

REFERENCE TITLE: defined contribution retirement system

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

## **SB 1340**

Introduced by  
Senator Antenori

AN ACT

AMENDING SECTION 38-727, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.2; RELATING TO THE ARIZONA STATE 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.

44 5. Notwithstanding other provisions of this section, a temporary  
45 employee of the legislature whose projected term of employment is for not

1 more than six months is ineligible for membership in ASRS. ~~If the employment~~  
2 ~~continues beyond six successive months, the employee may elect to either:~~

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

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

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

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

35 **8. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ALL EMPLOYEES**  
36 **OF AN EMPLOYER WHO ARE HIRED ON OR AFTER JANUARY 1, 2012 ARE INELIGIBLE FOR**  
37 **MEMBERSHIP IN ASRS.**

38 Sec. 2. Title 38, chapter 5, Arizona Revised Statutes, is amended by  
39 adding article 2.2, to read:

40 ARTICLE 2.2. ARIZONA STATE DEFINED  
41 CONTRIBUTION RETIREMENT SYSTEM

42 38-798. Definitions

43 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

44 1. "ANNUITY ACCOUNT" MEANS AN ACCOUNT THAT IS ESTABLISHED FOR EACH  
45 MEMBER TO RECORD THE DEPOSIT OF MEMBER CONTRIBUTIONS AND EMPLOYER

1 CONTRIBUTIONS AND INTEREST, DIVIDENDS OR OTHER ACCUMULATIONS CREDITED ON  
2 BEHALF OF THE MEMBER.

3 2. "ASRS" MEANS THE ARIZONA STATE RETIREMENT SYSTEM THAT IS  
4 ESTABLISHED BY ARTICLE 2 OF THIS CHAPTER.

5 3. "BOARD" MEANS THE ASRS BOARD THAT IS ESTABLISHED BY SECTION 38-713.

6 4. "COMPENSATION" MEANS THE FULL COMPENSATION ACTUALLY RECEIVED BY A  
7 MEMBER FOR SERVICE WHETHER OR NOT PART OF THE COMPENSATION IS RECEIVED FROM  
8 MONIES OTHER THAN THOSE PROVIDED BY THIS STATE OR A POLITICAL SUBDIVISION OF  
9 THIS STATE.

10 5. "DEFINED CONTRIBUTION SYSTEM" MEANS THE ARIZONA STATE DEFINED  
11 CONTRIBUTION RETIREMENT SYSTEM ESTABLISHED BY THIS ARTICLE.

12 6. "EMPLOYER" MEANS:

13 (a) THIS STATE.

14 (b) POLITICAL SUBDIVISIONS OF THIS STATE THAT ARE PARTICIPATING IN  
15 ASRS ON THE EFFECTIVE DATE OF THIS ARTICLE.

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

19 8. "EXISTING EMPLOYER" MEANS ANY EMPLOYER WHO EMPLOYED OR EMPLOYS A  
20 MEMBER OF THE EXISTING RETIREMENT SYSTEM.

21 9. "EXISTING RETIREMENT SYSTEM" MEANS THE DEFINED BENEFIT PROGRAM THAT  
22 IS ESTABLISHED BY ARTICLE 2 OF THIS CHAPTER.

23 10. "MEMBER":

24 (a) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER  
25 JANUARY 1, 2012, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHO ARE  
26 ENGAGED TO WORK AT LEAST TWENTY WEEKS IN EACH FISCAL YEAR AND AT LEAST TWENTY  
27 HOURS EACH WEEK.

28 (b) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER  
29 JANUARY 1, 2012, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHOSE WORK FOR  
30 MORE THAN ONE EMPLOYER TOTALS AT LEAST TWENTY WEEKS IN A FISCAL YEAR AND AT  
31 LEAST TWENTY HOURS EACH WEEK AND INCLUDES WORK PROVIDED ON A PART-TIME BASIS  
32 TO AN EMPLOYER WHO IS NOT THE FULL-TIME EMPLOYER OF THE EMPLOYEE.

33 (c) MEANS ANY PERSON RECEIVING A BENEFIT UNDER THIS ARTICLE.

