

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

**CHAPTER 180**  
**SENATE BILL 1083**

AN ACT

AMENDING SECTION 38-769, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA  
STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-769, Arizona Revised Statutes, is amended to  
3 read:

4 38-769. Maximum retirement benefits; termination; definitions

5 A. Notwithstanding any other provision of this article, except as  
6 provided in subsection C of this section, the employer provided portion of a  
7 member's annual benefit payable in the form of a straight life annuity, at  
8 any time within a limitation year, shall not exceed one hundred sixty  
9 thousand dollars or a larger amount that is effective as of January 1 of each  
10 calendar year, is prescribed by the board and is due to any cost of living  
11 adjustment announced by the United States secretary of the treasury pursuant  
12 to section 415(d) of the internal revenue code. The board shall increase the  
13 amount pursuant to this subsection as of the effective date of the increase  
14 as prescribed by the United States secretary of the treasury. Benefit  
15 increases provided in this section resulting from the increase in the  
16 limitations of section 415(b) of the internal revenue code as amended by the  
17 economic growth and tax relief reconciliation act of 2001 shall be provided  
18 to all current and former members who have benefits that are limited by  
19 section 415(b) of the internal revenue code and who have an accrued benefit  
20 under ASRS immediately before July 1, 2001, other than an accrued benefit  
21 resulting from a benefit increase solely as a result of the increases  
22 provided by this section resulting from the increase in the limitations of  
23 section 415(b) of the internal revenue code as amended by the economic growth  
24 and tax relief reconciliation act of 2001.

25 B. Notwithstanding the limitations of subsection A of this section,  
26 the benefits payable to a member are deemed not to exceed the limitations  
27 determined under subsection A of this section if the retirement benefits  
28 payable to the member under this article do not exceed ten thousand dollars  
29 for the limitation year and if an employer has not at any time maintained a  
30 defined contribution plan in which the member has participated.

31 C. The limitations determined under subsection A of this section are  
32 subject to the following adjustments:

33 1. If a member has less than ten years of membership in ASRS, the  
34 maximum dollar limitation determined under subsection A of this section shall  
35 be multiplied by a fraction, the numerator of which is the number of years,  
36 or partial years, of membership in ASRS and the denominator of which is ten.  
37 The reduction provided in this paragraph also applies to the ten thousand  
38 dollar floor limitation provided in subsection B of this section, except that  
39 the reduction applies to years of service with an employer rather than to  
40 years of membership in ASRS. The reduction in this paragraph does not reduce  
41 the limitations determined under subsection A of this section to an amount  
42 less than one-tenth of the limitations as determined without regard to this  
43 paragraph.

44 2. If the member's benefit under ASRS commences before the member  
45 reaches sixty-two years of age, the benefit will be limited to:

1 (a) If the annuity starting date is in a limitation year beginning  
2 before July 1, 2007, the annual amount of a benefit payable in the form of a  
3 straight life annuity commencing at the member's annuity starting date that  
4 is the actuarial equivalent of the dollar limitation under section  
5 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this  
6 section, with actuarial equivalence computed using whichever of the following  
7 produces the smaller annual amount:

8 (i) The interest rate and mortality table or other tabular factor  
9 specified by the board for determining actuarial equivalence for early  
10 retirement purposes.

11 (ii) A five per cent interest rate assumption and the applicable  
12 mortality table.

13 (b) If the annuity starting date is in a limitation year beginning on  
14 or after July 1, 2007 and ASRS does not have an immediately commencing  
15 straight life annuity payable at both age sixty-two and the age of benefit  
16 commencement, the annual amount of a benefit payable in the form of a  
17 straight life annuity commencing at the member's annuity starting date that  
18 is the actuarial equivalent of the dollar limitation under section  
19 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this  
20 section, with actuarial equivalence computed using a five per cent interest  
21 rate assumption and the applicable mortality table and expressing the  
22 member's age based on completed calendar months as of the annuity start date.

23 (c) If the annuity starting date is in a limitation year beginning on  
24 or after July 1, 2007 and ASRS has an immediately commencing straight life  
25 annuity payable at both age sixty-two and the age of benefit commencement,  
26 the lesser of:

27 (i) The adjusted dollar limitation determined in accordance with  
28 subdivision (b) of this paragraph, determined without applying the  
29 limitations of section 415 of the internal revenue code.

