

REFERENCE TITLE: PSPRS; CORP; EORP; administration changes

State of Arizona
House of Representatives
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Second Regular Session
2016

HB 2643

Introduced by
Representative Olson

AN ACT

AMENDING SECTIONS 38-843.05, 38-847, 38-849 AND 38-891.01, ARIZONA REVISED
STATUTES; 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. Section 38-843.05, Arizona Revised Statutes, is amended to
3 read:

4 38-843.05. Retired members; return to work; employer
5 contributions

6 A. An employer shall pay contributions at an alternate contribution
7 rate on behalf of a retired member who returns to work in any capacity in a
8 position ordinarily filled by an employee of the employer of an eligible
9 group, unless the retired member is required to participate in another state
10 retirement system and the retired member returned to work before July
11 20, 2011. For the purposes of this subsection, "returns to work in any
12 capacity" includes a retired member who returns to work and is ineligible for
13 benefits pursuant to section 38-849, subsection E.

14 B. The alternate contribution rate shall be equal to that portion of
15 the INDIVIDUAL EMPLOYER'S total required contribution that is applied to the
16 amortization of the unfunded actuarial accrued liability for the fiscal year
17 beginning July 1, based on the system's actuary's calculation of the total
18 required contribution for the preceding fiscal year ended on June 30. The
19 alternate contribution rate shall be applied to the compensation, gross
20 salary or contract fee of a retired member who meets the requirements of this
21 section.

22 C. The alternate contribution rate shall not be less than eight ~~per~~
23 ~~cent~~ PERCENT in any fiscal year.

24 D. All contributions made by the employer and allocated to the fund
25 are irrevocable and shall be used as benefits under this article or to pay
26 the expenses of the system. Payments made pursuant to this section by
27 employers become delinquent after the due date prescribed in section 38-843,
28 subsection D, and thereafter shall be increased by interest from and after
29 that date until payment is received by the system.

30 E. An employer of a retired member shall immediately notify the local
31 board after the employment of a retired member and shall submit any reports,
32 data, paperwork or materials that are requested by the board or the local
33 board that are necessary to determine the compensation, gross salary or
34 contract fee associated with a retired member who returns to work or to
35 determine the function, use, efficacy or operation of the return to work
36 program.

37 Sec. 2. Section 38-847, Arizona Revised Statutes, is amended to read:

38 38-847. Local boards

39 A. The administration of the system and responsibility for making the
40 provisions of the system effective for each employer are vested in a local
41 board. The department of public safety, the Arizona game and fish
42 department, the department of emergency and military affairs, the university
43 of Arizona, Arizona state university, northern Arizona university, each
44 county sheriff's office, each county attorney's office, each county parks
45 department, each municipal fire department, each eligible fire district, each
46 community college district, each municipal police department, the department

1 of law, the department of liquor licenses and control, the Arizona department
2 of agriculture, the Arizona state parks board, each Indian reservation police
3 agency and each Indian reservation ~~fire fighting~~ FIREFIGHTING agency shall
4 have a local board. A nonprofit corporation operating pursuant to sections
5 28-8423 and 28-8424 shall have one local board for all of its members. Each
6 local board shall be constituted as follows:

7 1. For political subdivisions or Indian tribes, the mayor or chief
8 elected official or a designee of the mayor or chief elected official
9 approved by the respective governing body as chairman, two members elected by
10 secret ballot by members employed by the appropriate employer and two
11 citizens, one of whom shall be the head of the merit system, or the head's
12 designee from among the other members of the merit system, if it exists for
13 the group of members, appointed by the mayor or chief elected official and
14 with the approval of the governing body of the city or the governing body of
15 the employer. The appointed two citizens shall serve on both local boards in
16 a city or Indian tribes where both fire and police department employees are
17 members.

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

22 3. For fire districts ~~organized pursuant to section 48-804, the~~
23 ~~secretary-treasurer as chairman~~, THE CHAIRPERSON OF THE FIRE DISTRICT
24 GOVERNING BOARD OR THE CHAIRPERSON'S DESIGNEE, two members elected by secret
25 ballot by members employed by the fire district and two citizens appointed by
26 the ~~secretary-treasurer~~ CHAIRPERSON OF THE FIRE DISTRICT GOVERNING BOARD, one
27 of whom is a resident of the fire district and one of whom has experience in
28 personnel administration but who is not required to be a resident of the fire
29 district.

