

REFERENCE TITLE: defined contribution retirement systems

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2745

Introduced by
Representative Smith D

AN ACT

AMENDING SECTIONS 38-727 AND 38-735, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.2; AMENDING SECTION 38-804, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.1; AMENDING SECTIONS 38-841 AND 38-884, ARIZONA REVISED STATUTES; REPEALING TITLE 38, CHAPTER 5, ARTICLE 8, ARIZONA REVISED STATUTES; RELATING TO PUBLIC EMPLOYEES AND RETIREMENT.

(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 BEFORE JANUARY 1, 2013.** The election not to
32 participate in ASRS is irrevocable and constitutes a waiver of all benefits
33 provided by ASRS for the state elected official's entire term, except for any
34 benefits accrued by the state elected official in ASRS for periods of
35 participation before being elected to an office subject to term limits or any
36 benefits expressly provided by law.

37 8. Every full-time superior court commissioner who is appointed on or
38 after July 1 of the first fiscal year after the social security
39 administration approves the inclusion of superior court commissioners on this
40 state's section 218 agreement is a member of ASRS and is subject to this
41 article.

42 **9. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ALL EMPLOYEES
43 OF AN EMPLOYER WHO ARE HIRED ON OR AFTER JANUARY 1, 2013 ARE INELIGIBLE FOR
44 MEMBERSHIP IN ASRS.**

1 Sec. 2. Section 38-735, Arizona Revised Statutes, is amended to read:
2 38-735. Payment of contributions: recovery of delinquent
3 payments

4 A. All amounts deducted from a member's compensation as provided in
5 section 38-736 and employer contributions required pursuant to section 38-737
6 shall be paid to ASRS for deposit in the ASRS depository.

7 B. Each employer shall certify on each payroll the amount to be
8 contributed and shall remit that amount to ASRS.

9 C. Payments made by employers pursuant to this article or article
10 2.1, ~~OR 7 or 8~~ of this chapter become delinquent after the due date
11 prescribed in the board's rules and thereafter shall be increased by interest
12 from and after that date until payment is received by ASRS. ASRS shall
13 charge interest on the delinquent payments at an annual rate equal to the
14 interest rate assumption approved by the board from time to time for
15 actuarial equivalency. Delinquent payments due under this article or article
16 2.1, ~~OR 7 or 8~~ of this chapter, together with interest charges as provided
17 in this subsection, may be recovered by action in a court of competent
18 jurisdiction against an employer that is liable for payments or, at the
19 request of the director, may be deducted from any other monies, including
20 excise revenue taxes, payable to the employer by any department or agency of
21 this state. The employer shall record delinquent payments that are recovered
22 or deducted from other monies pursuant to this subsection pursuant to
23 applicable accounting and financial reporting standards.

24 Sec. 3. Title 38, chapter 5, Arizona Revised Statutes, is amended by
25 adding article 2.2, to read:

26 ARTICLE 2.2. ARIZONA STATE DEFINED
27 CONTRIBUTION RETIREMENT SYSTEM

28 38-798. Definitions

29 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

30 1. "ANNUITY ACCOUNT" MEANS AN ACCOUNT THAT IS ESTABLISHED FOR EACH
31 MEMBER TO RECORD THE DEPOSIT OF MEMBER CONTRIBUTIONS AND EMPLOYER
32 CONTRIBUTIONS AND INTEREST, DIVIDENDS OR OTHER ACCUMULATIONS CREDITED ON
33 BEHALF OF THE MEMBER.

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

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

37 4. "COMPENSATION" MEANS THE FULL COMPENSATION ACTUALLY RECEIVED BY A
38 MEMBER FOR SERVICE WHETHER OR NOT PART OF THE COMPENSATION IS RECEIVED FROM
39 MONIES OTHER THAN THOSE PROVIDED BY THIS STATE OR A POLITICAL SUBDIVISION OF
40 THIS STATE.

41 5. "DEFINED CONTRIBUTION SYSTEM" MEANS THE ARIZONA STATE DEFINED
42 CONTRIBUTION RETIREMENT SYSTEM ESTABLISHED BY THIS ARTICLE.

43 6. "EMPLOYER" MEANS:

44 (a) THIS STATE.

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

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

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

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

10 10. "MEMBER":

11 (a) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER
12 JANUARY 1, 2013, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHO ARE
13 ENGAGED TO WORK AT LEAST TWENTY WEEKS IN EACH FISCAL YEAR AND AT LEAST TWENTY
14 HOURS EACH WEEK.

15 (b) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER
16 JANUARY 1, 2013, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHOSE WORK FOR
17 MORE THAN ONE EMPLOYER TOTALS AT LEAST TWENTY WEEKS IN A FISCAL YEAR AND AT
18 LEAST TWENTY HOURS EACH WEEK AND INCLUDES WORK PROVIDED ON A PART-TIME BASIS
19 TO AN EMPLOYER WHO IS NOT THE FULL-TIME EMPLOYER OF THE EMPLOYEE.

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

21 (d) DOES NOT INCLUDE ANY EMPLOYEE OF AN EMPLOYER WHO IS HIRED ON OR
22 AFTER JANUARY 1, 2013, WHO IS OTHERWISE ELIGIBLE PURSUANT TO THIS ARTICLE AND
23 WHO BEGINS SERVICE IN A LIMITED APPOINTMENT FOR NOT MORE THAN EIGHTEEN
24 MONTHS. IF THE EMPLOYMENT EXCEEDS EIGHTEEN MONTHS, THE EMPLOYEE SHALL BE
25 COVERED BY THE DEFINED CONTRIBUTION SYSTEM AS OF THE BEGINNING OF THE
26 NINETEENTH MONTH OF EMPLOYMENT. IN ORDER TO BE EXCLUDED UNDER THIS
27 SUBDIVISION, CLASSIFICATIONS OF EMPLOYEES DESIGNATED BY EMPLOYERS AS LIMITED
28 APPOINTMENTS MUST BE APPROVED BY THE BOARD.

29 11. "MEMBER CONTRIBUTION" MEANS AN AMOUNT REDUCED FROM THE MEMBER'S
30 REGULAR PAY AND DEPOSITED IN THE MEMBER'S INDIVIDUAL ANNUITY ACCOUNT IN THE
31 DEFINED CONTRIBUTION SYSTEM.

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

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

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

42 38-798.01. Defined contribution system; body corporate

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

1 B. THE DEFINED CONTRIBUTION SYSTEM CONSTITUTES A BODY CORPORATE, AND
2 ALL BUSINESS OF THE DEFINED CONTRIBUTION SYSTEM SHALL BE TRANSACTED IN THE
3 NAME OF THE ARIZONA STATE DEFINED CONTRIBUTION RETIREMENT SYSTEM.

4 38-798.02. Article to be liberally construed; purpose;
5 qualified plan

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

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

12 C. THE DEFINED CONTRIBUTION SYSTEM IS DESIGNED TO BE A QUALIFIED
13 GOVERNMENTAL PLAN UNDER SECTION 401(A) OF THE INTERNAL REVENUE CODE. THE
14 LEGISLATURE INTENDS THAT THE DEFINED CONTRIBUTION SYSTEM IS A QUALIFIED PLAN
15 UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE, AS AMENDED, OR SUCCESSOR
16 PROVISIONS OF LAW, AND THAT THE DEFINED CONTRIBUTION SYSTEM IS EXEMPT FROM
17 TAXATION UNDER SECTION 501 OF THE INTERNAL REVENUE CODE. THE BOARD MAY ADOPT
18 ANY ADDITIONAL PROVISIONS TO THE DEFINED CONTRIBUTION SYSTEM THAT ARE
19 NECESSARY TO FULFILL THIS INTENT.

