

State of Arizona  
House of Representatives  
Fifty-first Legislature  
Second Regular Session  
2014

# HOUSE BILL 2122

AN ACT

AMENDING SECTIONS 38-727, 38-831, 38-833 AND 38-840.06, ARIZONA REVISED  
STATUTES; RELATING TO PUBLIC PENSION PLANS.

(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 A. The following provisions apply to all employees hired on or after  
6 the 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 elected or appointed before January 1, 2014, who is eligible for  
21 participation in ASRS because the state elected official elected not to  
22 participate in the elected officials' retirement plan as provided in section  
23 38-804, subsection A and who elects not to participate in ASRS as provided in  
24 paragraph 7 of this section.

25 (c) On the part of any employee or officer who is eligible to  
26 participate and who participates in the elected officials' retirement plan  
27 pursuant to article 3 of this chapter, the elected officials' defined  
28 contribution retirement system pursuant to article 3.1 of this chapter, the  
29 public safety personnel retirement system pursuant to article 4 of this  
30 chapter or the corrections officer retirement plan pursuant to article 6 of  
31 this chapter.

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

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

40 4. Employees and officers shall not become members of ASRS and, if  
41 they are members immediately before becoming employed as provided by this  
42 section, shall have their membership status suspended while they are employed  
43 by state departments paying the salaries of their officers and employees  
44 wholly or in part from monies received from sources other than appropriations

1 from the state general fund for the period or periods payment of the employer  
2 contributions is not made by or on behalf of the departments.

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

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

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

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

20 7. A state elected official who is subject to term limits, who is  
21 elected or appointed before January 1, 2014 and who is eligible for  
22 participation in ASRS because the state elected official elected not to  
23 participate in the elected officials' retirement plan as provided in section  
24 38-804, subsection A may elect not to participate in ASRS. The election not  
25 to participate is specific for that term of office. The state elected  
26 official who is subject to term limits shall make the election in writing and  
27 file the election with ASRS within thirty days after the elected official's  
28 retirement plan mails the notice to the state elected official of the state  
29 elected official's eligibility to participate in ASRS. The election is  
30 effective on the first day of the state elected official's eligibility. If a  
31 state elected official who is subject to term limits fails to make an  
32 election as provided in this paragraph, the state elected official is deemed  
33 to have elected to participate in ASRS. The election not to participate in  
34 ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS  
35 for the state elected official's entire term, except for any benefits accrued  
36 by the state elected official in ASRS for periods of participation before  
37 being elected to an office subject to term limits or any benefits expressly  
38 provided by law.

39 8. Before July 1, 2015, a person may elect not to participate in ASRS  
40 if the person becomes employed by an employer after the person has attained  
41 at least sixty-five years of age, is not an active member, inactive member,  
42 retired member or receiving benefits pursuant to article 2.1 of this chapter  
43 and does not have any credited service or prior service in ASRS. The  
44 employee shall make the election not to participate in writing and file the  
45 election with ASRS within thirty days of employment. The election not to

1 participate is irrevocable for the remainder of the person's employment for  
2 which the person made the election and constitutes a waiver of all benefits  
3 provided by the Arizona state retirement system. The period the person works  
4 is not eligible for purchase under section 38-743 or 38-744.

5 B. The following elected officials are subject to this article if the  
6 member's employer is an employer under article 3 of this chapter ~~and the~~  
7 ~~member elects to participate in ASRS pursuant to subsection C of this~~  
8 ~~section:~~

9 1. A state elected official who is subject to term limits, who is  
10 elected or appointed on or before December 31, 2013 and who is an active, ~~or~~  
11 ~~AN~~ inactive, ~~A RETIRED OR A DISABLED~~ member of ASRS because the state elected  
12 official had previously elected not to participate in the elected officials'  
13 retirement plan as provided in section 38-804, subsection A.

14 2. Notwithstanding any exclusion from an agreement providing for  
15 coverage under the federal old age and survivors insurance system, an elected  
16 official, as defined in section 38-831, who is an active, ~~or~~ AN inactive, ~~A~~  
17 ~~RETIRED OR A DISABLED~~ member of ASRS, if the elected official's employer is a  
18 participating employer under this article.

19 ~~C. If an elected official as described in subsection B of this section~~  
20 ~~elects to continue or resume the member's participation in ASRS, the election~~  
21 ~~shall be made in writing and filed with ASRS within thirty days after the~~  
22 ~~elected official's term begins. The election is irrevocable for the~~  
23 ~~remainder of the elected official's term for which the election was made. If~~  
24 ~~the elected official does not make an election under this subsection, the~~  
25 ~~elected official shall be enrolled in the elected officials' defined~~  
26 ~~contribution retirement system pursuant to article 3.1 of this chapter.~~

27 Sec. 2. Section 38-831, Arizona Revised Statutes, is amended to read:

28 38-831. 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, employer contributions  
32 and interest, dividends or other accumulations credited on behalf of the  
33 member.

34 2. "Board" means the board of trustees of the public safety personnel  
35 retirement system established by section 38-848.

36 3. "Defined contribution system" means the elected officials' defined  
37 contribution retirement system established pursuant to this article.

