

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2562

AN ACT

AMENDING TITLE 38, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 38-716 AND 38-728; AMENDING SECTIONS 38-797, 38-797.07 AND 38-847, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-847.01; CHANGING THE DESIGNATION OF TITLE 38, CHAPTER 5, ARTICLE 8, ARIZONA REVISED STATUTES, TO "DEFINED CONTRIBUTION PLANS"; AMENDING SECTION 38-951, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 38-955 AND 38-956; MAKING AN APPROPRIATION; RELATING TO PUBLIC RETIREMENT SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 38, chapter 5, article 2, Arizona Revised Statutes,
3 is amended by adding section 38-716, to read:

4 38-716. Employers' responsibilities under the system

5 IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS ARTICLE OR ARTICLE 2.1, 7
6 OR 8 OF THIS CHAPTER, AN EMPLOYER OF A MEMBER SHALL:

7 1. COOPERATE AND COLLABORATE WITH ASRS AND FOLLOW ALL ASRS PROCEDURES
8 TO ENSURE THE PROPER ENROLLMENT OF MEMBERS IN THE SYSTEM.

9 2. SUBMIT ANY REPORTS, DATA, PAPERWORK OR MATERIALS THAT ARE REQUESTED
10 BY ASRS AND THAT ARE NECESSARY TO MAKE ELIGIBILITY DETERMINATIONS AND FOR THE
11 PROPER ADMINISTRATION OF THE PLAN.

12 3. ATTEND THE ASRS ANNUAL TRAINING CONFERENCE.

13 Sec. 2. Title 38, chapter 5, article 2, Arizona Revised Statutes, is
14 amended by adding section 38-728, to read:

15 38-728. Eligibility determinations; employee enrollment

16 A. FOR AN EMPLOYEE HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS
17 SECTION, IF AN EMPLOYER DISAGREES WITH A WRITTEN DETERMINATION MADE BY THE
18 STATE SOCIAL SECURITY SECTION 218 ADMINISTRATOR OF THE EMPLOYEE'S INCLUSION
19 UNDER AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD
20 AGE AND SURVIVORS INSURANCE SYSTEM OR THE APPLICATION OR USE OF THAT WRITTEN
21 DETERMINATION BY ASRS FOR ASRS MEMBERSHIP, THE EMPLOYER SHALL ENROLL THE
22 EMPLOYEE PURSUANT TO SECTION 38-956 IN THE PLAN ESTABLISHED BY ASRS PURSUANT
23 TO SECTION 38-955 DURING THE SOCIAL SECURITY ADMINISTRATION OR ASRS
24 ADMINISTRATIVE APPEALS PROCESS. IF THERE IS A DETERMINATION OF THE
25 EMPLOYEE'S ELIGIBILITY THAT IS FINAL AND IS NOT APPEALABLE AND THE EMPLOYEE
26 IS DETERMINED:

27 1. TO BE ELIGIBLE FOR ASRS, THE EMPLOYER SHALL ENROLL THE EMPLOYEE IN
28 ASRS AND SECTION 38-738 APPLIES, AND THE EMPLOYER SHALL DISCONTINUE THE
29 EMPLOYEE'S PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION
30 38-955.

31 2. TO BE NOT ELIGIBLE FOR ASRS, THE EMPLOYEE SHALL CONTINUE
32 PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955,
33 UNLESS THE EMPLOYEE HAS ENTERED INTO AN AGREEMENT WITH THE EMPLOYER THAT
34 REQUIRES PARTICIPATION IN AN ALTERNATIVE RETIREMENT PLAN OR FOR OTHER
35 COMPENSATION PROVIDED IN LIEU OF RETIREMENT BENEFITS AND THAT AGREEMENT IS
36 EXECUTED WITHIN TWO YEARS OF THE DATE THAT THE EMPLOYEE FIRST COMMENCED
37 PARTICIPATION IN THE PLAN AND IS IRREVOCABLE FOR THE REMAINDER OF THE
38 EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER.

39 3. TO BE NOT ELIGIBLE FOR ASRS AND THE EMPLOYER ELECTS NOT TO PROVIDE
40 COVERAGE UNDER SECTION 38-956, SUBSECTION B, THE RETIRED EMPLOYEE'S
41 PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955
42 SHALL BE DISCONTINUED.

43 B. FOR AN EMPLOYEE WHO IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS
44 SECTION, IF AN EMPLOYER DISAGREES WITH A WRITTEN DETERMINATION MADE BY THE
45 STATE SOCIAL SECURITY SECTION 218 ADMINISTRATOR OF THE EMPLOYEE'S INCLUSION

1 UNDER AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD
2 AGE AND SURVIVORS INSURANCE SYSTEM OR THE APPLICATION OR USE OF THAT WRITTEN
3 DETERMINATION BY ASRS FOR ASRS MEMBERSHIP AND THE EMPLOYEE IS ENROLLED IN
4 ASRS, THE FOLLOWING SHALL OCCUR:

5 1. THE EMPLOYEE'S PARTICIPATION IN ASRS SHALL BE SUSPENDED, ADDITIONAL
6 CONTRIBUTIONS SHALL NOT BE COLLECTED OR PERMITTED AND SERVICE CREDIT SHALL
7 NOT BE APPLIED DURING THE SOCIAL SECURITY ADMINISTRATION OR ASRS
8 ADMINISTRATIVE APPEALS PROCESS.