20 38-798.03. Administration of the defined contribution system

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

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

25 38-798.04. Powers and duties of the board

26 A. THE BOARD HAS ALL OF THE POWERS NECESSARY TO EFFECTUATE THE
27 PURPOSES OF THIS ARTICLE.

28 B. THE BOARD SHALL:

29 1. CONTRACT WITH A PRIVATE PENSION, INSURANCE, ANNUITY OR MUTUAL FUND
30 OR ANY OTHER QUALIFIED COMPANY OR COMPANIES TO ADMINISTER THE DAY-TO-DAY
31 OPERATIONS OF THE DEFINED CONTRIBUTION SYSTEM. IN SELECTING THE COMPANY OR
32 COMPANIES THE BOARD SHALL TAKE INTO ACCOUNT AS ITS HIGHEST DUTY THE PROPER
33 SAFEGUARD AND PROTECTION OF THE MEMBER AND EMPLOYER CONTRIBUTIONS, PROVIDING
34 EMPLOYEES WITH INVESTMENT PRODUCTS AT THE LOWEST AVAILABLE COST AND PROVIDING
35 EMPLOYEES WITH A BROAD RANGE OF INVESTMENT PRODUCTS THAT WILL MAXIMIZE THE
36 INTEREST, DIVIDEND OR OTHER RETURN ON CONTRIBUTIONS.

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

38 38-798.05. Participation in defined contribution system;
39 limiting participation in existing retirement
40 system

41 A. BEGINNING JANUARY 1, 2013, THE DEFINED CONTRIBUTION SYSTEM IS THE
42 SINGLE RETIREMENT PROGRAM FOR ALL NEW EMPLOYEES WHOSE EMPLOYMENT BEGINS ON OR
43 AFTER THAT DATE. NO ADDITIONAL NEW EMPLOYEES EXCEPT AS MAY BE PROVIDED IN
44 THIS SECTION MAY BE ADMITTED TO THE EXISTING RETIREMENT SYSTEM. MEMBERS OF
45 THE EXISTING RETIREMENT SYSTEM WHOSE EMPLOYMENT CONTINUES BEYOND JANUARY 1,

1 2013 ARE NOT AFFECTED BY THIS ARTICLE AND ARE ENTITLED TO CONTINUE TO
2 CONTRIBUTE AND PARTICIPATE IN THE EXISTING RETIREMENT SYSTEM WITHOUT A CHANGE
3 IN PROVISIONS OR BENEFITS.

4 B. NOTWITHSTANDING ARTICLE 2 OF THIS CHAPTER, ANY EMPLOYEE WHOSE
5 EMPLOYMENT TERMINATES ON OR AFTER JANUARY 1, 2013 AND WHO IS LATER REEMPLOYED
6 BY AN EMPLOYER IS ELIGIBLE FOR MEMBERSHIP ONLY IN THE DEFINED CONTRIBUTION
7 SYSTEM, EXCEPT THAT IF REEMPLOYMENT WITH AN EXISTING EMPLOYER OCCURS NOT MORE
8 THAN SIX MONTHS AFTER THE EMPLOYEE'S PREVIOUS EMPLOYMENT AND THE EMPLOYEE HAS
9 NOT WITHDRAWN CONTRIBUTIONS FROM THE EXISTING RETIREMENT SYSTEM, THE EMPLOYEE
10 IS ENTITLED TO READMISSION TO THE EXISTING RETIREMENT SYSTEM.

11 C. AN EMPLOYEE WHOSE EMPLOYMENT WITH AN EMPLOYER OR AN EXISTING
12 EMPLOYER IS SUSPENDED AS A RESULT OF AN APPROVED LEAVE OF ABSENCE IS ELIGIBLE
13 FOR READMISSION TO THE EXISTING RETIREMENT SYSTEM IN WHICH THE EMPLOYEE WAS A
14 MEMBER.

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

17 38-798.06. Voluntary participation in defined contribution
18 system

19 A. ON WRITTEN ELECTION ON OR AFTER JANUARY 1, 2013, A MEMBER OF THE
20 EXISTING RETIREMENT SYSTEM MAY VOLUNTARILY ELECT MEMBERSHIP IN THE DEFINED
21 CONTRIBUTION SYSTEM ON A PROSPECTIVE BASIS UNDER EITHER OF THE FOLLOWING:

22 1. ALL BENEFITS EARNED BY A MEMBER UNDER THE EXISTING RETIREMENT
23 SYSTEM BEFORE A VOLUNTARY ELECTION BY THE MEMBER SHALL BE FROZEN AND MADE
24 AVAILABLE TO THAT MEMBER ON RETIREMENT AS PROVIDED BY THE EXISTING RETIREMENT
25 SYSTEM. FOR THE PURPOSES OF THIS PARAGRAPH, "FROZEN" MEANS THAT THE MEMBER'S
26 COMPENSATION, CREDITED SERVICE AND ANY OTHER FACTOR USED TO DETERMINE
27 BENEFITS SHALL BE CALCULATED AS OF THE DATE THE MEMBER ELECTED MEMBERSHIP IN
28 THE DEFINED CONTRIBUTION SYSTEM AND AFTER THAT DATE NO INCREASE IN
29 COMPENSATION, CREDITED SERVICE OR ANY OTHER FACTOR MAY BE USED TO INCREASE
30 THE MEMBER'S RETIREMENT BENEFIT ABOVE THE RETIREMENT BENEFIT THE MEMBER WOULD
31 HAVE RECEIVED IF THE MEMBER HAD RETIRED ON THE DATE THE ELECTION WAS MADE.

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

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

42 C. THE BOARD SHALL ALLOW AN ELECTION UNDER THIS SECTION ON A
43 RETROACTIVE BASIS TO JANUARY 1, 2013.

44 D. AFTER A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP
45 IN THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO THIS SECTION, THE MEMBER SHALL

1 NOT CHANGE THE ELECTION OR AGAIN BECOME A MEMBER OF THE EXISTING RETIREMENT
2 SYSTEM.

3 38-798.07. Member contributions; annuity account; 414(h)
4 pick-up

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

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

15 C. ALL MEMBER CONTRIBUTIONS SHALL BE DEPOSITED IMMEDIATELY IN AN
16 ACCOUNT OR ACCOUNTS ESTABLISHED IN THE NAME OF THE MEMBER AND SHALL BE HELD
17 IN TRUST FOR THE BENEFIT OF THE MEMBER. AN ACCOUNT AGREEMENT SHALL BE ISSUED
18 TO EACH MEMBER PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH CONTRIBUTIONS
19 ARE RECEIVED AND THE INVESTMENT AND RETIREMENT OPTIONS AVAILABLE TO THE
20 MEMBER. ON OR BEFORE DECEMBER 31, 2012, THE BOARD SHALL ADOPT RULES DEFINING
21 THE MINIMUM REQUIREMENTS FOR THE INVESTMENT AND RETIREMENT OPTIONS TO BE
22 PROVIDED TO THE MEMBERS. THE RULES, TO THE EXTENT NOT INCONSISTENT WITH THE
23 APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE, SHALL PROVIDE FOR VARIED
24 RETIREMENT OPTIONS, INCLUDING:

- 25 1. LUMP SUM DISTRIBUTIONS.
- 26 2. JOINT AND SURVIVOR ANNUITIES.
- 27 3. OTHER ANNUITY FORMS IN THE DISCRETION OF THE BOARD.
- 28 4. VARIABLE ANNUITIES THAT GRADUALLY INCREASE MONTHLY RETIREMENT
29 PAYMENTS, EXCEPT THAT INCREASED PAYMENTS SHALL BE FUNDED SOLELY BY THE
30 EXISTING CURRENT VALUE OF THE MEMBER'S ACCOUNT AT THE TIME THE MEMBER'S
31 RETIREMENT PAYMENTS COMMENCE AND NOT, TO ANY EXTENT, IN A MANNER THAT WOULD
32 REQUIRE ADDITIONAL EMPLOYER OR EMPLOYEE CONTRIBUTIONS TO ANY MEMBER'S ACCOUNT
33 AFTER RETIREMENT OR CESSATION OF EMPLOYMENT.