30 (ii) The product of the dollar limitation under section 415(b)(1)(A)  
31 of the internal revenue code as adjusted in subsection A of this section,  
32 multiplied by the ratio of the annual amount of the immediately commencing  
33 straight life annuity under ASRS at the member's annuity starting date to the  
34 annual amount of the immediately commencing straight life annuity under ASRS  
35 at age sixty-two, determined without applying the limitations of section 415  
36 of the internal revenue code.

37 3. If the retirement benefit under ASRS commences after the member  
38 reaches sixty-five years of age, the dollar limitation under section  
39 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this  
40 section on that benefit is increased to:

41 (a) If the annuity starting date is in a limitation year beginning  
42 before July 1, 2007, the annual amount of a benefit payable in the form of a  
43 straight life annuity commencing at the member's annuity starting date that  
44 is the actuarial equivalent of the dollar limitation under section  
45 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code,

1 with actuarial equivalence computed using whichever of the following produces  
2 the smaller annual amount:

3 (i) The interest rate and mortality table or other tabular factor  
4 specified by the board for determining actuarial equivalence for delayed  
5 retirement purposes.

6 (ii) A five per cent interest rate assumption and the applicable  
7 mortality table.

8 (b) If the annuity starting date is in a limitation year beginning on  
9 or after July 1, 2007 and ASRS does not have an immediately commencing  
10 straight life annuity payable at both age sixty-five and the age of benefit  
11 commencement, the annual amount of a benefit payable in the form of a  
12 straight life annuity commencing at the member's annuity starting date that  
13 is the actuarial equivalent of the dollar limitation under section  
14 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this  
15 section, with actuarial equivalence computed using a five per cent interest  
16 rate assumption and the applicable mortality table and expressing the  
17 member's age based on completed calendar months as of the annuity starting  
18 date.

19 (c) If the annuity starting date is in a limitation year beginning on  
20 or after July 1, 2007 and ASRS has an immediately commencing straight life  
21 annuity payable at both age sixty-five and the age of benefit commencement,  
22 the lesser of:

23 (i) The adjusted dollar limitation determined in accordance with  
24 subdivision (b) of this paragraph, determined without applying the  
25 limitations of section 415 of the internal revenue code.

26 (ii) The product of the dollar limitation under section 415(b)(1)(A)  
27 of the internal revenue code as adjusted in subsection A of this section,  
28 multiplied by the ratio of the annual amount of the immediately commencing  
29 straight life annuity under ASRS at the member's annuity starting date to the  
30 annual amount of the immediately commencing straight life annuity under ASRS  
31 at age sixty-five, determined without applying the limitations of section 415  
32 of the internal revenue code.

33 4. For purposes of applying the limits of section 415 of the internal  
34 revenue code, a retirement benefit that is payable in any form other than a  
35 straight life annuity and that is not subject to section 417(e)(3) of the  
36 internal revenue code must be adjusted to an actuarially equivalent straight  
37 life annuity that equals either:

38 (a) For limitation years beginning on or after July 1, 2007, the  
39 greater of the annual amount of the straight life annuity, if any, payable  
40 under ASRS at the same annuity starting date, and the annual amount of a  
41 straight life annuity commencing at the same annuity starting date that has  
42 the same actuarial present value as the member's form of benefit computed  
43 using an interest rate of five per cent and the applicable mortality table  
44 under section 417(e)(3) of the internal revenue code.

45 (b) For limitation years beginning before July 1, 2007, the annual  
46 amount of a straight life annuity commencing at the same annuity starting

1 date that has the same actuarial present value as the member's form of  
2 benefit computed using whichever of the following produces the greater annual  
3 amount:

4 (i) The interest rate and mortality table or other tabular factor  
5 specified by the board for adjusting benefits in the same form.

6 (ii) A five per cent interest rate assumption and the applicable  
7 mortality table.