38 4. "Elected official" means:

39 (a) Every elected official of this state who was elected or appointed  
40 on or after January 1, 2014 and who was not a member of the plan on December  
41 31, 2013.

42 (b) Every elected official of each county of this state who was  
43 elected or appointed on or after January 1, 2014 and who was not a member of  
44 the plan on December 31, 2013.

1 (c) Every justice of the supreme court who was appointed on or after  
2 January 1, 2014 and who was not a member of the plan on December 31, 2013.

3 (d) Every judge of the court of appeals who was appointed on or after  
4 January 1, 2014 and who was not a member of the plan on December 31, 2013.

5 (e) Every judge of the superior court who was elected or appointed on  
6 or after January 1, 2014 and who was not a member of the plan on December  
7 31, 2013.

8 (f) Every full-time superior court commissioner, except full-time  
9 superior court commissioners who failed to make a timely election of  
10 membership under the judges' retirement plan, repealed on August 7, 1985, who  
11 was hired on or after January 1, 2014 and who was not a member of the plan on  
12 December 31, 2013.

13 (g) Each elected official of an incorporated city or town whose  
14 employer has executed a proper joinder agreement **WITH THE PLAN** for coverage  
15 of its elected officials, who was elected or appointed on or after January 1,  
16 2014 and who was not a member of the plan on December 31, 2013.

17 5. "Employer" means a department or political subdivision of this  
18 state that makes employer contributions to the defined contribution system on  
19 behalf of a member.

20 6. "Employer contribution" means an amount deposited by an employer,  
21 from the employer's own monies, in the member's annuity account on a periodic  
22 basis coinciding with the member's regular pay period.

23 7. "Member" means an elected official under the defined contribution  
24 system.

25 8. "Plan" means the elected officials' retirement plan established ~~in~~  
26 **BY** article 3 of this chapter.

27 Sec. 3. Section 38-833, Arizona Revised Statutes, is amended to read:  
28 **38-833. Member and employer contributions; disability**

29 A. Beginning January 1, 2014, the defined contribution system is the  
30 retirement program for elected officials, unless the elected official  
31 continues or resumes participation in ASRS pursuant to section 38-727,  
32 subsection ~~C~~ B. Elected officials shall be enrolled in the defined  
33 contribution plan established by the board pursuant to this article.

34 B. Each elected official who is a member of the defined contribution  
35 system shall contribute eight per cent of the member's gross compensation by  
36 salary reduction that shall be deposited in the member's annuity account.  
37 Each member shall also contribute to the elected officials' defined  
38 contribution retirement system disability program pursuant to article 3.2 of  
39 this chapter.

40 C. Although designated as employee contributions, all member  
41 contributions made to the defined contribution system shall be picked up and  
42 paid by the employer in lieu of contributions by the employee. The  
43 contributions picked up by an employer may be made through a reduction in the  
44 member's compensation. A member participating in the defined contribution  
45 system does not have the option of choosing to receive the contributed

1 amounts directly instead of the employer paying the amounts to the defined  
2 contribution system. All member contributions that are picked up by the  
3 employer as provided in this subsection shall be treated as employer  
4 contributions under section 414(h) of the internal revenue code, shall be  
5 excluded from members' gross income for federal and state income tax purposes  
6 and are includable in the gross income of the members or the members'  
7 beneficiaries only in the taxable year in which they are distributed.

8 D. Each employer shall annually make a contribution equal to six per  
9 cent of each member's gross compensation. The pro rata share of this amount  
10 shall be paid on each date that a member contribution is made and shall be  
11 credited to the member's annuity account. Each employer shall also  
12 contribute to the elected officials' defined contribution retirement system  
13 disability program pursuant to article 3.2 of this chapter.

14 E. Member and employer contributions and earnings on those  
15 contributions are immediately vested. A member may receive benefits pursuant  
16 to article 3.2 of this chapter if the member becomes totally disabled.

17 Sec. 4. Section 38-840.06, Arizona Revised Statutes, is amended to  
18 read:

19 38-840.06. EODC disability program benefits

20 In determining eligibility for and continuation of a disability benefit  
21 and computing the amount available to a member, the board shall follow the  
22 same procedures and methods as prescribed in section 38-806, except that **AN**  
23 **ELECTED OFFICIAL WHO NO LONGER HOLDS OFFICE MUST APPLY WITHIN ONE YEAR OF**  
24 **TERMINATING OFFICE AND** the credited service used to compute the benefit shall  
25 be only the time earned while a member of the elected officials' defined  
26 contribution retirement system established pursuant to article 3.1 of this  
27 chapter. **PAYMENT OF THE DISABILITY BENEFIT WILL BE MADE RETROACTIVE ONLY TO**  
28 **THE DATE THE BOARD RECEIVES APPLICATION FOR THE DISABILITY.**

29 Sec. 5. Retroactivity

30 Section 38-727, Arizona Revised Statutes, as amended by this act,  
31 applies retroactively to from and after December 31, 2013.

32 **(EMERGENCY NOT ENACTED)**

33 Sec. 6. Emergency

34 This act is an emergency measure that is necessary to preserve the  
35 public peace, health or safety and is operative immediately as provided by  
36 law.