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

37 D. ALTHOUGH DESIGNATED AS EMPLOYEE CONTRIBUTIONS, ALL EMPLOYEE
38 CONTRIBUTIONS MADE TO THE DEFINED CONTRIBUTION SYSTEM SHALL BE PICKED UP AND
39 PAID BY THE EMPLOYER IN LIEU OF CONTRIBUTIONS BY THE EMPLOYEE. THE
40 CONTRIBUTIONS PICKED UP BY AN EMPLOYER MAY BE MADE THROUGH A REDUCTION IN THE
41 EMPLOYEE'S COMPENSATION OR AN OFFSET AGAINST FUTURE COMPENSATION INCREASES,
42 OR A COMBINATION OF BOTH. AN EMPLOYEE PARTICIPATING IN THE DEFINED
43 CONTRIBUTION SYSTEM DOES NOT HAVE THE OPTION OF CHOOSING TO RECEIVE THE
44 CONTRIBUTED AMOUNTS DIRECTLY INSTEAD OF THE EMPLOYER PAYING THE AMOUNTS TO
45 THE DEFINED CONTRIBUTION SYSTEM. IT IS INTENDED THAT ALL EMPLOYEE

1 CONTRIBUTIONS THAT ARE PICKED UP BY THE EMPLOYER AS PROVIDED IN THIS
2 SUBSECTION SHALL BE TREATED AS EMPLOYER CONTRIBUTIONS UNDER SECTION 414(h) OF
3 THE INTERNAL REVENUE CODE, SHALL BE EXCLUDED FROM EMPLOYEES' GROSS INCOME FOR
4 FEDERAL AND STATE INCOME TAX PURPOSES AND ARE INCLUDABLE IN THE GROSS INCOME
5 OF THE EMPLOYEES OR THEIR BENEFICIARIES ONLY IN THE TAXABLE YEAR IN WHICH
6 THEY ARE DISTRIBUTED. THE SPECIFIED EFFECTIVE DATE OF THE PICKUP PURSUANT TO
7 THIS SUBSECTION SHALL NOT BE BEFORE THE DATE THE DEFINED CONTRIBUTION SYSTEM
8 RECEIVES NOTIFICATION FROM THE INTERNAL REVENUE SERVICE THAT ALL EMPLOYEE
9 CONTRIBUTIONS THAT ARE PICKED UP BY THE EMPLOYER AS PROVIDED IN THIS
10 SUBSECTION SHALL BE TREATED AS EMPLOYER CONTRIBUTIONS PURSUANT TO SECTION
11 414(h) OF THE INTERNAL REVENUE CODE. UNTIL NOTIFICATION IS RECEIVED, ANY
12 EMPLOYEE CONTRIBUTIONS MADE UNDER THIS ARE MADE WITH AFTER-TAX CONTRIBUTIONS.

13 38-798.08. Employer contributions

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

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

22 38-798.09. Termination of membership; suspension account

23 A. A MEMBER WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER TERMINATES
24 AFTER THE COMPLETION OF SIX COMPLETE YEARS OF EMPLOYMENT SERVICE IS ELIGIBLE
25 TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A DISTRIBUTION FROM THE
26 MEMBER'S ANNUITY ACCOUNT IN AN AMOUNT EQUAL TO THE MEMBER'S CONTRIBUTION PLUS
27 ONE-THIRD OF THE EMPLOYER CONTRIBUTIONS AND ANY EARNINGS ON THE
28 CONTRIBUTIONS.

29 B. A MEMBER WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER TERMINATES
30 AFTER THE COMPLETION OF NINE COMPLETE YEARS OF EMPLOYMENT SERVICE IS ELIGIBLE
31 TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A DISTRIBUTION FROM THE
32 MEMBER'S ANNUITY ACCOUNT IN AN AMOUNT EQUAL TO THE MEMBER'S CONTRIBUTION PLUS
33 TWO-THIRDS OF THE EMPLOYER'S CONTRIBUTIONS AND ANY EARNINGS ON THE
34 CONTRIBUTIONS.

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

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

44 E. NOTWITHSTANDING SUBSECTIONS A, B AND C OF THIS SECTION, ON THE
45 DEATH OR PERMANENT, TOTAL DISABILITY OF ANY MEMBER, THAT MEMBER OR THE

1 MEMBER'S BENEFICIARY IS ELIGIBLE TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT
2 AND RECEIVE ALL MONIES CONTRIBUTED TO OR ACCUMULATED IN THE MEMBER'S ANNUITY
3 ACCOUNT.

4 F. THE REMAINING BALANCE, IF ANY, IN THE MEMBER'S ACCOUNT AFTER THE
5 DISTRIBUTION PURSUANT TO THIS SECTION SHALL BE REMITTED AND PAID INTO A
6 SUSPENSION ACCOUNT THAT IS ADMINISTERED BY THE BOARD. THE BOARD SHALL ADOPT
7 RULES REGARDING THE DISTRIBUTION OF ANY BALANCE IN THE SUSPENSION ACCOUNT.
8 ANY MONIES IN THE SUSPENSION ACCOUNT SHALL BE USED SOLELY FOR THE PURPOSE OF
9 REDUCING EMPLOYER CONTRIBUTIONS IN FUTURE YEARS.

10 G. THE BOARD SHALL MAINTAIN ANY ACCOUNT BALANCES REMITTED TO THE
11 SUSPENSION ACCOUNT IN THE NAME OF THE TERMINATED EMPLOYEE FOR FIVE YEARS
12 AFTER INITIAL REMITTANCE TO THE SUSPENSION ACCOUNT. AT THE END OF FIVE YEARS
13 FOR EACH TERMINATED EMPLOYEE, THE BOARD SHALL CERTIFY IN WRITING TO EACH
14 CONTRIBUTING EMPLOYER THE AMOUNT OF THE ACCOUNT BALANCES PLUS EARNINGS ON THE
15 ACCOUNT BALANCES ATTRIBUTABLE TO EACH SEPARATE CONTRIBUTING EMPLOYER'S
16 PREVIOUSLY TERMINATED EMPLOYEES' ACCOUNTS THAT HAVE BEEN IRREVOCABLY
17 FORFEITED DUE TO EXPIRATION OF FIVE YEARS SINCE TERMINATION PURSUANT TO
18 SECTION 38-798.14.

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

26 I. ON THE USE OF THE AMOUNTS IRREVOCABLY FORFEITED TO ANY CONTRIBUTING
27 EMPLOYER AS A REDUCTION IN THE CURRENT FISCAL YEAR CONTRIBUTION OBLIGATION
28 AND ON NOTIFICATION PROVIDED BY THE SEVERAL CONTRIBUTING EMPLOYERS TO THE
29 BOARD OF THEIR INTENTION TO USE IRREVOCABLY FORFEITED AMOUNTS, THE BOARD
30 SHALL DIRECT THE DISTRIBUTION OF THE IRREVOCABLY FORFEITED AMOUNTS FROM THE
31 SUSPENSION ACCOUNT TO BE DEPOSITED ON BEHALF OF THE CONTRIBUTING EMPLOYER TO
32 THE MEMBER ANNUITY ACCOUNTS OF ITS CURRENT EMPLOYEES PURSUANT TO SECTION
33 38-798.08.

34 38-798.10. Retirement; commencement of annuity payments

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

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

42 38-798.11. Amount of annuity payments

43 A. THE AMOUNT OF ANNUITY PAYMENTS A RETIRED MEMBER RECEIVES SHALL BE
44 BASED SOLELY ON THE BALANCE IN THE MEMBER'S ANNUITY ACCOUNT AT THE DATE OF
45 RETIREMENT, THE RETIREMENT OPTION SELECTED OR, IF AN ANNUITY OPTION IS

1 SELECTED, THE ACTUARIAL LIFE EXPECTANCY OF THE MEMBER AND SUCH OTHER FACTORS
2 AS NORMALLY GOVERN ANNUITY PAYMENTS.

3 B. ON RETIREMENT OF A MEMBER AND WITH THE APPROVAL OF THAT MEMBER, THE
4 BOARD OR ITS DESIGNEE MAY PURCHASE AN ANNUITY WITH THE BALANCE OF THE
5 MEMBER'S ACCOUNT. ON DELIVERY OF THE ANNUITY TO THE MEMBER ON THE MEMBER'S
6 RETIREMENT, THE MEMBER SHALL EXECUTE A RELEASE SURRENDERING ANY CLAIM THE
7 MEMBER MAY HAVE AGAINST THE RETIREMENT TRUST.