8 5. For the purpose of applying the limits of section 415 of the  
9 internal revenue code, a retirement benefit that is payable in any form other  
10 than a straight life annuity to which section 417(e)(3) of the internal  
11 revenue code would apply if that section of the internal revenue code were  
12 applicable to ASRS must be adjusted to an actuarially equivalent straight  
13 life annuity that equals:

14 (a) If the annuity starting date is in a plan year beginning on or  
15 after July 1, 2006, the annual amount of the straight life annuity commencing  
16 at the same annuity starting date that has the same actuarial present value  
17 as the member's form of benefit, using whichever of the following produces  
18 the greater annual amount:

19 (i) The interest rate and mortality table or other tabular factor  
20 specified by the board for adjusting benefits in the same form.

21 (ii) A five and one-half per cent interest rate assumption and the  
22 applicable mortality table.

23 (iii) The applicable interest rate under section 417(e)(3) of the  
24 internal revenue code and the applicable mortality table, divided by 1.05.  
25 THE STABILITY PERIOD DURING WHICH THE APPLICABLE INTEREST RATE REMAINS  
26 CONSTANT IS THE PLAN YEAR. THE LOOK-BACK MONTH THAT IS USED TO DETERMINE THE  
27 APPLICABLE INTEREST RATE DURING THE STABILITY PERIOD IS THE THIRD FULL  
28 CALENDAR MONTH PRECEDING THE FIRST DAY OF THE STABILITY PERIOD. FOR THE  
29 PURPOSES OF THIS ITEM, "APPLICABLE INTEREST RATE" MEANS THE ANNUAL INTEREST  
30 RATE ON THIRTY-YEAR TREASURY SECURITIES AS SPECIFIED BY THE COMMISSIONER OF  
31 THE UNITED STATES INTERNAL REVENUE SERVICE FOR A MONTH IN REVENUE RULINGS OR  
32 NOTICES OR ANOTHER GUIDANCE PUBLISHED BY THE COMMISSIONER IN THE INTERNAL  
33 REVENUE BULLETIN.

34 (b) If the annuity starting date is in a plan year beginning in July  
35 1, 2004 or July 1, 2005, the annual amount of the straight life annuity  
36 commencing at the same annuity starting date that has the same actuarial  
37 present value as the member's form of benefit payable, using whichever of the  
38 following produces the greater annual amount:

39 (i) The interest rate and mortality table or other tabular factor  
40 specified by the board for adjusting benefits in the same form.

41 (ii) A five and one-half per cent interest assumption and the  
42 applicable mortality table.

43 (c) If the annuity starting date is on or after July 1, 2004 and  
44 before December 31, 2004, and ASRS applies the transition rule in section  
45 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in  
46 subdivision (b) of this paragraph, the annual amount of the straight life

1 annuity commencing at the same annuity starting date that has the same  
2 actuarial present value as the member's form of benefit, determined in  
3 accordance with internal revenue service notice 2004-78.

4 6. When calculating the limitations of paragraph 4 or 5 of this  
5 subsection, the portion of any joint or survivor annuity that constitutes a  
6 qualified joint and survivor annuity as defined in section 417 of the  
7 internal revenue code shall be disregarded.

8 D. Subsection C, paragraphs 1 and 2 of this section do not apply to  
9 income received from ASRS as a pension, annuity or similar allowance as a  
10 result of the recipient becoming disabled by personal injury or sickness or  
11 to amounts received from ASRS by beneficiaries, survivors or the estate of a  
12 member as a result of the death of the member.

13 E. Notwithstanding any other provision of this section, the annual  
14 benefit payable under this article may be reduced to the extent necessary, as  
15 determined by the board, to prevent disqualification of ASRS under section  
16 415 of the internal revenue code that imposes additional limitations on the  
17 annual benefits payable to members who also may be participating in another  
18 tax qualified pension or savings plan of this state. An employer shall not  
19 provide employee retirement or deferred benefits if the benefits authorized  
20 by this section and as required by federal law result in the failure of ASRS  
21 to meet federal qualification standards as applied to public pension plans.  
22 The board shall advise affected members of any additional information  
23 concerning their annual benefits required by this subsection. All benefits  
24 payable pursuant to this subsection shall comply with the limitations of  
25 benefits contained in section 415 of the internal revenue code and the final  
26 treasury regulations issued under that section. Notwithstanding any  
27 provision of this article to the contrary, if the annual benefits within the  
28 meaning of section 415 of the internal revenue code for any member exceed the  
29 limits of section 415(b) of the internal revenue code and this section, ASRS  
30 may only correct the excess pursuant to the employee plans compliance  
31 resolution system prescribed in internal revenue service revenue procedure  
32 2008-50 or any future guidance by the internal revenue service, including the  
33 preamble of the final treasury regulations issued under section 415 of the  
34 internal revenue code.