9 2. THE EMPLOYEE SHALL BE ENROLLED PURSUANT TO SECTION 38-956 IN THE
10 PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955.

11 3. IF THERE IS A DETERMINATION OF THE EMPLOYEE'S ELIGIBILITY THAT IS
12 FINAL AND IS NOT APPEALABLE AND THE EMPLOYEE IS DETERMINED ELIGIBLE FOR ASRS,
13 THE EMPLOYEE'S SUSPENSION FROM PARTICIPATION IN ASRS SHALL CEASE AND SECTION
14 38-738 APPLIES, AND THE EMPLOYER SHALL DISCONTINUE THE EMPLOYEE'S
15 PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955.

16 4. IF THERE IS A DETERMINATION OF THE EMPLOYEE'S ELIGIBILITY THAT IS
17 FINAL AND IS NOT APPEALABLE AND THE EMPLOYEE IS DETERMINED INELIGIBLE FOR
18 ASRS, THE EMPLOYEE SHALL CONTINUE PARTICIPATION PURSUANT TO SECTION 38-956 IN
19 THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955, EXCEPT:

20 (a) IF THE EMPLOYER ELECTS NOT TO PROVIDE COVERAGE UNDER SECTION
21 38-956, SUBSECTION B, A RETIRED EMPLOYEE'S PARTICIPATION IN THE PLAN
22 ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955 SHALL BE DISCONTINUED.

23 (b) IF THE EMPLOYEE HAS ENTERED INTO AN AGREEMENT WITH THE EMPLOYER
24 THAT REQUIRES PARTICIPATION IN AN ALTERNATIVE RETIREMENT PLAN OR FOR OTHER
25 COMPENSATION PROVIDED IN LIEU OF RETIREMENT BENEFITS AND THAT AGREEMENT WAS
26 EXECUTED WITHIN TWO YEARS OF THE DATE THAT THE EMPLOYEE FIRST COMMENCED
27 PARTICIPATION IN THE PLAN AND IS IRREVOCABLE FOR THE REMAINDER OF THE
28 EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER, THE EMPLOYEE'S PARTICIPATION IN THE
29 PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955 SHALL BE DISCONTINUED.

30 C. IF AN EMPLOYEE'S PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS
31 PURSUANT TO SECTION 38-955 IS DISCONTINUED PURSUANT TO THIS SECTION, NO
32 ADDITIONAL EMPLOYEE OR EMPLOYER CONTRIBUTIONS SHALL BE MADE TO THE PLAN AND
33 THE EMPLOYEE IS ENTITLED TO THE EMPLOYEE'S RETIREMENT SAVINGS ACCOUNT AND
34 EARNINGS ON THE ACCOUNT AS PERMITTED UNDER THE TERMS OF THE PLAN.

35 D. AN EMPLOYER IS NOT REQUIRED TO FORMALLY ADOPT THE PLAN ESTABLISHED
36 BY ASRS PURSUANT TO SECTION 38-955.

37 E. THIS SECTION ONLY APPLIES TO AN EMPLOYER THAT HAS ENTERED INTO AN
38 AGREEMENT APPROVED BY THE BOARD UNDER SECTION 38-729.

39 Sec. 3. Section 38-797, Arizona Revised Statutes, is amended to read:
40 38-797. Definitions

41 In this article, unless the context otherwise requires:

42 1. "ASRS" means the Arizona state retirement system established by
43 article 2 of this chapter.

44 2. "Assets" means the accumulated resources of the LTD program.

- 1 3. "Board" means the ASRS board established pursuant to section
2 38-713.
- 3 4. "Compensation" has the same meaning prescribed in section 38-711.
- 4 5. "Depository" means a bank in which the monies of the LTD program
5 are deposited and collateralized as provided by law.
- 6 6. "Employer" has the same meaning prescribed in section 38-711.
- 7 7. "Employer contributions" means all amounts paid into the LTD
8 program by an employer.
- 9 8. "Fiscal year" has the same meaning prescribed in section 38-711.
- 10 9. "LTD program" means the long-term disability program established by
11 this article.
- 12 10. "Member":
- 13 (a) Has the same meaning prescribed in section 38-711.
- 14 (b) **INCLUDES AN EMPLOYEE DESCRIBED IN SECTION 38-956.**
- 15 11. "Monthly compensation" means one-twelfth of a member's annual
16 compensation paid and payable in the fiscal year during which a member
17 becomes disabled.
- 18 12. "Normal retirement date":
- 19 (a) Has the same meaning prescribed in section 38-711 **FOR MEMBERS**
20 **ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER.**
- 21 (b) **MEANS SIXTY-FIVE YEARS OF AGE FOR MEMBERS ELIGIBLE PURSUANT TO**
22 **SECTION 38-956.**
- 23 13. "Political subdivision" has the same meaning prescribed in section
24 38-711.
- 25 14. "State" has the same meaning prescribed in section 38-711.
- 26 Sec. 4. Section 38-797.07, Arizona Revised Statutes, is amended to
27 read:
- 28 **38-797.07. LTD program benefits; limitations; definitions**
- 29 A. The LTD program is subject to the following limitations:
- 30 1. Except as provided in paragraph 9 of this subsection, monthly LTD
31 program benefits shall not exceed two-thirds of a member's monthly
32 compensation at the time disability commences, reduced by:
- 33 (a) For a member whose disability commences before July 1, 2008,
34 sixty-four per cent of social security disability benefits that the member
35 and the member's dependents are eligible to receive.
- 36 (b) For a member whose disability commences on or after July 1, 2008,
37 eighty-five per cent of social security disability benefits that the member
38 and the member's dependents are eligible to receive, but not including:
- 39 (i) The amount of attorney fees approved pursuant to social security
40 administration rules and reasonable documented costs paid to an attorney to
41 secure that disability benefit.
- 42 (ii) Any cost-of-living adjustments that are granted after the member
43 commences benefits under this section.