8 38-798.12. Supplemental annuity contracts

9 THE BOARD SHALL AUTHORIZE THE PRIVATE PENSION, INSURANCE, ANNUITY OR
10 MUTUAL FUND OR OTHER QUALIFIED COMPANY OR COMPANIES WITH WHICH IT CONTRACTS
11 TO MAKE AVAILABLE TO MEMBERS SUCH SUPPLEMENTAL ANNUITY OPTIONS, DISABILITY
12 AND OTHER INSURANCE OR BENEFITS AS THE BOARD DEEMS APPROPRIATE, EXCEPT THAT
13 SUPPLEMENTAL ANNUITIES, INSURANCE AND BENEFITS SHALL BE FUNDED SOLELY FROM
14 EMPLOYEE CONTRIBUTIONS.

15 38-798.13. Account statements

16 ON AN ANNUAL BASIS THE BOARD SHALL PREPARE OR CAUSE TO BE PREPARED AN
17 ACCOUNT STATEMENT FOR EACH MEMBER'S ANNUITY ACCOUNT. THE STATEMENT SHALL
18 INCLUDE A STATEMENT OF THE CURRENT MARKET VALUE OF THE MEMBER'S ACCOUNT. THE
19 BOARD SHALL PRESCRIBE THE FORM AND CONTENT OF THE ACCOUNT STATEMENT NOT
20 INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

21 38-798.14. Years of employment service

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

27 38-798.15. Right to benefits not subject to execution

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

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

33 38-798.16. Reservation to legislature

34 THE RIGHT TO MODIFY, AMEND OR REPEAL THIS ARTICLE, OR ANY PROVISION OF
35 THIS ARTICLE, IS RESERVED TO THE LEGISLATURE.

36 Sec. 4. Section 38-804, Arizona Revised Statutes, is amended to read:

37 38-804. Membership; termination

38 A. All elected officials WHO WERE ELECTED OR APPOINTED BEFORE JANUARY
39 1, 2013 are members of the plan, except that a state elected official who is
40 subject to term limits AND WHO WAS ELECTED OR APPOINTED BEFORE JANUARY 1,
41 2013 may elect not to participate in the plan. The state elected official
42 who is subject to term limits AND WHO WAS ELECTED OR APPOINTED BEFORE JANUARY
43 1, 2013 shall make the election in writing and file the election with the
44 board within thirty days after the state elected official assumes office.
45 The election is effective on the first day of the state elected official's

1 eligibility for that term of office. The election not to participate is
2 specific for that term of office. If a state elected official who is subject
3 to term limits **AND WHO WAS ELECTED OR APPOINTED BEFORE JANUARY 1, 2013** fails
4 to make an election as provided in this subsection, the state elected
5 official is deemed to have elected to participate in the plan. The election
6 not to participate in the plan is irrevocable and constitutes a waiver of all
7 benefits provided by the plan for the state elected official's entire term,
8 except for any benefits accrued by the state elected official in the plan for
9 periods of participation before being elected to an office subject to term
10 limits or any benefits expressly provided by law. The state elected official
11 who elects not to participate in the plan shall participate in the Arizona
12 state retirement system unless the state elected official makes an
13 irrevocable election not to participate in the Arizona state retirement
14 system as provided in section 38-727.

15 B. If a member who becomes a member of the plan before January 1, 2012
16 ceases to hold office for any reason other than death or retirement, within
17 twenty days after filing a completed application with the board, the member
18 is entitled to receive the following amounts, less any benefit payments the
19 member has received and any amount the member may owe to the plan:

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

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

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

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

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

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

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

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

44 C. If a member has more than ten years of credited service with the
45 plan, leaves the monies prescribed in subsection B of this section on account

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

6 D. If an elected official who becomes a member of the plan on or after
7 January 1, 2012 ceases to hold office for any reason other than death or
8 retirement, within twenty days after filing a completed application with the
9 board, the member may withdraw the member's accumulated contributions from
10 the plan and shall be paid the member's accumulated contributions plus
11 interest at a rate determined by the board as of the date of termination,
12 less any benefit payments the member has received and any amount the member
13 may owe to the plan.

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

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

28 G. If an elected official who has terminated the member's membership
29 in the plan pursuant to subsection B of this section is subsequently elected
30 or otherwise becomes eligible for membership in the plan pursuant to
31 subsection A of this section, credited service only accrues from the date of
32 the member's most recent eligibility as an elected official.

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

42 ~~I.~~ H. If a retired member subsequently becomes an elected official,
43 contributions shall not be made by the retired member and credited service
44 shall not accrue while the retired member is holding office.

1 ~~J.~~ I. In addition to subsection ~~I~~ H of this section, if a retired
2 member subsequently becomes, by reason of election or reelection, an elected
3 official of the same office from which the member retired within a time
4 period following the member's retirement that is less than one full term for
5 that office, the member shall not receive a pension. If the elected official
6 ceases to hold the same office, the elected official is entitled to receive
7 the same pension the elected official was receiving when the elected
8 official's pension was discontinued pursuant to this subsection. Nothing in
9 this subsection prohibits a retired judge called by the supreme court to
10 active duties of a judge pursuant to section 38-813 from receiving retirement
11 benefits.

12 J. AN ELECTED OFFICIAL WHO IS ELECTED OR APPOINTED ON OR AFTER JANUARY
13 1, 2013 IS INELIGIBLE TO BECOME A MEMBER OF THE PLAN AND IS SUBJECT TO
14 ARTICLE 3.1 OF THIS CHAPTER.

15 Sec. 5. Title 38, chapter 5, Arizona Revised Statutes, is amended by
16 adding article 3.1, to read:

17 ARTICLE 3.1. PUBLIC EMPLOYEE DEFINED
18 CONTRIBUTION RETIREMENT SYSTEM

19 38-831. Definitions

20 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

21 1. "ANNUITY ACCOUNT" MEANS AN ACCOUNT THAT IS ESTABLISHED FOR EACH
22 MEMBER TO RECORD THE DEPOSIT OF MEMBER CONTRIBUTIONS AND EMPLOYER
23 CONTRIBUTIONS AND INTEREST, DIVIDENDS OR OTHER ACCUMULATIONS CREDITED ON
24 BEHALF OF THE MEMBER.

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

26 3. "COMPENSATION" MEANS THE FULL COMPENSATION ACTUALLY RECEIVED BY A
27 MEMBER FOR SERVICE WHETHER OR NOT PART OF THE COMPENSATION IS RECEIVED FROM
28 MONIES OTHER THAN THOSE PROVIDED BY THIS STATE OR A POLITICAL SUBDIVISION OF
29 THIS STATE.

30 4. "DEFINED CONTRIBUTION SYSTEM" MEANS THE PUBLIC EMPLOYEE DEFINED
31 CONTRIBUTION RETIREMENT SYSTEM ESTABLISHED BY THIS ARTICLE.

32 5. "EMPLOYER" MEANS A DEPARTMENT, AGENCY OR POLITICAL SUBDIVISION OF
33 THIS STATE THAT MAKES EMPLOYER CONTRIBUTIONS TO THE DEFINED CONTRIBUTION
34 SYSTEM ON BEHALF OF A PUBLIC EMPLOYEE WHO PARTICIPATES IN THE DEFINED
35 CONTRIBUTION SYSTEM.