30 4. For joint powers authorities organized pursuant to section
31 48-805.01, the joint powers authority board chairman or a designee approved
32 by the governing body, two members elected by secret ballot by members
33 employed by the joint powers authority and two citizens, one of whom is a
34 resident of one of the partner entities and one of whom has experience in
35 personnel administration but who is not required to be a resident of a
36 partner entity.

37 B. On the taking effect of this system for an employer, the
38 appointments and elections of local board members shall take place with one
39 elective and appointive local board member serving a term ending two years
40 after the effective date of participation for the employer and other local
41 board members serving a term ending four years after the effective date.
42 Thereafter, every second year, and as a vacancy occurs, an office shall be
43 filled for a term of four years in the same manner as previously provided.

44 C. Each local board shall be fully constituted pursuant to subsection
45 A of this section within sixty days after the employer's effective date of
46 participation in the system. If the deadline is not met, on the written

1 request of any member who is covered by the local board or the employer to
2 the board of trustees, the board of trustees may appoint all vacancies of the
3 local board pursuant to subsection A of this section and designate whether
4 each appointive position is for a two year or four year term. If the board
5 of trustees cannot find individuals to serve on the local board who meet the
6 requirements of subsection A of this section, the board of trustees may
7 appoint individuals to serve as interim local board members until qualified
8 individuals are appointed or elected. Each local board shall meet at least
9 twice a year. Each member of a local board, within ten days after the
10 member's appointment or election, shall take an oath of office that, so far
11 as it devolves on the member, the member shall diligently and honestly
12 administer the affairs of the local board and that the member shall not
13 knowingly violate or willingly permit to be violated any of the provisions of
14 law applicable to the system.

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

17 1. To decide all questions of eligibility for membership, service
18 credits and benefits and determine the amount, manner and time of payment of
19 any benefits under the system.

20 2. To prescribe procedures to be followed by claimants in filing
21 applications for benefits.

22 3. To make a determination as to the right of any claimant to a
23 benefit and to afford any claimant or the board of trustees, or both, a right
24 to a rehearing on the original determination. Except as otherwise required
25 by law, unless all parties involved in a matter presented to the local board
26 for determination otherwise agree, the local board shall commence a hearing
27 on the matter within ninety days after the date the matter is presented to
28 the local board for determination. If a local board fails to commence a
29 hearing as provided in this paragraph, on a matter presented to the local
30 board for determination, the relief demanded by the party petitioning the
31 local board is deemed granted and approved by the local board. The granting
32 and approval of this relief is considered final and binding unless a timely
33 request for rehearing or appeal is made as provided in this article, unless
34 the board of trustees determines that granting the relief requested would
35 violate the internal revenue code or threaten to impair the system's status
36 as a qualified plan under the internal revenue code. If the board of
37 trustees determines that granting the requested relief would violate the
38 internal revenue code or threaten to impair the system's status as a
39 qualified plan, the board of trustees may refuse to grant the relief by
40 issuing a written determination to the local board and the party petitioning
41 the local board for relief. The decision by the board of trustees is subject
42 to judicial review pursuant to title 12, chapter 7, article 6.

43 4. To request and receive from the employers and from members such
44 information as is necessary for the proper administration of the system and
45 action on claims for eligibility for membership and benefits, and to forward
46 such information to the board of trustees.

1 5. To distribute, in such manner as the local board determines to be
2 appropriate, information explaining the system received from the board of
3 trustees.

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

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

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

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

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

14 E. A local board shall have no power to add to, subtract from, modify
15 or waive any of the terms of the system, change or add to any benefits
16 provided by the system or waive or fail to apply any requirement of
17 eligibility for membership or benefits under the system. Notwithstanding any
18 limitations periods imposed in this article, including subsection D,
19 paragraph 3 and subsections G and H of this section, if the board of trustees
20 determines a local board decision violates the internal revenue code or
21 threatens to impair the system's status as a qualified plan under the
22 internal revenue code, the local board's decision is not final and binding
23 and the board of trustees may refrain from implementing or complying with the
24 local board decision.