1 (c) For a member whose disability commences before July 1, 2008,
2 eighty-three per cent of social security retirement benefits that the member
3 is eligible to receive.

4 (d) For a member whose disability commences on or after July 1, 2008,
5 eighty-five per cent of social security retirement benefits that the member
6 is eligible to receive, but not including any cost-of-living adjustments that
7 are granted after the member commences benefits under this section.

8 (e) All of any workers' compensation benefits.

9 (f) All of any payments for a veteran's disability if both of the
10 following apply:

11 (i) The veteran's disability payment is for the same condition or a
12 condition related to the condition currently causing the member's total
13 disability.

14 (ii) The veteran's disability is due to, or a result of, service in
15 the armed forces of the United States.

16 (g) All of any other benefits by reason of employment that are
17 financed partly or wholly by an employer, including payments for sick leave.
18 This subdivision does not include any retirement benefit that is received by
19 the member pursuant to a state retirement system or plan other than ASRS.

20 (h) Fifty per cent of any salary, wages, commissions or other
21 employment related pay that the member receives or is entitled to receive
22 from any gainful employment in which the member actually engages.

23 2. For a member whose disability commences on or after ~~the effective~~
24 ~~date of this amendment to this section~~ **AUGUST 2, 2012**, a member's monthly
25 income from the monthly LTD program benefits and sources listed in paragraph
26 1 of this subsection shall not exceed one hundred per cent of the member's
27 monthly compensation at the time disability commences. ASRS shall offset the
28 member's monthly LTD program benefits by the amount necessary to reduce the
29 member's total monthly income to meet the limit prescribed in this paragraph.

30 3. Monthly LTD program benefits are not payable until a member has
31 been totally disabled for a period of six consecutive months.

32 4. Monthly LTD program benefits are not payable to a member who files
33 an initial claim for disability more than twelve months after the date of the
34 member's date of disability unless the member demonstrates to ASRS good cause
35 for not filing the initial claim within twelve months after the date of
36 disability.

37 5. Monthly LTD program benefits are not payable to a member who is
38 receiving retirement benefits from ASRS.

39 6. Monthly LTD program benefits are not payable to a member whose
40 disability is due to, or a result of, any of the following:

41 (a) An intentionally self-inflicted injury.

42 (b) War, whether declared or not.

43 (c) An injury incurred while engaged in a felonious criminal act or
44 enterprise.

1 (d) For a member whose most recent membership in the LTD program
2 commences before July 1, 2008, an injury or sickness for which the member
3 received medical treatment within three months before the date of the
4 member's coverage under the LTD program. This subdivision does not apply to
5 a member who either:

6 (i) Has been an active member of an employer for twelve continuous
7 months.

8 (ii) Is employed by an employer before July 1, 1988.

9 (e) For a member whose most recent membership in the LTD program
10 commences on or after July 1, 2008, an injury or sickness for which the
11 member received medical treatment within six months before the date of the
12 member's coverage under the LTD program. This subdivision does not apply to
13 a member who has been an active member of an employer for twelve continuous
14 months.

15 7. Monthly LTD program benefits cease to be payable to a member at the
16 earliest of the following:

17 (a) The date the member ceases to be totally disabled.

18 (b) The date the member:

19 (i) Ceases to be under the direct care of a doctor.

20 (ii) Refuses to undergo any medical examination or refuses to
21 participate in any work rehabilitation program for which the member is
22 reasonably qualified by education, training or experience and that is
23 requested by the insurance company or claims administrator that is selected
24 by the board to administer the LTD program.

25 (c) The date the member withdraws employee contributions with interest
26 and ceases to be a member.

27 (d) The later of the following:

28 (i) The member's normal retirement date.

29 (ii) The month following sixty months of payments if disability occurs
30 before sixty-five years of age.

31 (iii) The month following attainment of seventy years of age if
32 disability occurs at sixty-five years of age or after but before sixty-nine
33 years of age.

34 (iv) The month following twelve months of payments if disability
35 occurs at or after sixty-nine years of age.

36 (e) If the member is convicted of a criminal offense and sentenced to
37 more than six months in a jail, prison or other penal institution, the first
38 day of the month following the first thirty continuous days of the member's
39 confinement for the remainder of the confinement.

40 8. Monthly LTD program benefits are payable only for disabilities that
41 commence on or after July 1, 1988.

42 9. The minimum benefit for a member who is entitled to receive monthly
43 LTD program benefits is fifty dollars per month.