36 6. "EMPLOYER CONTRIBUTION" MEANS AN AMOUNT DEPOSITED IN THE MEMBER'S
37 INDIVIDUAL ANNUITY ACCOUNT ON A PERIODIC BASIS COINCIDING WITH THE EMPLOYEE'S
38 REGULAR PAY PERIOD BY AN EMPLOYER FROM THE EMPLOYER'S OWN MONIES.

39 7. "EXISTING EMPLOYER" MEANS ANY EMPLOYER WHO EMPLOYED OR EMPLOYS A
40 MEMBER OF THE EXISTING RETIREMENT SYSTEM.

41 8. "EXISTING RETIREMENT SYSTEM" MEANS THE DEFINED BENEFIT PROGRAMS
42 THAT ARE ESTABLISHED BY ARTICLES 3, 4 AND 6 OF THIS CHAPTER.

43 9. "MEMBER" MEANS A PUBLIC EMPLOYEE UNDER EITHER THE DEFINED
44 CONTRIBUTION SYSTEM OR THE EXISTING RETIREMENT SYSTEM AND ANY PERSON
45 RECEIVING A BENEFIT UNDER THIS ARTICLE.

1 10. "MEMBER CONTRIBUTION" MEANS AN AMOUNT REDUCED FROM THE MEMBER'S
2 REGULAR PAY AND DEPOSITED IN THE MEMBER'S INDIVIDUAL ANNUITY ACCOUNT IN THE
3 DEFINED CONTRIBUTION SYSTEM.

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

8 12. "PUBLIC EMPLOYEE" MEANS:

9 (a) EVERY ELECTED OFFICIAL OF THIS STATE WHO IS ELECTED OR APPOINTED
10 ON OR AFTER JANUARY 1, 2013.

11 (b) EVERY ELECTED OFFICIAL OF EACH COUNTY OF THIS STATE WHO IS ELECTED
12 OR APPOINTED ON OR AFTER JANUARY 1, 2013.

13 (c) EVERY JUSTICE OF THE SUPREME COURT, EVERY JUDGE OF THE COURT OF
14 APPEALS, EVERY JUDGE OF THE SUPERIOR COURT AND EVERY FULL-TIME SUPERIOR COURT
15 COMMISSIONER WHO IS ELECTED OR APPOINTED ON OR AFTER JANUARY 1, 2013.

16 (d) EACH ELECTED OFFICIAL OF AN INCORPORATED CITY OR TOWN WHOSE
17 EMPLOYER HAS EXECUTED A PROPER JOINDER AGREEMENT FOR COVERAGE OF ITS ELECTED
18 OFFICIALS AND WHO IS ELECTED OR APPOINTED ON OR AFTER JANUARY 1, 2013.

19 (e) AN EMPLOYEE OF A PARTICIPATING EMPLOYER UNDER THE PUBLIC SAFETY
20 PERSONNEL RETIREMENT SYSTEM WHO BECOMES EMPLOYED ON OR AFTER JANUARY 1, 2013.

21 (f) AN EMPLOYEE OF A PARTICIPATING EMPLOYER UNDER THE CORRECTIONS
22 OFFICER RETIREMENT PLAN WHO BECOMES EMPLOYED ON OR AFTER JANUARY 1, 2013.

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

25 14. "SYSTEM" MEANS THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.

26 15. "YEAR OF EMPLOYMENT SERVICE" MEANS EMPLOYMENT FOR AT LEAST TEN
27 MONTHS, EXCEPT THAT NO MORE THAN ONE YEAR OF SERVICE MAY BE ACCUMULATED IN
28 ANY TWELVE MONTH PERIOD. FOR THE PURPOSES OF THIS PARAGRAPH, "MONTH" MEANS
29 TWENTY EMPLOYMENT DAYS.

30 38-831.01. Defined contribution system; body corporate

31 A. THE PUBLIC EMPLOYEE DEFINED CONTRIBUTION RETIREMENT SYSTEM IS
32 ESTABLISHED TO PROVIDE FOR THE SECURE, FAIR AND ORDERLY RETIREMENT OF PUBLIC
33 EMPLOYEES OF THIS STATE AND POLITICAL SUBDIVISIONS OF THIS STATE.

34 B. THE DEFINED CONTRIBUTION SYSTEM CONSTITUTES A BODY CORPORATE, AND
35 ALL BUSINESS OF THE DEFINED CONTRIBUTION SYSTEM SHALL BE TRANSACTED IN THE
36 NAME OF THE PUBLIC EMPLOYEE DEFINED CONTRIBUTION RETIREMENT SYSTEM.

37 38-831.02. Article to be liberally construed; purpose;
38 qualified plan

39 A. THIS ARTICLE SHALL BE LIBERALLY CONSTRUED IN ORDER TO PROVIDE A
40 GENERAL ANNUITY BASED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES OF THIS STATE
41 AND POLITICAL SUBDIVISIONS OF THIS STATE.

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

1 C. THE DEFINED CONTRIBUTION SYSTEM IS DESIGNED TO BE A QUALIFIED
2 GOVERNMENTAL PLAN UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE. THE
3 LEGISLATURE INTENDS THAT THE DEFINED CONTRIBUTION SYSTEM IS A QUALIFIED PLAN
4 UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE, AS AMENDED, OR SUCCESSOR
5 PROVISIONS OF LAW, AND THAT THE DEFINED CONTRIBUTION SYSTEM IS EXEMPT FROM
6 TAXATION UNDER SECTION 501 OF THE INTERNAL REVENUE CODE. THE BOARD MAY ADOPT
7 ANY ADDITIONAL PROVISIONS TO THE DEFINED CONTRIBUTION SYSTEM THAT ARE
8 NECESSARY TO FULFILL THIS INTENT.

9 38-831.03. Administration of the defined contribution system

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

11 B. THE BOARD MAY SUE AND BE SUED, CONTRACT AND BE CONTRACTED WITH AND
12 CONDUCT ALL OF THE BUSINESS OF THE DEFINED CONTRIBUTION SYSTEM IN THE NAME OF
13 THE PUBLIC EMPLOYEE DEFINED CONTRIBUTION RETIREMENT SYSTEM.

14 38-831.04. Powers and duties of the board

15 A. THE BOARD HAS ALL OF THE POWERS NECESSARY TO EFFECTUATE THE
16 PURPOSES OF THIS ARTICLE.

17 B. THE BOARD SHALL:

18 1. CONTRACT WITH A PRIVATE PENSION, INSURANCE, ANNUITY OR MUTUAL FUND
19 OR ANY OTHER QUALIFIED COMPANY OR COMPANIES TO ADMINISTER THE DAILY
20 OPERATIONS OF THE DEFINED CONTRIBUTION SYSTEM. IN SELECTING THE COMPANY OR
21 COMPANIES THE BOARD SHALL TAKE INTO ACCOUNT AS ITS HIGHEST DUTY THE PROPER
22 SAFEGUARD AND PROTECTION OF THE MEMBER AND EMPLOYER CONTRIBUTIONS, PROVIDING
23 PUBLIC EMPLOYEES WITH INVESTMENT PRODUCTS AT THE LOWEST AVAILABLE COST AND
24 PROVIDING PUBLIC EMPLOYEES WITH A BROAD RANGE OF INVESTMENT PRODUCTS THAT
25 WILL MAXIMIZE THE INTEREST, DIVIDEND OR OTHER RETURN ON CONTRIBUTIONS.

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

27 38-831.05. Participation in defined contribution system:
28 limiting participation in existing retirement
29 system

30 A. BEGINNING JANUARY 1, 2013, THE DEFINED CONTRIBUTION SYSTEM IS THE
31 SINGLE RETIREMENT PROGRAM FOR ALL NEW PUBLIC EMPLOYEES WHOSE EMPLOYMENT
32 BEGINS ON OR AFTER THAT DATE. NO ADDITIONAL NEW PUBLIC EMPLOYEES EXCEPT AS
33 MAY BE PROVIDED IN THIS SECTION MAY BE ADMITTED TO THE EXISTING RETIREMENT
34 SYSTEM. MEMBERS OF THE EXISTING RETIREMENT SYSTEM WHOSE EMPLOYMENT CONTINUES
35 BEYOND JANUARY 1, 2013 ARE NOT AFFECTED BY THIS ARTICLE AND ARE ENTITLED TO
36 CONTINUE TO CONTRIBUTE AND PARTICIPATE IN THE EXISTING RETIREMENT SYSTEM
37 WITHOUT A CHANGE IN PROVISIONS OR BENEFITS.