35 F. If the maximum amount of benefit allowed under section 415 of the  
36 internal revenue code is increased after the commencement date of a member's  
37 benefit due to any cost of living adjustment announced by the United States  
38 secretary of the treasury pursuant to the provisions of section 415(d) of the  
39 internal revenue code, the amount of the monthly benefit payable under ASRS  
40 to a member whose benefit is restricted due to the provisions of section  
41 415(d) of the internal revenue code shall be increased by the board as of the  
42 date prescribed by the United States secretary of the treasury on which the  
43 increase shall become effective. The increase shall reflect the increase in  
44 the amount of retirement income that may be payable under this article as a  
45 result of the cost of living adjustment.

1 G. In determining the adjustments to the defined benefit dollar  
2 limitation authorized by subsection A of this section, the board shall  
3 prescribe a larger defined benefit dollar limitation if prescribed by the  
4 United States secretary of the treasury pursuant to section 415(d) of the  
5 internal revenue code. An adjustment to the defined benefit dollar  
6 limitation prescribed in subsection A of this section is not effective before  
7 the first calendar year for which the United States secretary of the treasury  
8 publishes the adjustment. After it is prescribed by the board, the new  
9 defined benefit dollar limitation applies to the limitation year ending with  
10 or within the calendar year for which the secretary of the treasury makes the  
11 adjustment.

12 H. For the purposes of the limitations prescribed by this section, all  
13 member and employer contributions made to ASRS to provide a member benefits  
14 pursuant to section 38-771 or 38-771.01 and all member contributions that are  
15 not treated as picked up by the employer under section 414(h)(2) of the  
16 internal revenue code shall be treated as made to a separate defined  
17 contribution plan.

18 I. On termination or partial termination of ASRS, the accrued benefit  
19 of each member is, as of the date of termination or partial termination,  
20 fully vested and nonforfeitable to the extent then funded.

21 J. If ASRS terminates, the benefit of any highly compensated employee  
22 as defined in section 414(q) of the internal revenue code and any highly  
23 compensated former employee is limited to a benefit that is nondiscriminatory  
24 under section 401(a)(4) of the internal revenue code and as follows:

25 1. Benefits distributed to any of the twenty-five active and former  
26 highly compensated employees with the greatest compensation in the current or  
27 any prior fiscal year are restricted so that the annual payments are no  
28 greater than an amount equal to the payment that would be made on behalf of  
29 the member under a straight life annuity that is the actuarial equivalent of  
30 the sum of the member's accrued benefit, the member's other benefits under  
31 ASRS, excluding a social security supplement as defined in 26 Code of Federal  
32 Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is  
33 entitled to receive under a social security supplement.

34 2. Paragraph 1 of this subsection does not apply if either:

35 (a) After payment of the benefit to a member described in paragraph 1  
36 of this subsection, the value of ASRS assets equals or exceeds one hundred  
37 ten per cent of the value of the current liabilities, as defined in section  
38 412(l)(7) of the internal revenue code, of ASRS.

39 (b) The value of the benefits for a member described in paragraph 1 of  
40 this subsection is less than one per cent of the value of the current  
41 liabilities, as defined in section 412(l)(7) of the internal revenue code, of  
42 ASRS before distribution.

43 (c) The value of the benefits payable by ASRS to a member described in  
44 paragraph 1 of this subsection does not exceed three thousand five hundred  
45 dollars.

1 K. For the purposes of subsection J of this section, "benefit"  
2 includes loans in excess of the amount prescribed in section 72(p)(2)(A) of  
3 the internal revenue code, any periodic income, any withdrawal values payable  
4 to a living member and any death benefits not provided for by insurance on  
5 the member's life.

