as salary or wages, including amounts that are subject to deferred  
24 compensation or tax shelter agreements, for services rendered to or for an  
25 employer, or that would have been paid to the member except for the member's  
26 election or a legal requirement that all or part of the gross amount be used  
27 for other purposes, but does not include amounts paid in excess of  
28 compensation limits established in section 38-746. Compensation includes  
29 amounts paid as salary or wages to a member by a second employer if the  
30 member meets the requirements prescribed in paragraph 23, subdivision (b) of  
31 this section with that second employer. Compensation, as provided in  
32 paragraph 5, subdivision (b) or (c) of this section, does not include:

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

37 (b) Damages, costs, attorney fees, interest or other penalties paid  
38 pursuant to a court order or a compromise settlement or agreement to satisfy  
39 a grievance or claim even though the amount of the payment is based in whole  
40 or in part on previous salary or wage levels, except that, if the court order  
41 or compromise settlement or agreement directs salary or wages to be paid for  
42 a specific period of time, the payment is compensation for that specific  
43 period of time. If the amount directed to be paid is less than the actual  
44 salary or wages that would have been paid for the period if service had been

1 performed, the contributions for the period shall be based on the amount of  
2 compensation that would have been paid if the service had been performed.

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

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

7 (e) Amounts that are paid as salary or wages to a member for which  
8 employer contributions have not been paid.

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

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

15 10. "Current annual compensation" means the greater of:

16 (a) Annualized compensation of the typical pay period amount  
17 immediately before the date of a request to ASRS to purchase credited service  
18 pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount  
19 shall be determined by taking the five pay periods immediately before the  
20 date of a request, disregarding the highest and lowest compensation amount  
21 pay periods and averaging the three remaining pay periods.

22 (b) Annualized compensation of the partial year, disregarding the  
23 first compensation amount pay period, if the member has less than twelve  
24 months total ~~credited service~~ COMPENSATION on the date of a request to  
25 purchase credited service pursuant to section 38-743, 38-744 or 38-745.

26 (c) The sum of the twelve months of compensation immediately before  
27 the date of a request to ASRS to purchase credited service pursuant to  
28 section 38-743, 38-744 or 38-745.

29 (d) The sum of the thirty-six months of compensation immediately  
30 before the date of a request to ASRS to purchase credited service pursuant to  
31 section 38-743, 38-744 or 38-745 divided by three.

32 (e) If the member has retired one or more times from ASRS, the average  
33 monthly compensation that was used for calculating the member's last pension  
34 benefit times twelve.

35 11. "Early retirement" means retirement before a member's normal  
36 retirement date after five years of total credited service and attainment of  
37 age fifty.

38 12. "Effective date" means July 1, 1970, except with respect to  
39 employers and members whose contributions to ASRS commence thereafter, the  
40 effective date of their membership in ASRS is as specified in the applicable  
41 joinder agreement.

- 1           13. "Employer" means:  
2           (a) This state.  
3           (b) Participating political subdivisions.  
4           (c) Participating political subdivision entities.  
5           14. "Employer contributions" means all amounts paid into ASRS by an  
6 employer on behalf of a member.  
7           15. "Fiscal year" means the period from July 1 of any year to June 30  
8 of the following year.  
9           16. "Inactive member" means a member who previously made contributions  
10 to ASRS and who satisfies each of the following:  
11           (a) Has not retired.  
12           (b) Is not eligible for active membership in ASRS.  
13           (c) Is not currently making contributions to ASRS.  
14           (d) Has not withdrawn contributions from ASRS.  
15           17. "Interest" means the assumed actuarial investment earnings rate  
16 approved by the board.  
17           18. "Internal revenue code" means the United States internal revenue  
18 code of 1986, as amended.  
19           19. "Investment management" means the persons, companies, banks,  
20 insurance company investment funds, mutual fund companies, management or any  
21 combinations of those entities that are appointed by ASRS and that have  
22 responsibility and authority for investment of the monies of ASRS.  
23           20. "Late retirement" means retirement after normal retirement.  
24           21. "Leave of absence" means any unpaid leave authorized by the  
25 employer, including leaves authorized for sickness or disability or to pursue  
26 education or training.  
27           22. "Life annuity" means equal monthly installments payable during the  
28 member's lifetime after retirement.  
29           23. "Member":  
30           (a) Means any employee of an employer on the effective date.  
31           (b) Means all employees of an employer who are eligible for membership  
32 pursuant to section 38-727 and who are engaged to work at least twenty weeks  
33 in each fiscal year and at least twenty hours each week.  
34           (c) Means any person receiving a benefit under ASRS.  
35           (d) Means any person who is a former active member of ASRS and who has  
36 not withdrawn contributions from ASRS pursuant to section 38-740.  
37           (e) Does not include any employee of an employer who is otherwise  
38 eligible pursuant to this article and who begins service in a limited  
39 appointment for not more than eighteen months on or after July 1, 1979. If  
40 the employment exceeds eighteen months, the employee shall be covered by ASRS  
41 as of the beginning of the nineteenth month of employment. In order to be  
42 excluded under this subdivision, classifications of employees designated by  
43 employers as limited appointments must be approved by the director.