44 10. Members are eligible to receive the LTD program benefits and
45 payments described in paragraph 1 of this subsection, and the reductions

1 provided by paragraph 1 of this subsection apply even though the social
2 security benefits are not actually paid as follows:

3 (a) For primary and dependent social security benefits, the members
4 are eligible for the social security benefits until the social security
5 benefits are actually awarded, or if the social security benefits are denied,
6 until the member pursues the social security appeal process through a hearing
7 before a social security administrative law judge or until the insurance
8 company or claims administrator determines that the member is not eligible
9 for social security benefits.

10 (b) For benefits and payments from any other source provided in
11 paragraph 1 of this subsection, the members are eligible for the benefits if
12 it is reasonable to believe that those benefits will be paid on proper
13 completion of the claim or would have been paid except for the failure of the
14 member to pursue the claim in time.

15 11. A member shall be considered totally disabled if based on objective
16 medical evidence:

17 (a) During the first thirty months of a period of disability, the
18 member is unable to perform all duties of the position held by the member
19 when the member became totally disabled.

20 (b) For a member who has received monthly LTD program benefits for
21 twenty-four months within a five-year period, the member is unable to perform
22 any work for compensation or gain for which the member is reasonably
23 qualified by education, training or experience in an amount at least equal to
24 the scheduled LTD program benefits prescribed in paragraph 1 of this
25 subsection.

26 B. A member WHO IS ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER AND
27 who receives monthly LTD program benefits is entitled to receive service
28 credit pursuant to article 2 of this chapter from the time disability
29 commences until LTD program benefits cease to be payable, except that for a
30 member who receives monthly LTD program benefits on or after June 30, 1999
31 the number of years of service credited to the member's retirement account
32 during the period the member receives LTD program benefit payments shall not
33 cause the member's total credited service for retirement benefits to exceed
34 the greater of thirty years or the total years of service credited to the
35 member's retirement account on the commencement of disability.

36 C. This section does not prohibit a member whose disability has been
37 established to the satisfaction of the board from relying on treatment by
38 prayer through spiritual means in accordance with the tenets and practice of
39 a recognized church, religious denomination or Native American traditional
40 medicine by a duly accredited practitioner of the church, denomination or
41 Native American traditional medicine without suffering reduction or
42 suspension of the member's monthly LTD program benefits.

43 D. ASRS may suspend or terminate benefits under this article if a
44 member fails to provide information, data, paperwork or other materials that
45 are requested by ASRS or the insurance company or claims administrator that

1 is selected by the board to administer the LTD program. If the member
2 provides the information requested, ASRS shall retroactively reinstate the
3 benefits or claim for which the member qualifies under this article.

4 E. For the purposes of this section:

5 1. "Objective medical evidence" means evidence that established facts
6 and conditions, as perceived without distortion by personal feelings,
7 prejudices or interpretations, and includes x-rays, quantitative tests,
8 laboratory findings, data, records, reports from the attending physician and
9 reports from a consulting physician, as applicable.

10 2. "Received medical treatment" means that the member consulted with
11 or received the advice of a licensed medical or dental practitioner,
12 including advice given during a routine examination, and it includes
13 situations in which the member received medical or dental care, treatment or
14 services, including the taking of drugs, medication, insulin or similar
15 substances.

16 3. "Social security" and "social security disability" includes the
17 railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States
18 Code sections 231 through 231u).

19 Sec. 5. Section 38-847, Arizona Revised Statutes, is amended to read:

20 38-847. Local boards

21 A. The administration of the system and responsibility for making the
22 provisions of the system effective for each employer are vested in a local
23 board. The department of public safety, the Arizona game and fish
24 department, the department of emergency and military affairs, the university
25 of Arizona, Arizona state university, northern Arizona university, each
26 county sheriff's office, each county attorney's office, each county parks
27 department, each municipal fire department, each eligible fire district, each
28 community college district, each municipal police department, the department
29 of law, the department of liquor licenses and control, the Arizona department
30 of agriculture, the Arizona state parks board, each Indian reservation police
31 agency and each Indian reservation fire fighting agency shall have a local
32 board. A nonprofit corporation operating pursuant to sections 28-8423 and
33 28-8424 shall have one local board for all of its members. Each local board
34 shall be constituted as follows:

35 1. For political subdivisions or Indian tribes, the mayor or chief
36 elected official or a designee of the mayor or chief elected official
37 approved by the respective governing body as chairman, two members elected by
38 secret ballot by members employed by the appropriate employer and two
39 citizens, one of whom shall be the head of the merit system, or the head's
40 designee from among the other members of the merit system, if it exists for
41 the group of members, appointed by the mayor or chief elected official and
42 with the approval of the governing body of the city or the governing body of
43 the employer. The appointed two citizens shall serve on both local boards in
44 a city or Indian tribes where both fire and police department employees are
45 members.

1 2. For state agencies and nonprofit corporations operating pursuant to
2 sections 28-8423 and 28-8424, two members elected by secret ballot by **THE**
3 members employed by the appropriate employer and three citizens appointed by
4 the governor. Each state agency local board shall elect a chairman.