38 B. NOTWITHSTANDING ARTICLES 3, 4 AND 6 OF THIS CHAPTER, ANY PUBLIC
39 EMPLOYEE WHOSE EMPLOYMENT TERMINATES ON OR AFTER JANUARY 1, 2013 AND WHO
40 LATER BECOMES A PUBLIC EMPLOYEE IS ELIGIBLE FOR MEMBERSHIP ONLY IN THE
41 DEFINED CONTRIBUTION SYSTEM, EXCEPT THAT IF THE PUBLIC EMPLOYEE HAS NOT
42 WITHDRAWN CONTRIBUTIONS FROM THE EXISTING RETIREMENT SYSTEM, THE PUBLIC
43 EMPLOYEE IS ENTITLED TO READMISSION TO THE EXISTING RETIREMENT SYSTEM.

1 C. A PUBLIC EMPLOYEE WHOSE EMPLOYMENT IS SUSPENDED AS A RESULT OF AN
2 APPROVED LEAVE OF ABSENCE IS ELIGIBLE FOR READMISSION TO THE EXISTING
3 RETIREMENT SYSTEM IN WHICH THE PUBLIC EMPLOYEE WAS A MEMBER.

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

6 38-831.06. Voluntary participation in defined contribution
7 system

8 A. ON WRITTEN ELECTION ON OR AFTER JANUARY 1, 2013, A MEMBER OF THE
9 EXISTING RETIREMENT SYSTEM MAY VOLUNTARILY ELECT MEMBERSHIP IN THE DEFINED
10 CONTRIBUTION SYSTEM ON A PROSPECTIVE BASIS UNDER EITHER OF THE FOLLOWING:

11 1. ALL BENEFITS EARNED BY A PUBLIC EMPLOYEE UNDER THE EXISTING
12 RETIREMENT SYSTEM BEFORE A VOLUNTARY ELECTION BY THE MEMBER SHALL BE FROZEN
13 AND MADE AVAILABLE TO THAT MEMBER ON RETIREMENT AS PROVIDED BY THE EXISTING
14 RETIREMENT SYSTEM. FOR THE PURPOSES OF THIS PARAGRAPH, "FROZEN" MEANS THAT
15 THE MEMBER'S COMPENSATION, CREDITED SERVICE AND ANY OTHER FACTOR USED TO
16 DETERMINE BENEFITS SHALL BE CALCULATED AS OF THE DATE THE MEMBER ELECTED
17 MEMBERSHIP IN THE DEFINED CONTRIBUTION SYSTEM AND AFTER THAT DATE NO INCREASE
18 IN COMPENSATION, CREDITED SERVICE OR ANY OTHER FACTOR MAY BE USED TO INCREASE
19 THE MEMBER'S RETIREMENT BENEFIT ABOVE THE RETIREMENT BENEFIT THE MEMBER WOULD
20 HAVE RECEIVED IF THE MEMBER HAD RETIRED ON THE DATE THE ELECTION WAS MADE.

21 2. WITHDRAWAL OF THE MEMBER'S CONTRIBUTIONS TO THE EXISTING RETIREMENT
22 SYSTEM PLUS EMPLOYER CONTRIBUTIONS AND INTEREST ON THOSE CONTRIBUTIONS AS
23 DETERMINED PURSUANT TO SECTION 38-804, 38-846.02 OR 38-884 AS IF THE MEMBER
24 IS TERMINATING EMPLOYMENT AND DEPOSIT OF THAT WITHDRAWN AMOUNT IN THE DEFINED
25 CONTRIBUTION SYSTEM.

26 B. IF A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP IN
27 THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO SUBSECTION A, PARAGRAPH 2 OF THIS
28 SECTION, THE MEMBER'S YEARS OF CREDITED SERVICE IN THE EXISTING RETIREMENT
29 SYSTEM SHALL BE APPLIED TOWARD YEARS OF EMPLOYMENT SERVICE REQUIRED BY
30 SECTION 38-831.09.

31 C. THE BOARD SHALL ALLOW AN ELECTION UNDER THIS SECTION ON A
32 RETROACTIVE BASIS TO JANUARY 1, 2013.

33 D. AFTER A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP
34 IN THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO THIS SECTION, THE MEMBER SHALL
35 NOT CHANGE THE ELECTION OR AGAIN BECOME A MEMBER OF THE EXISTING RETIREMENT
36 SYSTEM.

37 38-831.07. Member contributions; annuity account; 414(h)
38 pick-up

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

44 B. THE EMPLOYER SHALL MAKE SALARY REDUCTIONS AT THE NORMAL PAYROLL
45 INTERVALS AND SHALL REMIT THIS AMOUNT WITHIN FIVE WORKING DAYS TO THE PRIVATE

1 PENSION, INSURANCE, ANNUITY OR MUTUAL FUND OR ANY OTHER QUALIFIED COMPANY OR
2 COMPANIES DESIGNATED BY THE BOARD TO ADMINISTER THE DAILY OPERATIONS OF THE
3 DEFINED CONTRIBUTION SYSTEM.

4 C. ALL MEMBER CONTRIBUTIONS SHALL BE DEPOSITED IMMEDIATELY IN AN
5 ACCOUNT OR ACCOUNTS ESTABLISHED IN THE NAME OF THE MEMBER AND SHALL BE HELD
6 IN TRUST FOR THE BENEFIT OF THE MEMBER. AN ACCOUNT AGREEMENT SHALL BE ISSUED
7 TO EACH MEMBER PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH CONTRIBUTIONS
8 ARE RECEIVED AND THE INVESTMENT AND RETIREMENT OPTIONS AVAILABLE TO THE
9 MEMBER. ON OR BEFORE DECEMBER 31, 2012, THE BOARD SHALL ADOPT RULES DEFINING
10 THE MINIMUM REQUIREMENTS FOR THE INVESTMENT AND RETIREMENT OPTIONS TO BE
11 PROVIDED TO THE MEMBERS. THE RULES, TO THE EXTENT NOT INCONSISTENT WITH THE
12 APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE, SHALL PROVIDE FOR VARIED
13 RETIREMENT OPTIONS, INCLUDING:

14 1. LUMP SUM DISTRIBUTIONS.

15 2. JOINT AND SURVIVOR ANNUITIES.

16 3. OTHER ANNUITY FORMS IN THE DISCRETION OF THE BOARD.

17 4. VARIABLE ANNUITIES THAT GRADUALLY INCREASE MONTHLY RETIREMENT
18 PAYMENTS, EXCEPT THAT INCREASED PAYMENTS SHALL BE FUNDED SOLELY BY THE
19 EXISTING CURRENT VALUE OF THE MEMBER'S ACCOUNT AT THE TIME THE MEMBER'S
20 RETIREMENT PAYMENTS COMMENCE AND NOT, TO ANY EXTENT, IN A MANNER THAT WOULD
21 REQUIRE ADDITIONAL EMPLOYER OR EMPLOYEE CONTRIBUTIONS TO ANY MEMBER'S ACCOUNT
22 AFTER RETIREMENT OR CESSATION OF EMPLOYMENT.

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

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

1 414(h) OF THE INTERNAL REVENUE CODE. UNTIL NOTIFICATION IS RECEIVED, ANY
2 EMPLOYEE CONTRIBUTIONS MADE UNDER THIS ARE MADE WITH AFTER-TAX CONTRIBUTIONS.

