

REFERENCE TITLE: EORP; plan design

State of Arizona
House of Representatives
Fiftieth Legislature
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2011

HB 2198

Introduced by
Representative Robson

AN ACT

AMENDING SECTIONS 38-801, 38-805, 38-808, 38-810 AND 38-818, ARIZONA REVISED STATUTES; RELATING TO THE ELECTED OFFICIALS' RETIREMENT PLAN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-801, Arizona Revised Statutes, is amended to
3 read:

4 38-801. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accumulated contributions" means the sum of all member
7 contributions deducted from the member's salary pursuant to section 38-810,
8 subsection A plus the amount transferred to the fund on behalf of the member
9 plus the amount deposited in the fund pursuant to section 38-816.

10 2. "Actuarial equivalent" means equality in present value of the
11 aggregate amounts expected to be received under two different forms of
12 payment, based on mortality and interest assumptions adopted by the board.

13 3. "Alternate payee" means the spouse or former spouse of a
14 participant as designated in a domestic relations order.

15 4. "Alternate payee's portion" means benefits that are payable to an
16 alternate payee pursuant to a plan approved domestic relations order.

17 5. "Average yearly salary" means the result obtained by dividing the
18 total salary paid to an employee during a considered period by the number of
19 years, including fractional years, in which the salary was received. The
20 considered period shall be the ~~three~~ FIVE consecutive years within the last
21 ten completed years of credited service as an elected official that yield the
22 highest average. If an employee does not have ~~three~~ FIVE consecutive years
23 of credited service as an elected official, the considered period is the
24 employee's last consecutive period of employment with a plan employer
25 immediately before retirement.

26 6. "Board" means the board of trustees of the system.

27 7. "Credited service" means the number of whole and fractional years
28 of a member's service as an elected official after the elected official's
29 effective date of participation for which member and employer contributions
30 are on deposit with the fund, plus credited service transferred to the plan
31 from another retirement system or plan for public employees of this state,
32 plus service as an elected official before the elected official's effective
33 date of participation that is being funded pursuant to a joinder agreement
34 pursuant to section 38-810, subsection C and section 38-815 or service that
35 was redeemed pursuant to section 38-816. Credited service does not include
36 periods of service for which an active member is uncompensated by the
37 employer and for which no contributions to the plan are made.

38 8. "Cure period" means the ninety-day period in which a participant or
39 alternate payee may submit an amended domestic relations order and request a
40 determination, calculated from the time the plan issues a determination
41 finding that a previously submitted domestic relations order did not qualify
42 as a plan approved domestic relations order.

43 9. "Determination" means a written document that indicates to a
44 participant and alternate payee whether a domestic relations order qualifies
45 as a plan approved domestic relations order.

1 10. "Determination period" means the ninety-day period in which the
2 plan must review a domestic relations order that is submitted by a
3 participant or alternate payee to determine whether the domestic relations
4 order qualifies as a plan approved domestic relations order, calculated from
5 the time the plan mails a notice of receipt to the participant and alternate
6 payee.

7 11. "Direct rollover" means a payment by the plan to an eligible
8 retirement plan that is specified by the distributee.

9 12. "Distributee" means a member, a member's surviving spouse or a
10 member's spouse or former spouse who is the alternate payee under a plan
11 approved domestic relations order.

12 13. "Domestic relations order" means an order of a court of this state
13 that is made pursuant to the domestic relations laws of this state and that
14 creates or recognizes the existence of an alternate payee's right to, or
15 assigns to an alternate payee the right to, receive a portion of the benefits
16 payable to a participant.

17 14. "Effective date of participation" means August 7, 1985, except with
18 respect to employers and their elected officials whose contributions to the
19 plan commence after that date, in which case the effective date of their
20 participation in the plan is specified in the applicable joinder agreement.

21 15. "Elected official" means:

22 (a) Every elected official of this state.

23 (b) Every elected official of each county of this state.

24 (c) Every justice of the supreme court, every judge of the court of
25 appeals, every judge of the superior court and every full-time superior court
26 commissioner, except full-time superior court commissioners who failed to
27 make a timely election of membership under the judges' retirement plan,
28 repealed on August 7, 1985.

29 (d) The administrator of the board if the administrator is a natural
30 person.

31 (e) Each elected official of an incorporated city or town whose
32 employer has executed a proper joinder agreement for coverage of its elected
33 officials.

34 16. "Eligible child" means an unmarried child of a deceased active or
35 retired member who meets one of the following qualifications:

36 (a) Is under eighteen years of age.