34 (d) DOES NOT INCLUDE ANY EMPLOYEE OF AN EMPLOYER WHO IS HIRED ON OR  
35 AFTER JANUARY 1, 2012, WHO IS OTHERWISE ELIGIBLE PURSUANT TO THIS ARTICLE AND  
36 WHO BEGINS SERVICE IN A LIMITED APPOINTMENT FOR NOT MORE THAN EIGHTEEN  
37 MONTHS. IF THE EMPLOYMENT EXCEEDS EIGHTEEN MONTHS, THE EMPLOYEE SHALL BE  
38 COVERED BY THE DEFINED CONTRIBUTION SYSTEM AS OF THE BEGINNING OF THE  
39 NINETEENTH MONTH OF EMPLOYMENT. IN ORDER TO BE EXCLUDED UNDER THIS  
40 SUBDIVISION, CLASSIFICATIONS OF EMPLOYEES DESIGNATED BY EMPLOYERS AS LIMITED  
41 APPOINTMENTS MUST BE APPROVED BY THE BOARD.

42 11. "MEMBER CONTRIBUTION" MEANS AN AMOUNT REDUCED FROM THE MEMBER'S  
43 REGULAR PAY AND DEPOSITED IN THE MEMBER'S INDIVIDUAL ANNUITY ACCOUNT IN THE  
44 DEFINED CONTRIBUTION SYSTEM.

1 12. "PERMANENT, TOTAL DISABILITY" MEANS A MENTAL OR PHYSICAL INCAPACITY  
2 THAT IS SHOWN BY AN EXAMINATION BY A PHYSICIAN OR PHYSICIANS SELECTED BY THE  
3 BOARD AND THAT REQUIRES THE ABSENCE FROM EMPLOYMENT SERVICE FOR AT LEAST SIX  
4 MONTHS.

5 13. "RETIREMENT" MEANS A MEMBER'S WITHDRAWAL FROM THE ACTIVE EMPLOYMENT  
6 OF AN EMPLOYER AND COMPLETION OF ALL CONDITIONS PRECEDENT TO RETIREMENT.

7 14. "YEAR OF EMPLOYMENT SERVICE" MEANS EMPLOYMENT FOR AT LEAST TEN  
8 MONTHS, EXCEPT THAT NO MORE THAN ONE YEAR OF SERVICE MAY BE ACCUMULATED IN  
9 ANY TWELVE MONTH PERIOD. FOR THE PURPOSES OF THIS PARAGRAPH, "MONTH" MEANS  
10 TWENTY EMPLOYMENT DAYS.

11 38-798.01. Defined contribution system; body corporate

12 A. THE ARIZONA STATE DEFINED CONTRIBUTION SYSTEM IS ESTABLISHED TO  
13 PROVIDE FOR THE SECURE, FAIR AND ORDERLY RETIREMENT OF EMPLOYEES OF THIS  
14 STATE AND POLITICAL SUBDIVISIONS OF THIS STATE.

15 B. THE DEFINED CONTRIBUTION SYSTEM CONSTITUTES A BODY CORPORATE, AND  
16 ALL BUSINESS OF THE DEFINED CONTRIBUTION SYSTEM SHALL BE TRANSACTED IN THE  
17 NAME OF THE ARIZONA STATE DEFINED CONTRIBUTION RETIREMENT SYSTEM.

18 38-798.02. Article to be liberally construed; purpose;  
19 qualified plan

20 A. THIS ARTICLE SHALL BE LIBERALLY CONSTRUED IN ORDER TO PROVIDE A  
21 GENERAL ANNUITY BASED RETIREMENT SYSTEM FOR EMPLOYEES OF THIS STATE AND  
22 POLITICAL SUBDIVISIONS OF THIS STATE.

23 B. THE PURPOSE OF THIS ARTICLE IS TO PROVIDE A DEFINED CONTRIBUTION  
24 RETIREMENT PROGRAM THAT IS FULLY FUNDED ON A CURRENT BASIS FROM EMPLOYER AND  
25 EMPLOYEE CONTRIBUTIONS.

26 C. THE DEFINED CONTRIBUTION SYSTEM IS DESIGNED TO BE A QUALIFIED  
27 GOVERNMENTAL PLAN UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE. THE  
28 LEGISLATURE INTENDS THAT THE DEFINED CONTRIBUTION SYSTEM IS A QUALIFIED PLAN  
29 UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE, AS AMENDED, OR SUCCESSOR  
30 PROVISIONS OF LAW, AND THAT THE DEFINED CONTRIBUTION SYSTEM IS EXEMPT FROM  
31 TAXATION UNDER SECTION 501 OF THE INTERNAL REVENUE CODE. THE BOARD MAY ADOPT  
32 ANY ADDITIONAL PROVISIONS TO THE DEFINED CONTRIBUTION SYSTEM THAT ARE  
33 NECESSARY TO FULFILL THIS INTENT.