6 L. On retirement of a member who was a retired member, who resumed  
7 active membership and who subsequently retires, the limitations of this  
8 section in effect on the member's subsequent retirement apply to the member's  
9 retirement benefit payable as recomputed pursuant to section 38-766. In  
10 addition, the sum of the present value of the member's recomputed retirement  
11 benefits plus the present value of the benefits the member received during  
12 the member's prior retirement shall not exceed the present value of the  
13 limitations in effect on the member's subsequent retirement. The limitations  
14 prescribed in this subsection shall not reduce a member's retirement benefit  
15 below the retirement benefit the member was receiving before the member  
16 resumed active membership. For the purposes of determining present value  
17 under this subsection, the board shall use the actuarial equivalent  
18 assumptions provided in section 38-711, paragraph 2.

19 M. For the purposes of this section:

20 1. The following adjustments shall be made to the definition of  
21 compensation prescribed in subsection 0 of this section:

22 (a) Compensation shall be adjusted for the types of compensation that  
23 are prescribed in this paragraph and that are paid after a member's severance  
24 from employment with an employer. Amounts described in subdivisions (b), (c)  
25 and (d) of this paragraph may be included only as compensation to the extent  
26 the amounts are paid by the later of two and one-half months after severance  
27 from employment or by the end of the limitation year that includes the date  
28 of the severance from employment. Any other payment of compensation paid  
29 after severance of employment that is not described in the types of  
30 compensation prescribed in this paragraph is not considered compensation for  
31 purposes of this section, even if payment is made within the time period  
32 prescribed in this subdivision.

33 (b) Compensation shall include regular pay after severance of  
34 employment if the payment is regular compensation for services performed  
35 during the member's regular working hours or compensation for services  
36 performed outside the member's regular working hours, such as overtime or  
37 shift differential, commission, bonus or other similar payments, and the  
38 payment would have been paid to the member before a severance from employment  
39 if the member had continued in employment with the employer.

40 (c) Leave cash-outs shall be included in compensation if those amounts  
41 would have been included in compensation if they were paid before the  
42 member's severance from employment and the amounts are payment for unused  
43 accrued bona fide sick, vacation or other leave, but only if the member would  
44 have been able to use the leave if employment had continued.

45 (d) Deferred compensation shall be included in compensation if the  
46 compensation would have been included in compensation if it had been paid

1 before the member's severance from employment and the compensation is  
2 received pursuant to a nonqualified unfunded deferred compensation plan, but  
3 only if the payment would have been paid at the same time if the member had  
4 continued in employment with the employer and only to the extent that the  
5 payment is includable in the member's gross income.

6 (e) Compensation does include payments to an individual who does not  
7 currently perform services for an employer by reason of qualified military  
8 service as defined in section 414(u)(5) of the internal revenue code to the  
9 extent those payments do not exceed the amounts the individual would have  
10 received if the individual had continued to perform services for the employer  
11 rather than entering qualified military service.

12 (f) Compensation does not include compensation paid to a member who is  
13 permanently and totally disabled as defined in section 22(e)(3) of the  
14 internal revenue code.

15 (g) Compensation shall include amounts that are includable in the  
16 gross income of a member as required by section 409A or section 457(f)(1)(A)  
17 of the internal revenue code or because the amounts are constructively  
18 received by the member.

19 2. Compensation for a limitation year shall not include amounts earned  
20 but not paid during the limitation year solely because of the timing of pay  
21 periods and pay dates.

22 3. Payments awarded by an administrative agency or court or pursuant  
23 to a bona fide agreement by an employer to compensate a member for lost wages  
24 are compensation for the limitation year to which the back pay relates, but  
25 only to the extent the payments represent wages and compensation that would  
26 otherwise be included in compensation under this section.

27 N. The definition of limitation year prescribed in subsection 0 of  
28 this section may only be changed by an amendment to subsection 0, except that  
29 if ASRS is terminated effective as of a date other than the last day of the  
30 limitation year, the termination shall be treated as if this section has been  
31 amended to change the definition of limitation year.