25 F. A local board, from time to time, shall establish and adopt such
26 rules as it deems necessary or desirable for its administration. All rules
27 and decisions of a local board shall be uniformly and consistently applied to
28 all members in similar circumstances. If a claim or dispute is presented to
29 a local board for determination but the local board has not yet adopted
30 uniform rules of procedure for adjudication of the claim or dispute, the
31 local board shall adopt and use the model uniform rules of local board
32 procedure that are issued by the board of trustees' fiduciary counsel to
33 adjudicate the claim or dispute.

34 G. Except as otherwise provided in this article, any action by a
35 majority vote of the members of a local board that is not inconsistent with
36 the provisions of the system and the internal revenue code shall be final,
37 conclusive and binding on all persons affected by it unless a timely
38 application for a rehearing or appeal is filed as provided in this article.
39 No later than twenty days after taking action, the local board shall submit
40 to the board of trustees the minutes from the local board meeting that
41 include the name of the member affected by its decision, a description of the
42 action taken and an explanation of the reasons and all documents submitted to
43 the local board for the action taken, including the reports of a medical
44 board. The board of trustees may not implement and comply with any local
45 board action that does not comply with the internal revenue code or that

1 threatens to jeopardize the system's status as a qualified plan under the
2 internal revenue code.

3 H. A claimant or the board of trustees may apply for a rehearing
4 before the local board within the time periods prescribed in this subsection,
5 except that if a decision of a local board violates the internal revenue code
6 or threatens to jeopardize the system's status as a qualified plan under the
7 internal revenue code, no limitation period for the board of trustees to seek
8 a rehearing of a local board decision applies. An application for a
9 rehearing shall be filed in writing with a member of the local board or its
10 secretary within sixty days after:

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

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

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

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

22 K. When making a ruling, determination or calculation, the local board
23 shall be entitled to rely on information furnished by the employer, a medical
24 board, the board of trustees, independent legal counsel or the actuary for
25 the system.

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

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

35 N. The fees of the medical board and of the local board's independent
36 legal counsel and all other expenses of the local board necessary for the
37 administration of the system shall be paid by the employer and not the board
38 of trustees or system at such rates and in such amounts as the local board
39 shall approve. Legal counsel that is employed by the local board is
40 independent of the employer and any employee organization or member and owes
41 its duty of loyalty only to the local board in connection with its
42 representation of the local board.

43 O. The local board shall issue directions to the board of trustees
44 concerning all benefits that are to be paid from the employer's account
45 pursuant to the provisions of the fund. The local board shall keep on file,

1 in such manner as it may deem convenient or proper, all reports from the
2 board of trustees and the actuary.

3 P. The local board and the individual members of the local board shall
4 be indemnified from the assets of the employer for any judgment against the
5 local board or its members, including attorney fees and costs, arising from
6 any act, or failure to act, made in good faith pursuant to the provisions of
7 the system, including expenses reasonably incurred in the defense of any
8 claim relating to the act or failure to act.

9 Sec. 3. Section 38-849, Arizona Revised Statutes, is amended to read:

10 38-849. Limitations on receiving pension; violation;
11 classification; reemployment after severance;
12 reinstatement of service credits; reemployment of
13 retired member or member with a disability;
14 definition

15 A. If a member is convicted of, or discharged because of, theft,
16 embezzlement, fraud or misappropriation of an employer's property or property
17 under the control of the employer, the member shall be subject to restitution
18 and fines imposed by a court of competent jurisdiction. The court may order
19 the restitution or fines to be paid from any payments otherwise payable to
20 the member from the retirement system.

21 B. A person who knowingly makes any false statement or who falsifies
22 or permits to be falsified any record of the system with an intent to defraud
23 the system is guilty of a class 5 felony. If any change or error in the
24 records results in any member or beneficiary receiving from the system more
25 or less than the member or beneficiary would have been entitled to receive
26 had the records been correct, the local board shall correct such error, and
27 as far as practicable shall adjust the payments in such manner that the
28 actuarial equivalent of the benefit to which such member or beneficiary was
29 correctly entitled shall be paid. If a member is convicted of a crime
30 specified in this subsection, section 13-713 applies.