34 38-798.03. Administration of the defined contribution system

35 A. THE BOARD SHALL ADMINISTER THE DEFINED CONTRIBUTION SYSTEM.

36 B. THE BOARD MAY SUE AND BE SUED, CONTRACT AND BE CONTRACTED WITH AND  
37 CONDUCT ALL OF THE BUSINESS OF THE DEFINED CONTRIBUTION SYSTEM IN THE NAME OF  
38 THE ARIZONA STATE DEFINED CONTRIBUTION RETIREMENT SYSTEM.

39 38-798.04. Powers and duties of the board

40 A. THE BOARD HAS ALL OF THE POWERS NECESSARY TO EFFECTUATE THE  
41 PURPOSES OF THIS ARTICLE.

42 B. THE BOARD SHALL:

43 1. CONTRACT WITH A PRIVATE PENSION, INSURANCE, ANNUITY OR MUTUAL FUND  
44 OR ANY OTHER QUALIFIED COMPANY OR COMPANIES TO ADMINISTER THE DAY-TO-DAY  
45 OPERATIONS OF THE DEFINED CONTRIBUTION SYSTEM. IN SELECTING THE COMPANY OR

1 COMPANIES THE BOARD SHALL TAKE INTO ACCOUNT AS ITS HIGHEST DUTY THE PROPER  
2 SAFEGUARD AND PROTECTION OF THE MEMBER AND EMPLOYER CONTRIBUTIONS, PROVIDING  
3 EMPLOYEES WITH INVESTMENT PRODUCTS AT THE LOWEST AVAILABLE COST AND PROVIDING  
4 EMPLOYEES WITH A BROAD RANGE OF INVESTMENT PRODUCTS THAT WILL MAXIMIZE THE  
5 INTEREST, DIVIDEND OR OTHER RETURN ON CONTRIBUTIONS.

6 2. ADOPT RULES REGARDING THE PROPER INVESTMENT OF THE CONTRIBUTIONS.

7 38-798.05. Participation in defined contribution system;  
8 limiting participation in existing retirement  
9 system

10 A. BEGINNING JANUARY 1, 2012, THE DEFINED CONTRIBUTION SYSTEM IS THE  
11 SINGLE RETIREMENT PROGRAM FOR ALL NEW EMPLOYEES WHOSE EMPLOYMENT BEGINS ON OR  
12 AFTER THAT DATE. NO ADDITIONAL NEW EMPLOYEES EXCEPT AS MAY BE PROVIDED IN  
13 THIS SECTION MAY BE ADMITTED TO THE EXISTING RETIREMENT SYSTEM. MEMBERS OF  
14 THE EXISTING RETIREMENT SYSTEM WHOSE EMPLOYMENT CONTINUES BEYOND JANUARY 1,  
15 2012 ARE NOT AFFECTED BY THIS ARTICLE AND ARE ENTITLED TO CONTINUE TO  
16 CONTRIBUTE AND PARTICIPATE IN THE EXISTING RETIREMENT SYSTEM WITHOUT A CHANGE  
17 IN PROVISIONS OR BENEFITS.

18 B. NOTWITHSTANDING ARTICLE 2 OF THIS CHAPTER, ANY EMPLOYEE WHOSE  
19 EMPLOYMENT TERMINATES AFTER DECEMBER 31, 2011 AND WHO IS LATER REEMPLOYED BY  
20 AN EMPLOYER IS ELIGIBLE FOR MEMBERSHIP ONLY IN THE DEFINED CONTRIBUTION  
21 SYSTEM, EXCEPT THAT IF REEMPLOYMENT WITH AN EXISTING EMPLOYER OCCURS NOT MORE  
22 THAN SIX MONTHS AFTER THE EMPLOYEE'S PREVIOUS EMPLOYMENT AND THE EMPLOYEE HAS  
23 NOT WITHDRAWN CONTRIBUTIONS FROM THE EXISTING RETIREMENT SYSTEM, THE EMPLOYEE  
24 IS ENTITLED TO READMISSION TO THE EXISTING RETIREMENT SYSTEM.

25 C. AN EMPLOYEE WHOSE EMPLOYMENT WITH AN EMPLOYER OR AN EXISTING  
26 EMPLOYER IS SUSPENDED AS A RESULT OF AN APPROVED LEAVE OF ABSENCE IS ELIGIBLE  
27 FOR READMISSION TO THE EXISTING RETIREMENT SYSTEM IN WHICH THE EMPLOYEE WAS A  
28 MEMBER.