3 38-831.08. Employer contributions

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

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

12 38-831.09. Termination of membership; suspension account

13 A. A PUBLIC EMPLOYEE WHOSE EMPLOYMENT WITH A PARTICIPATING EMPLOYER
14 TERMINATES AFTER THE COMPLETION OF FOUR COMPLETE YEARS OF EMPLOYMENT SERVICE
15 IS ELIGIBLE TO TERMINATE THE MEMBER'S ANNUITY ACCOUNT AND RECEIVE A
16 DISTRIBUTION OF ALL MONIES CONTRIBUTED AND ACCUMULATED IN THE MEMBER'S
17 ANNUITY ACCOUNT.

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

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

27 D. THE REMAINING BALANCE, IF ANY, IN THE MEMBER'S ACCOUNT AFTER THE
28 DISTRIBUTION PURSUANT TO THIS SECTION SHALL BE REMITTED AND PAID INTO A
29 SUSPENSION ACCOUNT THAT IS ADMINISTERED BY THE BOARD. THE BOARD SHALL ADOPT
30 RULES REGARDING THE DISTRIBUTION OF ANY BALANCE IN THE SUSPENSION ACCOUNT.
31 ANY MONIES IN THE SUSPENSION ACCOUNT SHALL BE USED SOLELY FOR THE PURPOSE OF
32 REDUCING EMPLOYER CONTRIBUTIONS IN FUTURE YEARS.

33 E. THE BOARD SHALL MAINTAIN ANY ACCOUNT BALANCES REMITTED TO THE
34 SUSPENSION ACCOUNT IN THE NAME OF THE TERMINATED EMPLOYEE FOR FIVE YEARS
35 AFTER INITIAL REMITTANCE TO THE SUSPENSION ACCOUNT. AT THE END OF FIVE YEARS
36 FOR EACH TERMINATED EMPLOYEE, THE BOARD SHALL CERTIFY IN WRITING TO EACH
37 CONTRIBUTING EMPLOYER THE AMOUNT OF THE ACCOUNT BALANCES PLUS EARNINGS ON THE
38 ACCOUNT BALANCES ATTRIBUTABLE TO EACH SEPARATE CONTRIBUTING EMPLOYER'S
39 PREVIOUSLY TERMINATED EMPLOYEES' ACCOUNTS THAT HAVE BEEN IRREVOCABLY
40 FORFEITED DUE TO EXPIRATION OF FIVE YEARS SINCE TERMINATION PURSUANT TO
41 SECTION 38-831.14.

42 F. ON CERTIFICATION TO THE SEVERAL CONTRIBUTING EMPLOYERS OF THE
43 AGGREGATE ACCOUNT BALANCES PLUS EARNINGS ON THE ACCOUNT BALANCES THAT HAVE
44 BEEN IRREVOCABLY FORFEITED PURSUANT TO THIS SECTION, THE SEVERAL CONTRIBUTING
45 EMPLOYERS MAY REDUCE IN THE NEXT SUCCEEDING FISCAL YEAR OR YEARS THEIR TOTAL

1 AGGREGATE CONTRIBUTION REQUIREMENTS PURSUANT TO SECTION 38-831.08 FOR THE
2 CURRENT FISCAL YEAR BY AN AMOUNT EQUAL TO THE AGGREGATE AMOUNTS IRREVOCABLY
3 FORFEITED AND CERTIFIED AS SUCH TO EACH CONTRIBUTING EMPLOYER.

4 G. ON THE USE OF THE AMOUNTS IRREVOCABLY FORFEITED TO ANY CONTRIBUTING
5 EMPLOYER AS A REDUCTION IN THE CURRENT FISCAL YEAR CONTRIBUTION OBLIGATION
6 AND ON NOTIFICATION PROVIDED BY THE SEVERAL CONTRIBUTING EMPLOYERS TO THE
7 BOARD OF THEIR INTENTION TO USE IRREVOCABLY FORFEITED AMOUNTS, THE BOARD
8 SHALL DIRECT THE DISTRIBUTION OF THE IRREVOCABLY FORFEITED AMOUNTS FROM THE
9 SUSPENSION ACCOUNT TO BE DEPOSITED ON BEHALF OF THE CONTRIBUTING EMPLOYER TO
10 THE MEMBER ANNUITY ACCOUNTS OF ITS CURRENT EMPLOYEES PURSUANT TO SECTION
11 38-831.08.

12 38-831.10. Retirement; commencement of annuity payments

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

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

20 38-831.11. Amount of annuity payments

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

26 B. ON RETIREMENT OF A MEMBER AND WITH THE APPROVAL OF THAT MEMBER, THE
27 BOARD OR ITS DESIGNEE MAY PURCHASE AN ANNUITY WITH THE BALANCE OF THE
28 MEMBER'S ACCOUNT. ON DELIVERY OF THE ANNUITY TO THE MEMBER ON THE MEMBER'S
29 RETIREMENT, THE MEMBER SHALL EXECUTE A RELEASE SURRENDERING ANY CLAIM THE
30 MEMBER MAY HAVE AGAINST THE RETIREMENT TRUST.

31 38-831.12. Supplemental annuity contracts

32 THE BOARD SHALL AUTHORIZE THE PRIVATE PENSION, INSURANCE, ANNUITY OR
33 MUTUAL FUND OR OTHER QUALIFIED COMPANY OR COMPANIES WITH WHICH IT CONTRACTS
34 TO MAKE AVAILABLE TO MEMBERS SUCH SUPPLEMENTAL ANNUITY OPTIONS, DISABILITY
35 AND OTHER INSURANCE OR BENEFITS AS THE BOARD DEEMS APPROPRIATE, EXCEPT THAT
36 SUPPLEMENTAL ANNUITIES, INSURANCE AND BENEFITS SHALL BE FUNDED SOLELY FROM
37 EMPLOYEE CONTRIBUTIONS.

38 38-831.13. Account statements

39 ON AN ANNUAL BASIS THE BOARD SHALL PREPARE OR CAUSE TO BE PREPARED AN
40 ACCOUNT STATEMENT FOR EACH MEMBER'S ANNUITY ACCOUNT. THE STATEMENT SHALL
41 INCLUDE A STATEMENT OF THE CURRENT MARKET VALUE OF THE MEMBER'S ACCOUNT. THE
42 BOARD SHALL PRESCRIBE THE FORM AND CONTENT OF THE ACCOUNT STATEMENT NOT
43 INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

1 38-831.14. Years of employment service

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

7 38-831.15. Right to benefits not subject to execution

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

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

13 38-831.16. Reservation to legislature

14 THE RIGHT TO MODIFY, AMEND OR REPEAL THIS ARTICLE, OR ANY PROVISION OF
15 THIS ARTICLE, IS RESERVED TO THE LEGISLATURE.

16 Sec. 6. Section 38-841, Arizona Revised Statutes, is amended to read:

17 38-841. Purpose; vested benefits

18 A. Before the establishment of the public safety personnel retirement
19 system, municipal firemen and policemen, employees of the Arizona highway
20 patrol and other public safety personnel in the state of Arizona were covered
21 under various local, municipal and state retirement programs. These
22 heterogeneous programs provided for wide and significant differentials in
23 employee contribution rates, benefit eligibility provisions, types of benefit
24 protection and benefit formulas.

25 B. In order to provide a uniform, consistent and equitable statewide
26 program for public safety personnel who are regularly assigned hazardous duty
27 in the employ of the state of Arizona or a political subdivision thereof,
28 this retirement system was created effective as of July 1, 1968, as an
29 amendment to and continuation of three prior systems. Groups of employees
30 covered under the three prior systems as of June 30, 1968, and the assets and
31 liabilities accumulated thereunder for such employees, are transferred with
32 prior service credits to this retirement system as of the effective date, and
33 both they and their employers shall be required to make stipulated
34 contributions to support the system's benefit structure on a sound actuarial
35 basis. Future employees in such groups shall commence participation in, and
36 contributions to, the system immediately on commencement of covered
37 employment.