31 C. If a member who received a severance refund on termination of
32 employment pursuant to section 38-846.02 becomes reemployed with the same
33 employer within two years after the former member's termination date, the
34 member may have forfeited credited service attributable to service rendered
35 during a prior period of service as an employee restored on satisfaction of
36 each of the following conditions:

37 1. The member files with the system a written application for
38 reinstatement of forfeited credited service within ninety days after again
39 becoming an employee.

40 2. The retirement fund is paid the total amount previously withdrawn
41 pursuant to section 38-846.02 plus compound interest from the date of
42 withdrawal to the date of repayment. Interest shall be computed at the rate
43 of nine ~~per cent~~ PERCENT for each year compounded each year from the date of
44 withdrawal to the date of repayment. Forfeited credited service shall not be
45 restored until complete payment is received by the fund.

1 3. The required payment is completed within one year after returning
2 to employee status.

3 D. If a member who received a severance refund on termination of
4 employment, as provided in section 38-846.02, is subsequently reemployed by
5 an employer, the member's prior service credits shall be cancelled and
6 service shall be credited only from the date the member's most recent
7 reemployment period commenced. However, a present active member of the
8 system who forfeited credited service, received a severance refund pursuant
9 to section 38-846.02 and becomes reemployed with the same employer two years
10 or more after the member's termination date or becomes reemployed with
11 another employer may elect to redeem any part of that forfeited credited
12 service by paying into the system any amounts required pursuant to this
13 subsection. A present active member who elects to redeem any part of
14 forfeited credited service for which the member is deemed eligible by the
15 board shall pay into the system the amounts previously paid or transferred to
16 the member as a severance refund plus an amount, computed by the system's
17 actuary that is necessary to equal the increase in the actuarial present
18 value of projected benefits resulting from the redemption calculated using
19 the actuarial methods and assumptions prescribed by the system's actuary. On
20 satisfaction of this obligation the member's prior service credits shall be
21 reinstated.

22 E. If a retired member becomes reemployed in any capacity by the
23 employer from which the member retired before one year from the date of
24 retirement or in the same position at any time following retirement:

25 1. The following apply:

26 (a) Within ten days after the retired member is reemployed, the local
27 board shall advise the system in writing of the retired member's
28 reemployment.

29 (b) The system shall not make pension payments to the retired member
30 during the period of reemployment.

31 (c) Employee contributions shall not be made on the retired member's
32 account, nor shall any service be credited during the period of reemployment.
33 On subsequent termination of employment by the retired member, the retired
34 member is entitled to receive a pension based on the member's service and
35 compensation before the date of the member's reemployment. The employer
36 shall pay the alternate contribution rate pursuant to section 38-843.05.

37 2. Paragraph 1, subdivisions (a) and (b) of this subsection do not
38 apply if either:

39 (a) The retired member becomes reemployed after sixty consecutive days
40 from the member's retirement date as a result of participating in an open
41 competitive new hire process for an entry level, nonsupervisory position,
42 except if the retired member is hired for the same position.

43 (b) The retired member is hired as a fire inspector or arson
44 investigator.

45 F. If a retired member is assigned voluntary duties acting as a
46 limited authority peace officer, pursuant to the Arizona peace officer

1 standards and training board rules, employee contributions shall not be made
2 on the retired member's account, and any service shall not be credited during
3 the period of reemployment. The employer shall not pay the alternate
4 contribution rate pursuant to section 38-843.05.

5 G. If after one year from the date of retirement a retired member
6 becomes reemployed by the employer from which the member retired in a
7 position other than the same position from which the member retired, employee
8 contributions shall not be made on the retired member's account, and any
9 service shall not be credited during the period of reemployment. The
10 employer shall pay the alternate contribution rate pursuant to section
11 38-843.05.