29 D. THE BOARD SHALL RESOLVE ANY QUESTION THAT EXISTS REGARDING  
30 READMISSION TO MEMBERSHIP IN THE EXISTING RETIREMENT SYSTEM.

31 38-798.06. Voluntary participation in defined contribution  
32 system

33 A. ON WRITTEN ELECTION ON OR AFTER JANUARY 1, 2012, A MEMBER OF THE  
34 EXISTING RETIREMENT SYSTEM MAY VOLUNTARILY ELECT MEMBERSHIP IN THE DEFINED  
35 CONTRIBUTION SYSTEM ON A PROSPECTIVE BASIS UNDER EITHER OF THE FOLLOWING:

36 1. ALL BENEFITS EARNED BY A MEMBER UNDER THE EXISTING RETIREMENT  
37 SYSTEM BEFORE A VOLUNTARY ELECTION BY THE MEMBER SHALL BE FROZEN AND MADE  
38 AVAILABLE TO THAT MEMBER ON RETIREMENT AS PROVIDED BY THE EXISTING RETIREMENT  
39 SYSTEM. FOR THE PURPOSES OF THIS PARAGRAPH, "FROZEN" MEANS THAT THE MEMBER'S  
40 COMPENSATION, CREDITED SERVICE AND ANY OTHER FACTOR USED TO DETERMINE  
41 BENEFITS SHALL BE CALCULATED AS OF THE DATE THE MEMBER ELECTED MEMBERSHIP IN  
42 THE DEFINED CONTRIBUTION SYSTEM AND AFTER THAT DATE NO INCREASE IN  
43 COMPENSATION, CREDITED SERVICE OR ANY OTHER FACTOR MAY BE USED TO INCREASE  
44 THE MEMBER'S RETIREMENT BENEFIT ABOVE THE RETIREMENT BENEFIT THE MEMBER WOULD  
45 HAVE RECEIVED IF THE MEMBER HAD RETIRED ON THE DATE THE ELECTION WAS MADE.

1           2. WITHDRAWAL OF THE MEMBER'S CONTRIBUTIONS TO THE EXISTING RETIREMENT  
2 SYSTEM PLUS EMPLOYER CONTRIBUTIONS AND INTEREST ON THOSE CONTRIBUTIONS AS  
3 DETERMINED PURSUANT TO SECTION 38-740 AS IF THE MEMBER IS TERMINATING  
4 EMPLOYMENT AND DEPOSIT OF THAT WITHDRAWN AMOUNT IN THE DEFINED CONTRIBUTION  
5 SYSTEM.

6           B. IF A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP IN  
7 THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO SUBSECTION A, PARAGRAPH 2 OF THIS  
8 SECTION, THE MEMBER'S YEARS OF CREDITED SERVICE IN THE EXISTING RETIREMENT  
9 SYSTEM SHALL BE APPLIED TOWARD YEARS OF EMPLOYMENT SERVICE REQUIRED BY  
10 SECTION 38-798.09.

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

13           D. AFTER A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP  
14 IN THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO THIS SECTION, THE MEMBER SHALL  
15 NOT CHANGE THE ELECTION OR AGAIN BECOME A MEMBER OF THE EXISTING RETIREMENT  
16 SYSTEM.

17           38-798.07. Member contributions; annuity account; 414(h)  
18 pick-up

19           A. EACH EMPLOYEE WHO IS A MEMBER OF THE DEFINED CONTRIBUTION SYSTEM  
20 MAY CONTRIBUTE A PERCENTAGE RANGING FROM ZERO PER CENT TO A MAXIMUM OF  
21 FIFTEEN PER CENT OF THE MEMBER'S GROSS COMPENSATION BY SALARY REDUCTION,  
22 EXCEPT THAT THE AMOUNT CONTRIBUTED EACH YEAR SHALL NOT BE MORE THAN THE  
23 MAXIMUM AMOUNT ALLOWED UNDER THE INTERNAL REVENUE CODE.