37 (b) Is at least eighteen years of age and under twenty-three years of
38 age only during any period that the child is a full-time student.

39 (c) Is under a disability that began before the child attained
40 twenty-three years of age and remains a dependent of the surviving spouse or
41 guardian.

42 17. "Eligible retirement plan" means any of the following that accepts
43 a distributee's eligible rollover distribution:

44 (a) An individual retirement account described in section 408(a) of
45 the internal revenue code.

1 (b) An individual retirement annuity described in section 408(b) of
2 the internal revenue code.

3 (c) An annuity plan described in section 403(a) of the internal
4 revenue code.

5 (d) A qualified trust described in section 401(a) of the internal
6 revenue code.

7 (e) An annuity contract described in section 403(b) of the internal
8 revenue code.

9 (f) An eligible deferred compensation plan described in section 457(b)
10 of the internal revenue code that is maintained by a state, a political
11 subdivision of a state or any agency or instrumentality of a state or a
12 political subdivision of a state and that agrees to separately account for
13 amounts transferred into the eligible deferred compensation plan from this
14 plan.

15 18. "Eligible rollover distribution" means a payment to a distributee,
16 but does not include any of the following:

17 (a) Any distribution that is one of a series of substantially equal
18 periodic payments made not less frequently than annually for the life or life
19 expectancy of the member or the joint lives or joint life expectancies of the
20 member and the member's beneficiary or for a specified period of ten years or
21 more.

22 (b) Any distribution to the extent the distribution is required under
23 section 401(a)(9) of the internal revenue code.

24 (c) The portion of any distribution that is not includable in gross
25 income.

26 19. "Employer" means a department, agency or political subdivision of
27 this state that makes employer contributions to the plan pursuant to section
28 38-810 on behalf of an elected official who participates in the plan.

29 20. "Fund" means the elected officials' retirement plan fund.

30 21. "Notice of receipt" means a written document that is issued by the
31 plan to a participant and alternate payee and that states that the plan has
32 received a domestic relations order and a request for a determination that
33 the domestic relations order is a plan approved domestic relations order.

34 22. "Participant" means a member who is subject to a domestic relations
35 order.

36 23. "Participant's portion" means benefits that are payable to a
37 participant pursuant to a plan approved domestic relations order.

38 24. "Pension" means a series of monthly payments to a person who is
39 entitled to receive benefits under the plan.

40 25. "Personal representative" means the personal representative of a
41 deceased alternate payee.

42 26. "Plan" means the elected officials' retirement plan.

43 27. "Plan approved domestic relations order" means a domestic relations
44 order that the plan approves as meeting all the requirements for a plan
45 approved domestic relations order as otherwise prescribed in this article.

1 28. "Retired member" means a person who is being paid a pension based
2 on the person's credited service as a member of the plan.

3 29. "Segregated funds" means the amount of benefits that would
4 currently be payable to an alternate payee pursuant to a domestic relations
5 order under review by the plan, or a domestic relations order submitted to
6 the plan that failed to qualify as a plan approved domestic relations order,
7 if the domestic relations order were determined to be a plan approved
8 domestic relations order.

9 30. "System" means the public safety personnel retirement system.

10 Sec. 2. Section 38-805, Arizona Revised Statutes, is amended to read:

11 38-805. Normal retirement and early retirement pensions

12 A. A member ~~WHO BECOMES AN ELECTED OFFICIAL BEFORE THE EFFECTIVE DATE~~
13 ~~OF THIS AMENDMENT TO THIS SECTION AND~~ who ceases to hold office is eligible
14 for a normal retirement pension, if the member satisfies one of the following
15 requirements:

16 1. Has attained age sixty-five with five or more years of credited
17 service.

18 2. Has attained age sixty-two with ten or more years of credited
19 service.

20 3. Has twenty or more years of credited service.

21 B. ~~A MEMBER WHO BECOMES AN ELECTED OFFICIAL ON OR AFTER THE EFFECTIVE~~
22 ~~DATE OF THIS AMENDMENT TO THIS SECTION AND WHO CEASES TO HOLD OFFICE IS~~
23 ~~ELIGIBLE FOR A NORMAL RETIREMENT PENSION, IF THE MEMBER SATISFIES ONE OF THE~~
24 ~~FOLLOWING REQUIREMENTS:~~

25 1. ~~HAS ATTAINED AGE SIXTY-FIVE WITH FIVE OR MORE YEARS OF CREDITED~~
26 ~~SERVICE.~~

27 2. ~~HAS ATTAINED AGE SIXTY-TWO WITH TEN OR MORE YEARS OF CREDITED~~
28 ~~SERVICE.~~

29 ~~B-~~ C. A member who has at least five years of credited service and
30 ~~WHO~~ ceases to hold office as an elected official may take early retirement.