5 3. For fire districts organized pursuant to section 48-804, the
6 secretary-treasurer as chairman, two members elected by secret ballot by
7 members employed by the fire district and two citizens appointed by the
8 secretary-treasurer, one of whom is a resident of the fire district and one
9 of whom has experience in personnel administration but who is not required to
10 be a resident of the fire district.

11 B. On the taking effect of this system for an employer, the
12 appointments and elections of local board members shall take place with one
13 elective and appointive local board member serving a term ending two years
14 after the effective date of participation for the employer and other local
15 board members serving a term ending four years after the effective date.
16 Thereafter, every second year, and as a vacancy occurs, an office shall be
17 filled for a term of four years in the same manner as previously provided.

18 C. Each local board shall be fully constituted pursuant to subsection
19 A of this section within sixty days after the employer's effective date of
20 participation in the system. If the deadline is not met, on the written
21 request of any member who is covered by the local board or the employer to
22 the board of trustees, the board of trustees may appoint all vacancies of the
23 local board pursuant to subsection A of this section and designate whether
24 each appointive position is for a two-year or four-year term. If the board
25 of trustees cannot find individuals to serve on the local board who meet the
26 requirements of subsection A of this section, the board of trustees may
27 appoint individuals to serve as interim local board members until qualified
28 individuals are appointed or elected. Each local board shall meet at least
29 twice a year. Each member of a local board, within ten days after the
30 member's appointment or election, shall take an oath of office that, so far
31 as it devolves on the member, the member shall diligently and honestly
32 administer the affairs of the local board and that the member shall not
33 knowingly violate or willingly permit to be violated any of the provisions of
34 law applicable to the system.

35 D. Except as limited by subsection E of this section, a local board
36 shall have such powers as may be necessary to discharge the following duties:

37 1. To decide all questions of eligibility ~~and~~ **FOR MEMBERSHIP**, service
38 credits, ~~AND BENEFITS~~ and determine the amount, manner and time of payment
39 of any benefits under the system.

40 2. To prescribe procedures to be followed by claimants in filing
41 applications for benefits.

42 3. To make a determination as to the right of any claimant to a
43 benefit and to afford any claimant or the board of trustees, or both, a right
44 to a rehearing on the original determination. Except as otherwise required
45 by law, unless all parties involved in a matter presented to the local board

1 for determination otherwise agree, the local board shall commence a hearing
2 on the matter within ninety days after the date the matter is presented to
3 the local board for determination. If a local board fails to commence a
4 hearing as provided in this paragraph, on a matter presented to the local
5 board for determination, the relief demanded by the party petitioning the
6 local board is deemed granted and approved by the local board. The granting
7 and approval of this relief is considered final and binding unless a timely
8 request for rehearing or appeal is made as provided in this article, unless
9 the board of trustees determines that granting the relief requested would
10 violate the internal revenue code or threaten to impair the system's status
11 as a qualified plan under the internal revenue code. If the board of
12 trustees determines that granting the requested relief would violate the
13 internal revenue code or threaten to impair the system's status as a
14 qualified plan, the board of trustees may refuse to grant the relief by
15 issuing a written determination to the local board and the party petitioning
16 the local board for relief. The decision by the board of trustees is subject
17 to judicial review pursuant to title 12, chapter 7, article 6.

18 4. To request and receive from the employers and from members such
19 information as is necessary for the proper administration of the system and
20 action on claims for **ELIGIBILITY FOR MEMBERSHIP AND** benefits, and to forward
21 such information to the board of trustees.

22 5. To distribute, in such manner as the local board determines to be
23 appropriate, information explaining the system received from the board of
24 trustees.

25 6. To furnish the employer, the board of trustees and the legislature,
26 on request, with such annual reports with respect to the administration of
27 the system as are reasonable and appropriate.

28 7. To receive and review the actuarial valuation of the system for its
29 group of members.

30 8. To receive and review reports of the financial condition and of the
31 receipts and disbursements of the fund from the board of trustees.

32 9. To appoint medical boards as provided in section 38-859.

33 10. To sue and be sued to effectuate the duties and responsibilities
34 set forth in this article.

35 E. A local board shall have no power to add to, subtract from, modify
36 or waive any of the terms of the system, change or add to any benefits
37 provided by the system or waive or fail to apply any requirement of
38 eligibility for membership or benefits under the system. Notwithstanding any
39 limitations periods imposed in this article, including subsection D,
40 paragraph 3 and subsections G and H of this section, if the board of trustees
41 determines a local board decision violates the internal revenue code or
42 threatens to impair the system's status as a qualified plan under the
43 internal revenue code, the local board's decision is not final and binding
44 and the board of trustees may refrain from implementing or complying with the
45 local board decision.

1 F. A local board, from time to time, shall establish and adopt such
2 rules as it deems necessary or desirable for its administration. All rules
3 and decisions of a local board shall be uniformly and consistently applied to
4 all members in similar circumstances. If a claim or dispute is presented to
5 a local board for determination but the local board has not yet adopted
6 uniform rules of procedure for adjudication of the claim or dispute, the
7 local board shall adopt and use the model uniform rules of local board
8 procedure that are issued by the board of trustees' fiduciary counsel to
9 adjudicate the claim or dispute.