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

29           C. ALL MEMBER CONTRIBUTIONS SHALL BE DEPOSITED IMMEDIATELY IN AN  
30 ACCOUNT OR ACCOUNTS ESTABLISHED IN THE NAME OF THE MEMBER AND SHALL BE HELD  
31 IN TRUST FOR THE BENEFIT OF THE MEMBER. AN ACCOUNT AGREEMENT SHALL BE ISSUED  
32 TO EACH MEMBER PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH CONTRIBUTIONS  
33 ARE RECEIVED AND THE INVESTMENT AND RETIREMENT OPTIONS AVAILABLE TO THE  
34 MEMBER. ON OR BEFORE DECEMBER 31, 2011, THE BOARD SHALL ADOPT RULES DEFINING  
35 THE MINIMUM REQUIREMENTS FOR THE INVESTMENT AND RETIREMENT OPTIONS TO BE  
36 PROVIDED TO THE MEMBERS. THE RULES, TO THE EXTENT NOT INCONSISTENT WITH THE  
37 APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE, SHALL PROVIDE FOR VARIED  
38 RETIREMENT OPTIONS, INCLUDING:

- 39           1. LUMP SUM DISTRIBUTIONS.
- 40           2. JOINT AND SURVIVOR ANNUITIES.
- 41           3. OTHER ANNUITY FORMS IN THE DISCRETION OF THE BOARD.
- 42           4. VARIABLE ANNUITIES THAT GRADUALLY INCREASE MONTHLY RETIREMENT  
43 PAYMENTS, EXCEPT THAT INCREASED PAYMENTS SHALL BE FUNDED SOLELY BY THE  
44 EXISTING CURRENT VALUE OF THE MEMBER'S ACCOUNT AT THE TIME THE MEMBER'S  
45 RETIREMENT PAYMENTS COMMENCE AND NOT, TO ANY EXTENT, IN A MANNER THAT WOULD

1 REQUIRE ADDITIONAL EMPLOYER OR EMPLOYEE CONTRIBUTIONS TO ANY MEMBER'S ACCOUNT  
2 AFTER RETIREMENT OR CESSATION OF EMPLOYMENT.

3 5. THE INSTANCES IN WHICH, IF ANY, DISTRIBUTIONS OR LOANS CAN BE MADE  
4 TO MEMBERS FROM THEIR ANNUITY ACCOUNT BALANCES BEFORE THE MEMBER ATTAINS  
5 FIFTY-FIVE YEARS OF AGE.

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

27 38-798.08. Employer contributions

28 A. EACH PARTICIPATING EMPLOYER SHALL ANNUALLY MAKE A CONTRIBUTION  
29 EQUAL TO ONE HUNDRED PER CENT OF EACH MEMBER'S CONTRIBUTION, EXCEPT THAT THE  
30 EMPLOYER'S CONTRIBUTION SHALL NOT BE MORE THAN FIVE PER CENT OF EACH MEMBER'S  
31 GROSS COMPENSATION. THE PRO RATA SHARE OF THIS AMOUNT SHALL BE PAID ON EACH  
32 DATE THAT A MEMBER CONTRIBUTION IS MADE AND SHALL BE REMITTED AS PROVIDED FOR  
33 IN SECTION 38-798.07 FOR CREDIT TO THE MEMBER'S ANNUITY ACCOUNT.

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

36 38-798.09. Termination of membership; suspension account

37 A. A MEMBER WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER TERMINATES  
38 AFTER THE COMPLETION OF SIX COMPLETE YEARS OF EMPLOYMENT SERVICE IS ELIGIBLE  
39 TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A DISTRIBUTION FROM THE  
40 MEMBER'S ANNUITY ACCOUNT IN AN AMOUNT EQUAL TO THE MEMBER'S CONTRIBUTION PLUS  
41 ONE-THIRD OF THE EMPLOYER CONTRIBUTIONS AND ANY EARNINGS ON THE  
42 CONTRIBUTIONS.

43 B. A MEMBER WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER TERMINATES  
44 AFTER THE COMPLETION OF NINE COMPLETE YEARS OF EMPLOYMENT SERVICE IS ELIGIBLE  
45 TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A DISTRIBUTION FROM THE

1 MEMBER'S ANNUITY ACCOUNT IN AN AMOUNT EQUAL TO THE MEMBER'S CONTRIBUTION PLUS  
2 TWO-THIRDS OF THE EMPLOYER'S CONTRIBUTIONS AND ANY EARNINGS ON THE  
3 CONTRIBUTIONS.

4 C. A MEMBER WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER TERMINATES  
5 AFTER THE COMPLETION OF TWELVE COMPLETE YEARS OF EMPLOYMENT SERVICE IS  
6 ELIGIBLE TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A DISTRIBUTION  
7 OF ALL MONIES CONTRIBUTED AND ACCUMULATED IN THE MEMBER'S ANNUITY ACCOUNT.