1 (f) Does not include any leased employee. For the purposes of section  
2 414(n) of the internal revenue code, "leased employee" means an individual  
3 who:

4 (i) Is not otherwise an employee of an employer.

5 (ii) Pursuant to a leasing agreement between the employer and another  
6 person, performs services for the employer on a substantially full-time basis  
7 for at least one year.

8 (iii) Performs services under the primary direction or control of the  
9 employer.

10 24. "Member contributions" means all amounts paid to ASRS by a member.

11 25. "Normal costs" means the sum of the individual normal costs for all  
12 active members for each fiscal year. The normal cost for an individual  
13 active member is the cost that is assigned to the fiscal year using the  
14 projected unit credit method.

15 26. "Normal retirement age" means the age at which a member reaches the  
16 member's normal retirement date.

17 27. "Normal retirement date" means the earliest of the following:

18 (a) A member's sixty-fifth birthday.

19 (b) A member's sixty-second birthday and completion of at least ten  
20 years of credited service.

21 (c) For a member whose membership commenced before July 1, 2011, the  
22 first day that the sum of a member's age and years of total credited service  
23 equals eighty. For a member whose membership commenced on or after July 1,  
24 2011, the first day that the sum of a member's age and years of total  
25 credited service equals eighty-five.

26 28. "Political subdivision" means any political subdivision of this  
27 state and includes a political subdivision entity.

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

29 (a) That is located in this state.

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

32 (c) Where a majority of the membership of the entity is composed of  
33 political subdivisions.

34 (d) Whose primary purpose is the performance of a government related  
35 service.

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

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

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

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

1 (c) In determining average monthly compensation pursuant to paragraph  
2 5 of this section, the service year is considered to be twelve months of  
3 compensation.

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

6 33. "Vested" means that a member is eligible to receive a future  
7 retirement benefit.

8 Sec. 2. Section 38-744, Arizona Revised Statutes, is amended to read:  
9 38-744. Leave of absence; credit for leave without pay

10 A. If an active member of ASRS or a member who is receiving benefits  
11 pursuant to section 38-797.07 is officially granted a leave of absence from  
12 employment without pay and returns to employment with the same employer,  
13 unless employment could not be resumed because of disability or  
14 nonavailability of a position, the member may elect to be credited with  
15 service for retirement purposes for not more than one year of the leave by  
16 paying to ASRS the amounts as provided in subsection B of this section, if  
17 the member has not withdrawn contributions from ASRS and the member's  
18 employer has certified that the leave of absence benefits or is in the best  
19 interests of the employer.

20 B. A member who elects to be credited with a leave period as provided  
21 in subsection A of this section shall pay to ASRS an amount equal to the  
22 present value of the additional benefit that is derived from the purchased  
23 credited service using the actuarial assumptions that are approved by the  
24 board.

25 C. A MEMBER WHO PREVIOUSLY WAS A MEMBER OF ANOTHER PUBLIC EMPLOYEE  
26 RETIREMENT SYSTEM AND WHO RECEIVES OR IS ELIGIBLE TO RECEIVE A RETIREMENT  
27 BENEFIT FROM THAT SYSTEM FOR ANY PERIOD OF EMPLOYMENT IS INELIGIBLE TO  
28 RECEIVE RETIREMENT BENEFITS FROM ASRS FOR THE SAME PERIOD.

29 ~~C.~~ D. Beginning July 1, 2010, a member shall have at least five years  
30 of credited service in ASRS before electing to receive credit for service  
31 pursuant to this section.

32 ~~D.~~ E. For the purposes of subsection A of this section, each employer  
33 shall adopt rules establishing guidelines for a leave of absence that  
34 benefits or is in the best interests of the employer.

35 Sec. 3. Section 38-745, Arizona Revised Statutes, is amended to read:  
36 38-745. Credit for military service

37 A. An active member of ASRS or a member who is receiving benefits  
38 pursuant to section 38-797.07 may purchase credited service in ASRS for  
39 active military service if all of the following apply:

40 1. The member was honorably separated from the military service.

41 2. The member submits a copy of the member's military service record  
42 (DD-214) or its equivalent with the member's application for military service  
43 credit.

44 3. Beginning July 1, 2010, a member has at least five years of  
45 credited service in ASRS.