10 G. Except as otherwise provided in this article, any action by a
11 majority vote of the members of a local board that is not inconsistent with
12 the provisions of the system and the internal revenue code shall be final,
13 conclusive and binding on all persons affected by it unless a timely
14 application for a rehearing or appeal is filed as provided in this article.
15 No later than twenty days after taking action, the local board shall submit
16 to the board of trustees the minutes from the local board meeting that
17 include the name of the member affected by its decision, a description of the
18 action taken and an explanation of the reasons and all documents submitted to
19 the local board for the action taken, including the reports of a medical
20 board. The board of trustees may not implement and comply with any local
21 board action that does not comply with the internal revenue code or that
22 threatens to jeopardize the system's status as a qualified plan under the
23 internal revenue code.

24 H. A claimant or the board of trustees may apply for a rehearing
25 before the local board within the time periods prescribed in this subsection,
26 except that if a decision of a local board violates the internal revenue code
27 or threatens to jeopardize the system's status as a qualified plan under the
28 internal revenue code, no limitation period for the board of trustees to seek
29 a rehearing of a local board decision applies. An application for a
30 rehearing shall be filed in writing with a member of the local board or its
31 secretary within sixty days after:

32 1. The applicant-claimant receives notification of the local board's
33 original action by certified mail, by attending the meeting at which the
34 action is taken or by receiving benefits from the system pursuant to the
35 local board's original action, whichever occurs first.

36 2. The applicant-board of trustees receives notification of the local
37 board's original action as prescribed by subsection G of this section by
38 certified mail.

39 I. A hearing before a local board on a matter remanded from the
40 superior court is not subject to a rehearing before the local board.

41 J. Decisions of local boards are subject to judicial review pursuant
42 to title 12, chapter 7, article 6.

43 K. When making a ruling, determination or calculation, the local board
44 shall be entitled to rely on information furnished by the employer, a medical

1 board, the board of trustees, independent legal counsel or the actuary for
2 the system.

3 L. Each member of a local board is entitled to one vote. A majority
4 is necessary for a decision by the members of a local board at any meeting of
5 the local board.

6 M. The local board shall adopt such bylaws as it deems desirable. The
7 local board shall elect a secretary who may, but need not, be a member of the
8 local board. The secretary of the local board shall keep a record and
9 prepare minutes of all meetings in compliance with chapter 3, article 3.1 of
10 this title and forward the minutes and all necessary communications to the
11 board of trustees as prescribed by subsection G of this section.

12 N. The fees of the medical board and of the local board's independent
13 legal counsel and all other expenses of the local board necessary for the
14 administration of the system shall be paid by the employer and not the board
15 of trustees or system at such rates and in such amounts as the local board
16 shall approve. Legal counsel that is employed by the local board is
17 independent of the employer and any employee organization or member and owes
18 its duty of loyalty only to the local board in connection with its
19 representation of the local board.

20 O. The local board shall issue directions to the board of trustees
21 concerning all benefits that are to be paid from the employer's account
22 pursuant to the provisions of the fund. The local board shall keep on file,
23 in such manner as it may deem convenient or proper, all reports from the
24 board of trustees and the actuary.

25 P. The local board and the individual members of the local board shall
26 be indemnified from the assets of the employer for any judgment against the
27 local board or its members, including attorney fees and costs, arising from
28 any act, or failure to act, made in good faith pursuant to the provisions of
29 the system, including expenses reasonably incurred in the defense of any
30 claim relating to the act or failure to act.

31 Sec. 6. Title 38, chapter 5, article 4, Arizona Revised Statutes, is
32 amended by adding section 38-847.01, to read:

33 38-847.01. Membership in retirement plan; eligibility

34 A. EACH EMPLOYEE OF AN ELIGIBLE GROUP SHALL PARTICIPATE IN THE PLAN ON
35 PROPER DETERMINATION OF ELIGIBILITY FOR MEMBERSHIP BY THE LOCAL BOARD
36 PURSUANT TO SECTION 38-847, SUBSECTION D.

37 B. THE EMPLOYER SHALL PROVIDE TO THE LOCAL BOARD ALL NECESSARY
38 INFORMATION TO RENDER A DECISION ON THE EMPLOYEE'S ELIGIBILITY FOR
39 MEMBERSHIP. THE INFORMATION SHALL INCLUDE:

- 40 1. THE DATE THE EMPLOYEE WAS HIRED OR APPOINTED TO THE POSITION.
41 2. THE EMPLOYEE'S POSITION TITLE.
42 3. A DESCRIPTION OF THE ESSENTIAL FUNCTIONS FOR THE POSITION.

43 C. AN EMPLOYEE RECEIVING A PENSION FROM THE PLAN IS NOT SUBJECT TO
44 THIS SECTION, BUT IS SUBJECT TO SECTION 38-849.

1 Sec. 7. Heading change

2 The article heading of title 38, chapter 5, article 8, Arizona Revised
3 Statutes, is changed from "SUPPLEMENTAL DEFINED CONTRIBUTION PLANS" to
4 "DEFINED CONTRIBUTION PLANS".

5 Sec. 8. Section 38-951, Arizona Revised Statutes, is amended to read:
6 38-951. Definitions

7 In this article, unless the context otherwise requires:

8 1. "Board" means the Arizona state retirement system board established
9 by section 38-713 or the board of trustees established by section 38-848.