38 C. The provisions of this system shall not be construed to authorize
39 the granting of any retirement benefits to persons who are retired as of ~~the~~
40 ~~effective date of this article~~ JULY 1, 1968, except as described in sections
41 38-849 and 38-853.

42 ~~D. Additional eligible groups of public safety personnel will~~
43 ~~participate in the system pursuant to election by their employer for such~~
44 ~~coverage under an appropriate joinder agreement.~~

1 D. AN EMPLOYEE OF A PARTICIPATING EMPLOYER OF THE SYSTEM WHO BECOMES
2 AN EMPLOYEE ON OR AFTER JANUARY 1, 2013 IS INELIGIBLE TO BECOME A MEMBER OF
3 THE SYSTEM AND IS SUBJECT TO ARTICLE 3.1 OF THIS TITLE.

4 E. The public safety personnel retirement system is a jural entity
5 that may sue and be sued.

6 Sec. 7. Section 38-884, Arizona Revised Statutes, is amended to read:
7 38-884. Membership of retirement plan; termination; credited
8 service; redemption

9 A. Each employee ~~of~~ WHO BECOMES EMPLOYED BY a participating employer
10 BEFORE JANUARY 1, 2013 is a member of the plan unless the employee is
11 receiving a pension from the plan. A person employed shall undergo a medical
12 examination performed by a doctor or clinic appointed by the local board or,
13 in the case of a state correctional officer who is employed by the state
14 department of corrections, complete a physical examination pursuant to
15 section 41-1822, subsection B. For the purposes of subsection B of this
16 section, the doctor or clinic appointed by the local board may be the
17 employer's regular employee or contractor.

18 B. The purpose of the medical examination authorized by this section
19 is to identify a member's physical or mental condition or injury that existed
20 or occurred before the member's date of membership in the plan. Any employee
21 who fails or refuses to submit to the medical examination prescribed in this
22 section is deemed to waive all rights to disability benefits under this
23 article. Medical examinations conducted under this article shall not be
24 conducted or used for purposes of hiring, advancement, discharge, job
25 training or other terms, conditions and privileges of employment unrelated to
26 receipt or qualification for pension benefits or service credits from the
27 fund. This subsection does not affect or impair the right of an employer to
28 prescribe medical or physical standards for employees or prospective
29 employees.

30 C. If a member who becomes a member of the plan before January 1, 2012
31 ceases to be an employee for any reason other than death or retirement,
32 within twenty days after filing a completed application with the board, the
33 member is entitled to receive the following amounts, less any benefit
34 payments the member has received and any amount the member may owe to the
35 plan:

36 1. If the member has less than five years of credited service with the
37 plan, the member may withdraw the member's accumulated contributions from the
38 plan.

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

42 (a) 5.0 to 5.9 years of credited service, twenty-five per cent of all
43 member contributions deducted from the member's salary pursuant to section
44 38-891, subsection B.

1 (b) 6.0 to 6.9 years of credited service, forty per cent of all member
2 contributions deducted from the member's salary pursuant to section 38-891,
3 subsection B.

4 (c) 7.0 to 7.9 years of credited service, fifty-five per cent of all
5 member contributions deducted from the member's salary pursuant to section
6 38-891, subsection B.

7 (d) 8.0 to 8.9 years of credited service, seventy per cent of all
8 member contributions deducted from the member's salary pursuant to section
9 38-891, subsection B.

10 (e) 9.0 to 9.9 years of credited service, eighty-five per cent of all
11 member contributions deducted from the member's salary pursuant to section
12 38-891, subsection B.

13 (f) 10.0 or more years of credited service, one hundred per cent of
14 all member contributions deducted from the member's salary pursuant to
15 section 38-891, subsection B.

16 D. If a member who becomes a member of the plan before January 1, 2012
17 has more than ten years of credited service with the plan, leaves the monies
18 prescribed in subsection C of this section on account with the plan for more
19 than thirty days after termination of employment and after that time period
20 requests a refund of those monies, the member is entitled to receive the
21 amount prescribed in subsection C of this section plus interest at a rate
22 determined by the board for each year computed from and after the member's
23 termination of employment.

24 E. The accumulated member contributions of a member who ceases to be
25 an employee for a reason other than death or retirement and who becomes a
26 member of the plan on or after January 1, 2012 shall be paid to the member
27 plus interest at a rate determined by the board as of the date of termination
28 within twenty days after filing with the plan a written application for
29 payment.

30 F. If the refund includes monies that are an eligible rollover
31 distribution and the member elects to have the distribution paid directly to
32 an eligible retirement plan or individual retirement account or annuity and
33 specifies the eligible retirement plan or individual retirement account or
34 annuity to which the distribution is to be paid, the distribution shall be
35 made in the form of a direct trustee-to-trustee transfer to the specified
36 eligible retirement plan. The distribution shall be made in the form and at
37 the time prescribed by the board.

38 G. Service shall be credited to a member's individual credited service
39 account in accordance with rules the local board prescribes. In no case
40 shall more than twelve months of credited service be credited on account of
41 all service rendered by a member in any one year. In no case shall service
42 be credited for any period during which the member is not employed in a
43 designated position, except as provided by sections 38-921 and 38-922.

1 H. Credited service is forfeited if the amounts prescribed in
2 subsection C, D or E of this section are paid or are transferred in
3 accordance with this section.

4 I. If a former member becomes reemployed with the same employer within
5 two years after the former member's termination date, a member may have
6 forfeited credited service attributable to service rendered during a prior
7 period of service as an employee restored on satisfaction of each of the
8 following conditions:

9 1. The member files with the plan a written application for
10 reinstatement of forfeited credited service within ninety days after again
11 becoming an employee.

12 2. The retirement fund is paid the total amount previously withdrawn
13 pursuant to subsection C, D or E of this section plus compound interest from
14 the date of withdrawal to the dates of repayment. Interest shall be computed
15 at the rate of nine per cent for each year compounded each year from the date
16 of withdrawal to the date of repayment. Forfeited credited service shall not
17 be restored until complete payment is received by the fund.

18 3. The required payment is completed within one year after returning
19 to employee status.

20 J. A present active member of the plan who received a refund of
21 accumulated contributions from the plan pursuant to subsection C, D or E of
22 this section and forfeited credited service pursuant to subsection H of this
23 section may elect to redeem any part of that forfeited credited service by
24 paying into the plan any amounts required pursuant to this subsection. A
25 present active member who elects to redeem any part of forfeited credited
26 service for which the member is deemed eligible by the board shall pay into
27 the plan the amounts previously paid or transferred as a refund of the
28 member's accumulated contributions plus an amount, computed by the plan's
29 actuary that is necessary to equal the increase in the actuarial present
30 value of projected benefits resulting from the redemption calculated using
31 the actuarial methods and assumptions prescribed by the plan's actuary.

32 K. A retired member may become employed by an employer in a designated
33 position and continue to receive a pension if the employment occurs at least
34 twelve months after retirement. The retired member shall not contribute to
35 the fund and shall not accrue credited service. If a retired member becomes
36 employed by an employer in a designated position before twelve months after
37 retirement:

38 1. Payment of the retired member's pension shall be suspended until
39 the retired member again ceases to be an employee. The amount of pension
40 shall not be changed on account of service as an employee subsequent to
41 retirement.

42 2. The retired member shall not contribute to the fund and shall not
43 accrue credited service.

44 Sec. 8. Repeal

45 Title 38, chapter 5, article 8, Arizona Revised Statutes, is repealed.

1 Sec. 9. Modification of contract

2 The board of trustees of the public safety personnel retirement system
3 and each appropriate political subdivision of this state shall modify the
4 existing joinder agreements entered into pursuant to sections 38-815, 38-851
5 and 38-902, Arizona Revised Statutes, to reflect this act.

6 Sec. 10. Conforming legislation

7 The legislative council staff shall prepare proposed legislation
8 conforming the Arizona Revised Statutes to the provisions of this act for
9 consideration in the fifty-first legislature, first regular session.