31 ~~C-~~ D. On normal or early retirement, a retired member shall receive a
32 pension computed pursuant to section 38-808, subsection B until the member's
33 death.

34 Sec. 3. Section 38-808, Arizona Revised Statutes, is amended to read:

35 38-808. Pension payments; computation of amounts; termination

36 A. Plan retirement commences on the first day of the month following
37 the date of the member's retirement or death. Pension payments shall be
38 received on or about the first day of the month next following the member's
39 plan retirement. The last pension payment shall be made as of the last day
40 of the month in which the death of the retired member or the surviving spouse
41 or minor children occurs. Pension payments shall not be made in advance.

42 B. The monthly pension shall be equal to one-twelfth of the following
43 amount:

1 1. Four per cent of the member's average yearly salary multiplied by
2 the member's credited service, not to exceed eighty per cent of the member's
3 average yearly salary. This amount shall be reduced if the member takes
4 early retirement pursuant to section 38-805, subsection ~~B~~ C. The amount of
5 reduction is three-twelfths of one per cent for each month the retired
6 member's early retirement age precedes the member's normal retirement age
7 pursuant to section 38-805, subsection A OR B, except that the reduction
8 shall not be more than thirty per cent.

9 2. A member who meets the requirements for a disability retirement
10 pension shall receive a disability pension equal to four per cent of the
11 member's average yearly salary multiplied by twenty years of credited service
12 if the member has ten or more years of credited service, four per cent of the
13 member's average yearly salary multiplied by ten years of credited service if
14 the member has five or more years of credited service but fewer than ten
15 years of credited service or four per cent of the member's average yearly
16 salary multiplied by five years of credited service if the member has fewer
17 than five years of credited service.

18 C. The plan shall make payments pursuant to section 401(a)(9) of the
19 internal revenue code and the regulations that are issued under that section.
20 Notwithstanding any other provision of this plan, beginning January 1, 1987
21 payment of benefits to a member shall commence no later than April 1 of the
22 calendar year following the later of:

23 1. The calendar year in which the member attains seventy and one-half
24 years of age.

25 2. The date the member terminates employment.

26 D. If all pension payments terminate before an amount equal to the
27 member's accumulated contributions has been paid, the difference between the
28 member's accumulated contributions and the aggregate amount of pension
29 payments shall be paid to the person or persons and in such shares as
30 designated by the retired member in writing and filed with the board. If the
31 designated person or persons do not survive the retired member, the
32 difference shall be paid to the estate of the retired member.

33 Sec. 4. Section 38-810, Arizona Revised Statutes, is amended to read:

34 38-810. Contributions

35 A. Each member shall contribute to the fund an amount equal to ~~seven~~
36 ~~per cent of the member's gross salary~~ THE AMOUNT PRESCRIBED IN SUBSECTION F
37 OF THIS SECTION. Contributions of members shall be made by payroll
38 deductions. Every member is deemed to consent to these deductions. Payment
39 of a member's compensation, less these payroll deductions, constitutes a full
40 and complete discharge and satisfaction of all claims and demands by the
41 member relating to remuneration for the member's services rendered during the
42 period covered by the payment, except with respect to the benefits provided
43 under the plan.

1 B. The board's office shall be credited monthly with monies collected
 2 pursuant to section 12-119.01, subsection B, paragraph 2, section 12-120.31,
 3 subsection D, paragraph 2, section 12-284.03, subsection A, paragraph 6,
 4 section 22-281, subsection C, paragraph 3 and section 41-178. The monies
 5 credited to the fund pursuant to this subsection shall be deposited in the
 6 fund on a monthly basis, and there shall be a complete accounting of the
 7 determination of these monies deposited in the fund.