10 2. "Eligible group" means any of the following:

11 (a) The Arizona state retirement system established by article 2 of
12 this chapter.

13 (b) The elected officials' retirement plan established by article 3 of
14 this chapter.

15 (c) The public safety personnel retirement system established by
16 article 4 of this chapter.

17 (d) The corrections officer retirement plan established by article 6
18 of this chapter.

19 (e) An optional retirement program established pursuant to section
20 15-1451 or 15-1628.

21 3. "Employer" means an agency or department of this state or an agency
22 or department of a political subdivision of this state that has employees in
23 an eligible group.

24 4. "Plan" means a ~~supplemental~~ defined contribution plan authorized by
25 this article.

26 Sec. 9. Title 38, chapter 5, article 8, Arizona Revised Statutes, is
27 amended by adding sections 38-955 and 38-956, to read:

28 38-955. Defined contribution plan; establishment;
29 administration

30 A. THE ARIZONA STATE RETIREMENT SYSTEM BOARD SHALL ESTABLISH,
31 ADMINISTER, MANAGE AND OPERATE A DEFINED CONTRIBUTION PLAN FOR EMPLOYEES
32 ENROLLED PURSUANT TO SECTIONS 38-728 AND 38-956.

33 B. THE ARIZONA STATE RETIREMENT SYSTEM BOARD MAY:

34 1. DELEGATE AUTHORITY TO IMPLEMENT THE PLAN TO ITS DIRECTOR APPOINTED
35 PURSUANT TO SECTION 38-715.

36 2. EMPLOY SERVICES IT DEEMS NECESSARY, INCLUDING LEGAL SERVICES, FOR
37 THE OPERATION AND ADMINISTRATION OF THE PLAN.

38 3. ADMINISTER THE PLAN THROUGH CONTRACTS WITH MULTIPLE VENDORS.

39 4. PERFORM ALL ACTS, WHETHER OR NOT EXPRESSLY AUTHORIZED, THAT IT
40 DEEMS NECESSARY AND PROPER FOR THE OPERATION AND PROTECTION OF THE PLAN.

41 5. FOR THE PURPOSES OF THIS ARTICLE, ENTER INTO INTERGOVERNMENTAL
42 AGREEMENTS PURSUANT TO TITLE 11, CHAPTER 7, ARTICLE 3.

43 C. NOTWITHSTANDING TITLE 41, CHAPTER 23, THE ARIZONA STATE RETIREMENT
44 SYSTEM BOARD MAY EMPLOY THE SERVICES OF THE THIRD-PARTY ADMINISTRATOR THAT IS
45 CONTRACTED ON THE EFFECTIVE DATE OF THIS SECTION TO ADMINISTER THE

1 SUPPLEMENTAL DEFINED CONTRIBUTION PLAN PURSUANT TO THIS ARTICLE TO ALSO
2 ADMINISTER THE DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THIS SECTION
3 UNTIL THE END OF THE CURRENT CONTRACT. ON EXPIRATION OF THAT CONTRACT, THE
4 ARIZONA STATE RETIREMENT SYSTEM BOARD SHALL PARTICIPATE IN A COMPETITIVE BID
5 PROCESS AT LEAST ONCE EVERY FIVE YEARS TO CONTRACT WITH A PRIVATE PERSON OR
6 ANY QUALIFIED COMPANY OR COMPANIES TO ADMINISTER THE DEFINED CONTRIBUTION
7 PLAN ESTABLISHED PURSUANT TO THIS SECTION.

8 D. THE DEFINED CONTRIBUTION PLAN SHALL BE DESIGNED TO BE A QUALIFIED
9 GOVERNMENTAL PLAN UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE. THE
10 LEGISLATURE INTENDS THAT THE DEFINED CONTRIBUTION PLAN IS A QUALIFIED PLAN
11 UNDER SECTION 401 OF THE INTERNAL REVENUE CODE, AS AMENDED, OR SUCCESSOR
12 PROVISIONS OF LAW, AND THAT THE PLAN IS EXEMPT FROM TAXATION UNDER SECTION
13 501 OF THE INTERNAL REVENUE CODE. THE BOARD MAY ADOPT ANY ADDITIONAL
14 PROVISIONS TO THE PLAN THAT ARE NECESSARY TO FULFILL THIS INTENT.

15 E. ALTHOUGH DESIGNATED AS EMPLOYEE CONTRIBUTIONS, ALL EMPLOYEE
16 CONTRIBUTIONS MADE TO THE PLAN SHALL BE PICKED UP AND PAID BY THE EMPLOYER IN
17 LIEU OF CONTRIBUTIONS BY THE EMPLOYEE. THE CONTRIBUTIONS PICKED UP BY AN
18 EMPLOYER MAY BE MADE THROUGH A REDUCTION IN THE EMPLOYEE'S COMPENSATION OR AN
19 OFFSET AGAINST FUTURE COMPENSATION INCREASES, OR A COMBINATION OF BOTH. AN
20 EMPLOYEE PARTICIPATING IN THE PLAN DOES NOT HAVE THE OPTION OF CHOOSING TO
21 RECEIVE THE CONTRIBUTED AMOUNTS DIRECTLY INSTEAD OF THE EMPLOYER PAYING THE
22 AMOUNTS TO THE PLAN. IT IS INTENDED THAT ALL EMPLOYEE CONTRIBUTIONS THAT ARE
23 PICKED UP BY THE EMPLOYER AS PROVIDED IN THIS SUBSECTION SHALL BE TREATED AS
24 EMPLOYER CONTRIBUTIONS UNDER SECTION 414(h) OF THE INTERNAL REVENUE CODE,
25 SHALL BE EXCLUDED FROM EMPLOYEES' GROSS INCOME FOR FEDERAL AND STATE INCOME
26 TAX PURPOSES AND ARE INCLUDABLE IN THE GROSS INCOME OF THE EMPLOYEES OR THEIR
27 BENEFICIARIES ONLY IN THE TAXABLE YEAR IN WHICH THEY ARE DISTRIBUTED.