1 B. The cost to purchase military service credit is an amount equal to  
2 the present value of the additional benefit that is derived from the  
3 purchased credited service using the actuarial assumptions that are approved  
4 by the board.

5 C. An active member of ASRS who is called to active military service  
6 may receive credited service for not more than sixty months of active  
7 military service, except as provided by the uniformed services employment and  
8 reemployment rights act (38 United States Code section 4312(c)). The  
9 member's employer shall make employer contributions and member contributions  
10 for the member if the member meets the following requirements:

11 1. Was an active member of ASRS on the day before the member began  
12 active military service.

13 2. Is a member of the Arizona national guard or is a member of the  
14 reserves of any military establishment of the United States.

15 3. Volunteers or is ordered into active military service of the United  
16 States as part of a military call-up.

17 4. One of the following occurs:

18 (a) Is honorably separated from active military service and returns to  
19 employment for the same employer from which the member left for active  
20 military service within ninety days after the date active military service is  
21 terminated.

22 (b) Is hospitalized as a result of military service and returns to  
23 employment for the same employer from which the member left for active  
24 military service within ninety days after release from service related  
25 hospitalization.

26 (c) Becomes disabled as a result of or during the military service and  
27 is unable to return to the same employer.

28 (d) Dies as a result of or during the military service.

29 D. Contributions made pursuant to subsection C of this section shall  
30 be for the period of time beginning on the date the member began active  
31 military service and ending on the later of one of the following dates:

32 1. The date the member ~~is separated from active military service~~  
33 RETURNS TO EMPLOYMENT OR THE DATE THE MEMBER SHOULD HAVE RETURNED TO  
34 EMPLOYMENT PURSUANT TO 20 CODE OF FEDERAL REGULATIONS SECTION 1002.115,  
35 WHICHEVER DATE IS EARLIER.

36 2. The date the member is released from service related  
37 hospitalization or ~~one-year~~ TWO YEARS after initiation of service related  
38 hospitalization, whichever date is earlier.

39 3. One year after the date of disability.

40 4. The date the member dies as a result of or during active military  
41 service.

42 E. Notwithstanding any other law, on payment of the contributions made  
43 pursuant to subsection C of this section, the member shall be credited with  
44 service for retirement purposes for the period of time of active military  
45 service of not more than sixty months.

1 F. The employer shall make contributions pursuant to subsection C of  
2 this section as follows:

3 1. Contributions shall be based on the compensation that a member  
4 would have received but for the period that the member was ordered into  
5 active military service.

6 2. If the employer cannot reasonably determine a member's rate of  
7 compensation for the period that the member was ordered into active military  
8 service, the employer shall make contributions based on the member's average  
9 rate of compensation during the twelve-month period immediately preceding the  
10 period of active military service.

11 3. If a member has been employed less than twelve months before being  
12 ordered into active military service, the employer shall make contributions  
13 based on the employment period immediately preceding the period of active  
14 military service.

15 4. Employer contributions shall be made in a lump sum and without  
16 penalty when the member returns to employment, when it is determined that the  
17 member is unable to return to employment because of a disability as a result  
18 of or that occurred during military service or on receipt of the member's  
19 death certificate. If a member suffers a service related death, the employer  
20 shall make the employer and member contributions up to and including the date  
21 of the member's death. Death benefits shall be calculated as prescribed by  
22 law.

23 G. In computing the length of total credited service of a member for  
24 the purpose of determining retirement benefits or eligibility, the period of  
25 military service, as prescribed by this section, shall be included.

26 H. Notwithstanding any other law, the member is not required to  
27 reimburse the member's employer or ASRS for any contribution made pursuant to  
28 subsection C of this section.

29 I. In addition to, but not in duplication of, the provisions of  
30 subsection C of this section, contributions, benefits and credited service  
31 provided pursuant to this section shall be provided in accordance with  
32 section 414(u) of the internal revenue code.

33 J. A MEMBER WHO DOES NOT CURRENTLY PERFORM SERVICES FOR AN EMPLOYER BY  
34 REASON OF QUALIFIED MILITARY SERVICE, AS THAT TERM IS DEFINED IN SECTION  
35 414(u) OF THE INTERNAL REVENUE CODE, AND WHO IS RECEIVING DIFFERENTIAL WAGE  
36 PAYMENTS, AS THAT TERM IS DEFINED IN SECTION 3401(h)(2) OF THE INTERNAL  
37 REVENUE CODE, SHALL NOT BE CONSIDERED AS HAVING A SEVERANCE FROM EMPLOYMENT  
38 FOR ALL PURPOSES UNDER ASRS DURING THE PERIOD THE DIFFERENTIAL WAGES ARE  
39 BEING PAID BY THE EMPLOYER TO THE EMPLOYEE.