8 C. As determined by actuarial valuations performed by the plan's
 9 actuary, each employer shall make level per cent compensation contributions
 10 sufficient under the actuarial valuation to meet both the normal cost plus
 11 the actuarially determined amount required to amortize the unfunded accrued
 12 liability over, beginning July 1, 2005, a rolling period of at least twenty
 13 and not more than thirty years that is established by the board taking into
 14 account the recommendation of the plan's actuary, except that, beginning with
 15 fiscal year 2006-2007, the employer contribution rate shall not be less than
 16 ten per cent of salary. The monies deposited in the fund pursuant to
 17 subsection B of this section shall be used to reduce the contributions
 18 required of state and county employers only. Employers that entered the plan
 19 under a joinder agreement shall also contribute an amount equal to the
 20 unfunded accrued liability for that employer. The unfunded liability for
 21 each new employer shall be actuarially determined by the plan's actuary as of
 22 the effective date of participation of each employer and shall be payable on
 23 the effective date of participation. The minimum employer contribution that
 24 is paid and that is in excess of the normal cost plus the actuarially
 25 determined amount required to amortize the unfunded accrued liability as
 26 calculated pursuant to this subsection shall be used to reduce future
 27 employer contribution increases and shall not be used to pay for an increase
 28 in benefits that are otherwise payable to members. The board shall
 29 separately account for these monies in the fund. After the close of any
 30 fiscal year, if the plan's actuary determines that the actuarial valuation of
 31 the fund contains excess valuation assets and is more than one hundred per
 32 cent funded, the board shall account for fifty per cent of the excess
 33 valuation assets in a stabilization reserve account. After the close of any
 34 fiscal year, if the plan's actuary determines that the actuarial valuation of
 35 the fund has a valuation asset deficiency and an unfunded actuarial accrued
 36 liability, the board shall use any valuation assets in the stabilization
 37 reserve account, to the extent available, to limit the decline in the fund's
 38 funding ratio to not more than two per cent.

39 D. The department of administration and the treasurer of each county
 40 and participating city and town shall transfer to the board the contributions
 41 provided for in subsections A and C of this section within ten working days
 42 after each payroll date. The state, county treasurers and clerks of the
 43 superior court shall transfer the monies credited under subsection B of this
 44 section to the board on or before the fifteenth day of each calendar month
 45 that follows the month in which the court fees were collected. Contributions

1 and monies credited under subsection B of this section and transferred after
2 these dates shall include a penalty equal to ten per cent a year, compounded
3 annually, for each day that the contributions or monies credited under
4 subsection B of this section are late. Delinquent payments due under this
5 subsection, together with interest charges as provided in this subsection and
6 court costs, may be recovered by action in a court of competent jurisdiction
7 against the person or persons responsible for the payments or, at the request
8 of the board, may be deducted from any other monies, including excise revenue
9 taxes, payable to a political subdivision by any department or agency of this
10 state. If requested by the board, the state, county treasurers or clerks of
11 the superior court shall transfer the monies credited under subsection B of
12 this section, in an amount determined by the board, directly to the qualified
13 governmental excess benefit arrangement established pursuant to section
14 38-803.01.

15 E. The employer shall pay the member contributions required of members
16 on account of compensation earned after August 7, 1985. The paid
17 contributions shall be treated as employer contributions for the purpose of
18 determining tax treatment under the United States internal revenue code. The
19 effective date of the employer payment shall not be before the date the
20 retirement plan has received notification from the United States internal
21 revenue service that pursuant to section 414(h) of the United States internal
22 revenue code the member contributions paid will not be included in gross
23 income for income tax purposes until the paid contributions are distributed
24 by refund or pension payments. The employer shall pay the member
25 contributions from monies established and available in the retirement
26 deduction account, which monies would otherwise have been designated as
27 member contributions and paid to the retirement plan. Member contributions
28 paid pursuant to this subsection shall be treated for all other purposes, in
29 the same manner and to the same extent, as member contributions made before
30 August 7, 1985.

31 F. THE AMOUNT CONTRIBUTED BY A MEMBER PURSUANT TO SUBSECTION A OF THIS
32 SECTION IS:

- 33 1. THROUGH JUNE 30, 2011, SEVEN PER CENT OF THE MEMBER'S GROSS SALARY.
- 34 2. FOR FISCAL YEAR 2011-2012, EIGHT PER CENT OF THE MEMBER'S GROSS
35 SALARY.
- 36 3. FOR FISCAL YEAR 2012-2013, NINE PER CENT OF THE MEMBER'S GROSS
37 SALARY.
- 38 4. FOR FISCAL YEAR 2013-2014, TEN PER CENT OF THE MEMBER'S GROSS
39 SALARY.
- 40 5. FOR FISCAL YEAR 2014-2015 AND EACH FISCAL YEAR THEREAFTER, ELEVEN
41 PER CENT OF THE MEMBER'S GROSS SALARY.

42 G. FOR FISCAL YEARS 2011-2012, 2012-2013, 2013-2014 AND 2014-2015, THE
43 AMOUNT OF THE MEMBER'S CONTRIBUTION THAT EXCEEDS SEVEN PER CENT OF THE
44 MEMBER'S COMPENSATION SHALL NOT BE USED TO REDUCE THE EMPLOYER'S CONTRIBUTION
45 THAT IS CALCULATED PURSUANT TO SUBSECTION C OF THIS SECTION.