12 H. At any time following retirement, if the retired member becomes
13 employed by an employer, other than the employer from which the member
14 retired, in a position ordinarily filled by an employee of an eligible group,
15 employee contributions shall not be made on the retired member's account, and
16 any service shall not be credited during the period of reemployment. The
17 employer shall pay the alternate contribution rate pursuant to section
18 38-843.05.

19 I. If a member who retired under an accidental or ordinary disability
20 becomes reemployed as an employee of an eligible group, section 38-844
21 applies and a determination shall be made by the local board as to whether
22 subsection E, F, G or H of this section applies.

23 J. The local board shall review all reemployment determinations and
24 voluntary assignments as described in subsection F of this section. If the
25 local board or the system is not provided the necessary information required
26 by the system to make a reemployment determination, the local board and the
27 system shall suspend pension payments until information is received and a
28 determination is made regarding whether the reemployment meets the
29 requirements of subsection E, F, G, H or I of this section.

30 K. A person who defrauds the system or who takes, converts, steals or
31 embezzles monies owned by or from the system and who fails or refuses to
32 return the monies to the system on the board's written request is subject to
33 civil suit by the system in the superior court in Maricopa county. On entry
34 of an order finding the person has defrauded the system or taken, converted,
35 stolen or embezzled monies owned by or from the system, the court shall enter
36 an order against that person and for the system awarding the system all of
37 its costs and expenses of any kind, including attorney fees, that were
38 necessary to successfully prosecute the action. The court shall also grant
39 the system a judicial lien on all of the nonexempt property of the person
40 against whom judgment is entered pursuant to this subsection in an amount
41 equal to all amounts awarded to the system, plus interest at the rate
42 prescribed by section 44-1201, until all amounts owed are paid to the system.

43 L. Notwithstanding any other provision of this article, the board may
44 offset against any benefits otherwise payable by the system to an active or
45 retired member or survivor any court ordered amounts awarded to the board and
46 system and assessed against the member or survivor.

1 M. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A MEMBER WHO
2 RETIRES HAVING MET ALL OF THE QUALIFICATIONS FOR RETIREMENT AND WHO
3 SUBSEQUENTLY BECOMES AN ELECTED OFFICIAL, BY ELECTION OR APPOINTMENT, IS NOT
4 CONSIDERED REEMPLOYED BY THE SAME EMPLOYER.

5 ~~M.~~ N. For the purposes of this section, "same position" means a
6 position in which the member performs substantially similar duties that were
7 performed and exercises substantially similar authority that was exercised by
8 the retired member before retirement.

9 Sec. 4. Section 38-891.01, Arizona Revised Statutes, is amended to
10 read:

11 38-891.01. Retired member; return to work; employer
12 contributions

13 A. An employer shall pay contributions at an alternate contribution
14 rate on behalf of a retired member who returns to work in any capacity in a
15 position ordinarily filled by an employee of the employer in a designated
16 position. This section applies to a retired member who has been retired for
17 more than twelve consecutive months.

18 B. The alternate contribution rate shall be equal to that portion of
19 the **INDIVIDUAL EMPLOYER'S** total required contribution that is applied to the
20 amortization of the unfunded actuarial accrued liability for the fiscal year
21 beginning July 1, based on the fund's actuary's calculation of the total
22 required contribution for the preceding fiscal year ended on June 30. The
23 alternate contribution rate shall be applied to the compensation, gross
24 salary or contract fee of a retired member who meets the requirements of this
25 section.

26 C. The alternate contribution rate shall not be less than six ~~per cent~~
27 **PERCENT** in any fiscal year.

28 D. All contributions made by the employer and allocated to the fund
29 established by section 38-882 are irrevocable and shall be used as benefits
30 under this article or to pay the expenses of the plan. Payments made
31 pursuant to this section by employers become delinquent after the due date
32 prescribed in section 38-891, subsection C, and thereafter shall be increased
33 by interest from and after that date until payment is received by the plan.

34 E. An employer of a retired member shall submit any reports, data,
35 paperwork or materials that are requested by the board and that are necessary
36 to determine the compensation, gross salary or contract fee associated with a
37 retired member who returns to work or to determine the function, use,
38 efficacy or operation of the return to work program.