28 38-956. Defined contribution plan; eligibility; contribution;
29 vesting

30 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, AN EMPLOYEE OF
31 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE SHALL BE ENROLLED IN THE
32 PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955 IF ALL OF THE FOLLOWING
33 APPLY:

34 1. THE EMPLOYEE IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS
35 SECTION.

36 2. THE EMPLOYEE IS NOT ELIGIBLE FOR THE ARIZONA STATE RETIREMENT
37 SYSTEM PURSUANT TO ARTICLE 2 OF THIS CHAPTER BECAUSE THE EMPLOYEE IS NOT
38 INCLUDED IN AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE
39 FEDERAL OLD AGE AND SURVIVORS INSURANCE SYSTEM.

40 3. THE EMPLOYEE IS NOT ELIGIBLE FOR A STATEWIDE RETIREMENT SYSTEM OR
41 PLAN PURSUANT TO ARTICLE 3, 4 OR 6 OF THIS CHAPTER BECAUSE THE EMPLOYEE DOES
42 NOT MEET THE DEFINITION OF A MEMBER IN THOSE SYSTEMS OR PLANS.

43 4. THE EMPLOYEE IS ENGAGED TO WORK AT LEAST TWENTY WEEKS IN EACH
44 FISCAL YEAR AND AT LEAST TWENTY HOURS EACH WEEK.

1 B. A RETIRED MEMBER OF A STATEWIDE RETIREMENT SYSTEM OR PLAN PURSUANT
2 TO ARTICLE 3, 4, OR 6 OF THIS CHAPTER WHO MEETS THE REQUIREMENTS OF
3 SUBSECTION A OF THIS SECTION MAY BE ENROLLED IN THE PLAN ESTABLISHED BY ASRS
4 PURSUANT TO SECTION 38-955 AT THE EMPLOYER'S OPTION.

5 C. EACH EMPLOYEE SHALL CONTRIBUTE ONE-HALF OF THE TOTAL ASRS NORMAL
6 COST PLUS ONE AND ONE-HALF PER CENT OF THE EMPLOYEE'S COMPENSATION, AS
7 DEFINED IN SECTION 38-711, BY SALARY REDUCTION THAT SHALL BE DEPOSITED IN THE
8 EMPLOYEE'S RETIREMENT SAVINGS ACCOUNT. EACH EMPLOYER SHALL CONTRIBUTE
9 ONE-HALF OF THE TOTAL ASRS NORMAL COST PLUS ONE AND ONE-HALF PER CENT OF THE
10 EMPLOYEE'S COMPENSATION, AS DEFINED IN SECTION 38-711, THAT SHALL BE
11 DEPOSITED IN THE EMPLOYEE'S RETIREMENT SAVINGS ACCOUNT. EMPLOYEE AND
12 EMPLOYER CONTRIBUTIONS AND EARNINGS ON THOSE CONTRIBUTIONS ARE IMMEDIATELY
13 VESTED.

14 D. EACH EMPLOYEE AND EMPLOYER SHALL ALSO CONTRIBUTE TO THE LONG-TERM
15 DISABILITY PROGRAM PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER. AN EMPLOYEE MAY
16 RECEIVE BENEFITS PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER IF THE EMPLOYEE
17 BECOMES TOTALLY DISABLED.

18 E. NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION,
19 AN EMPLOYEE SHALL NOT BE ENROLLED UNDER THIS SECTION IF THE EMPLOYEE HAS
20 ENTERED INTO AN AGREEMENT WITH THE EMPLOYER THAT REQUIRES PARTICIPATION IN AN
21 ALTERNATIVE RETIREMENT PLAN OR FOR OTHER COMPENSATION PROVIDED IN LIEU OF
22 RETIREMENT BENEFITS. THE AGREEMENT SHALL SPECIFY THAT IT IS IRREVOCABLE FOR
23 THE REMAINDER OF THE EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER AND SHALL BE
24 EXECUTED WITHIN TWO YEARS OF INITIAL ELIGIBILITY UNDER THIS SECTION.

25 Sec. 10. Appropriation; ASRS; exemption

26 A. The following sums are appropriated from the Arizona state
27 retirement system administration account fund in fiscal year 2013-2014 to the
28 Arizona state retirement system:

- 29 1. One FTE position and \$72,400 for personal services.
- 30 2. \$430,000 for professional services.

31 B. The appropriation made in subsection A, paragraph 2 of this section
32 is exempt from the provisions of section 35-190, Arizona Revised Statutes,
33 relating to lapsing of appropriations.