1 Sec. 5. Section 38-818, Arizona Revised Statutes, is amended to read:
2 38-818. Benefit increases: definition
3 A. Effective July 1 of each year, each retired member or survivor of a
4 retired member is entitled to receive a permanent increase in the base
5 benefit equal to the amount determined pursuant to this section if either:
6 1. The retired member or survivor of a retired member was receiving
7 benefits on or before July 31 of the two previous years.
8 2. The retired member or survivor of a retired member was fifty-five
9 years of age or older on July 1 of the current year and was receiving
10 benefits on or before July 31 of the previous year.
11 B. The monthly amount of a permanent increase provided by subsection A
12 is determined as follows:
13 1. Determine the excess investment earnings on the actuarial present
14 value of pensions in payment status.
15 2. Determine the actuarial present value, as of June 30 of the
16 preceding calendar year, of a one-half of one per cent per month increase in
17 the amount of each pension eligible for an increase.
18 3. Divide the amount determined in paragraph 1 of this subsection by
19 the amount determined in paragraph 2 of this subsection.
20 4. From the quotient obtained in paragraph 3 of this subsection, drop
21 any fraction.
22 5. Multiply the number obtained in paragraph 4 of this subsection by
23 one-half of one per cent.
24 C. The excess investment earnings of pensions in payment status are
25 equal to the actuarial present value of pensions in payment status multiplied
26 by the ~~positive difference, if any, between the total return of the plan and~~
27 ~~nine per cent~~ EXCESS INVESTMENT EARNINGS AMOUNT. The excess investment
28 earnings on pensions in payment status are zero if the total return of the
29 plan is less than or equal to nine per cent.
30 D. As used in this section: ~~—~~
31 1. Total return and the actuarial present value of pensions in payment
32 status are the amounts published in the annual report of the plan for the
33 fiscal year ending June 30 of the calendar year preceding the July 1 of the
34 increase.
35 2. THE RATIO OF THE MARKET VALUE OF ASSETS TO THE ACTUARIAL ACCRUED
36 LIABILITY OF THE FUND IS THE NUMBER DETERMINED BY THE ADMINISTRATOR FOR THE
37 FISCAL YEAR ENDING JUNE 30 OF THE CALENDAR YEAR PRECEDING THE JULY 1 OF THE
38 INCREASE.
39 E. All excess investment earnings on pensions in payment status are
40 available for benefit increases as provided in this section. Any excess
41 investment earnings on pensions in payment status from any year ~~which~~ THAT
42 are not used for benefit adjustments for that year are available for future
43 benefit increases in the following years. Earnings on the excess investment
44 earnings on pensions in payment status account balance at the rate of the
45 total return as published in the annual report of the plan shall be added

1 each year to the excess investment earnings on pensions in payment status
2 account balance and shall be available for future benefit increases.

3 F. The maximum benefit increase under this section is limited to four
4 per cent of the benefit being received on the preceding June 30.

5 G. FOR THE PURPOSES OF THIS SECTION, "EXCESS INVESTMENT EARNINGS
6 AMOUNT" MEANS:

7 1. IF THE RATIO OF THE MARKET VALUE OF ASSETS TO THE ACTUARIAL ACCRUED
8 LIABILITY OF THE FUND IS SEVENTY PER CENT OR LESS, ZERO.

9 2. IF THE RATIO OF THE MARKET VALUE OF ASSETS TO THE ACTUARIAL ACCRUED
10 LIABILITY OF THE FUND IS MORE THAN SEVENTY PER CENT BUT LESS THAN EIGHTY PER
11 CENT, ONE-QUARTER OF THE POSITIVE DIFFERENCE, IF ANY, BETWEEN THE TOTAL
12 RETURN OF THE PLAN AND NINE PER CENT.

13 3. IF THE RATIO OF THE MARKET VALUE OF ASSETS TO THE ACTUARIAL ACCRUED
14 LIABILITY OF THE FUND IS EIGHTY PER CENT OR MORE, ONE-HALF OF THE POSITIVE
15 DIFFERENCE, IF ANY, BETWEEN THE TOTAL RETURN OF THE PLAN AND NINE PER CENT.

16 Sec. 6. Retroactivity

17 Sections 38-810 and 38-818, Arizona Revised Statutes, as amended by
18 this act, apply retroactively to from and after June 29, 2011.