32 0. For the purposes of this section:

33 1. Annual additions shall be determined as provided in section 38-747,  
34 subsection 0.

35 2. "Annual benefit" means a benefit, including any portion of a  
36 member's retirement benefit payable to an alternate payee under a qualified  
37 domestic relations order that satisfies the requirements prescribed in  
38 section 414(p)(1)(A)(i) of the internal revenue code and section 38-773,  
39 payable annually in the form of a straight life annuity, disregarding the  
40 portion of a joint and survivor annuity that constitutes a qualified joint  
41 and survivor annuity as defined in section 417 of the internal revenue code,  
42 with no ancillary or incidental benefits or rollover contributions and  
43 excluding any portion of the benefit derived from member contributions or  
44 other contributions that are treated as a separate defined contribution plan  
45 under section 415 of the internal revenue code but including any of those  
46 contributions that are picked up by the employer under section 414(h) of the

1 internal revenue code, or that otherwise are not treated as a separate  
2 defined contribution plan. If the benefit is payable in another form, the  
3 determination as to whether the limitation described in subsection A of this  
4 section has been satisfied shall be made by the board by adjusting the  
5 benefit so that it is actuarially equivalent to the annual benefit described  
6 in this paragraph in accordance with the regulations promulgated by the  
7 United States secretary of the treasury. In addition, for determining the  
8 annual benefit attributable to member contributions, the factors described in  
9 section 411(c)(2)(B) of the internal revenue code and the regulations  
10 promulgated under the internal revenue code shall be used by the board  
11 regardless of whether section 411 of the internal revenue code applies to  
12 ASRS. The factors described in section 411(c)(2)(B) of the internal revenue  
13 code shall be those factors described under section 417(e)(3) of the internal  
14 revenue code and determined on the basis of the 417(e) mortality table and an  
15 interest rate as prescribed in subsection C, paragraph 5 of this section.

16 3. "Applicable mortality table" means the mortality table described in  
17 internal revenue service revenue ruling 2001-62.

18 4. "Compensation" means the member's earned income, wages, salaries,  
19 fees for professional service and other amounts received for personal  
20 services actually rendered in the course of employment with the employer and  
21 includes amounts described in sections 104(a)(3) and 105(a) of the internal  
22 revenue code, but only to the extent that these amounts are includable in the  
23 gross income of the member. Compensation also includes any elective deferral  
24 as defined in section 402(g)(3) of the internal revenue code and any amount  
25 that is contributed or deferred by an employer at the election of a member  
26 and that is not includable in the gross income of the member by reason of  
27 section 125, 132(f)(4) or 457 of the internal revenue code. Compensation  
28 does not mean:

29 (a) Employer contributions to a plan of deferred compensation to the  
30 extent the contributions are not included in the gross income of the employee  
31 for the taxable year in which contributed and any distributions from a plan  
32 of deferred compensation, regardless of whether the amounts are includable in  
33 gross income of the employee when distributed, except that any amount  
34 received by a member pursuant to an unfunded nonqualified plan may be  
35 considered as compensation for the purposes of this section in the year the  
36 amounts are includable in the gross income of the member under the internal  
37 revenue code.

38 (b) Other amounts that receive special tax benefits, such as premiums  
39 for group term life insurance, but only to the extent that the premiums are  
40 not includable in the gross income of the employee, qualified transportation  
41 fringe benefits as defined in section 132 of the internal revenue code and,  
42 effective for plan years beginning from and after December 31, 1987, any  
43 amounts under section 125 of the internal revenue code that are not available  
44 to a member in cash in lieu of group health coverage because the member is  
45 unable to certify that the member has other health coverage.

1           5. "Defined benefit dollar limitation" means the dollar limitation  
2 determined under subsection A of this section.

3           6. "Defined benefit plan" has the same meaning prescribed in section  
4 414(j) of the internal revenue code.

5           7. "Defined contribution plan" has the same meaning prescribed in  
6 section 414(i) of the internal revenue code.

7           8. "Limitation year" and "years of service" mean the fiscal year.

APPROVED BY THE GOVERNOR APRIL 23, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2014.