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

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

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

24 G. THE BOARD SHALL MAINTAIN ANY ACCOUNT BALANCES REMITTED TO THE  
25 SUSPENSION ACCOUNT IN THE NAME OF THE TERMINATED EMPLOYEE FOR FIVE YEARS  
26 AFTER INITIAL REMITTANCE TO THE SUSPENSION ACCOUNT. AT THE END OF FIVE YEARS  
27 FOR EACH TERMINATED EMPLOYEE, THE BOARD SHALL CERTIFY IN WRITING TO EACH  
28 CONTRIBUTING EMPLOYER THE AMOUNT OF THE ACCOUNT BALANCES PLUS EARNINGS ON THE  
29 ACCOUNT BALANCES ATTRIBUTABLE TO EACH SEPARATE CONTRIBUTING EMPLOYER'S  
30 PREVIOUSLY TERMINATED EMPLOYEES' ACCOUNTS THAT HAVE BEEN IRREVOCABLY  
31 FORFEITED DUE TO EXPIRATION OF FIVE YEARS SINCE TERMINATION PURSUANT TO  
32 SECTION 38-798.14.

33 H. ON CERTIFICATION TO THE SEVERAL CONTRIBUTING EMPLOYERS OF THE  
34 AGGREGATE ACCOUNT BALANCES PLUS EARNINGS ON THE ACCOUNT BALANCES THAT HAVE  
35 BEEN IRREVOCABLY FORFEITED PURSUANT TO THIS SECTION, THE SEVERAL CONTRIBUTING  
36 EMPLOYERS MAY REDUCE IN THE NEXT SUCCEEDING FISCAL YEAR OR YEARS THEIR TOTAL  
37 AGGREGATE CONTRIBUTION REQUIREMENTS PURSUANT TO SECTION 38-798.08 FOR THE  
38 CURRENT FISCAL YEAR BY AN AMOUNT EQUAL TO THE AGGREGATE AMOUNTS IRREVOCABLY  
39 FORFEITED AND CERTIFIED AS SUCH TO EACH CONTRIBUTING EMPLOYER.

40 I. ON THE USE OF THE AMOUNTS IRREVOCABLY FORFEITED TO ANY CONTRIBUTING  
41 EMPLOYER AS A REDUCTION IN THE CURRENT FISCAL YEAR CONTRIBUTION OBLIGATION  
42 AND ON NOTIFICATION PROVIDED BY THE SEVERAL CONTRIBUTING EMPLOYERS TO THE  
43 BOARD OF THEIR INTENTION TO USE IRREVOCABLY FORFEITED AMOUNTS, THE BOARD  
44 SHALL DIRECT THE DISTRIBUTION OF THE IRREVOCABLY FORFEITED AMOUNTS FROM THE  
45 SUSPENSION ACCOUNT TO BE DEPOSITED ON BEHALF OF THE CONTRIBUTING EMPLOYER TO

1 THE MEMBER ANNUITY ACCOUNTS OF ITS CURRENT EMPLOYEES PURSUANT TO SECTION  
2 38-798.08.

3 38-798.10. Retirement; commencement of annuity payments

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

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

11 38-798.11. Amount of annuity payments

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

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

22 38-798.12. Supplemental annuity contracts

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

29 38-798.13. Account statements

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

35 38-798.14. Years of employment service

36 A MEMBER OF THE DEFINED CONTRIBUTION SYSTEM WHO TERMINATES EMPLOYMENT  
37 WITH A PARTICIPATING EMPLOYER AND DOES NOT REMOVE ANY MONIES FROM THE  
38 MEMBER'S ANNUITY ACCOUNT AND BECOMES REEMPLOYED WITH A PARTICIPATING EMPLOYER  
39 WITHIN FIVE YEAR RETAINS THE MEMBER'S PREVIOUS YEARS OF EMPLOYMENT SERVICE  
40 FOR PURPOSES OF SECTION 38-798.09.

41 38-798.15. Right to benefits not subject to execution

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

1           B. ANY ASSIGNMENT OF THE RIGHT OF ANY PERSON TO A BENEFIT PROVIDED FOR  
2 IN THIS ARTICLE IS NOT ENFORCEABLE IN ANY COURT.  
3           38-798.16. Reservation to legislature  
4           THE RIGHT TO MODIFY, AMEND OR REPEAL THIS ARTICLE, OR ANY PROVISION OF  
5 THIS ARTICLE, IS RESERVED TO THE LEGISLATURE.