

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

# HOUSE BILL 2562

## AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 38-716. Employers' responsibilities under the system

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

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

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

12 3. ATTEND THE ASRS ANNUAL TRAINING CONFERENCE.

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

15 38-728. Eligibility determinations; employee enrollment

16 A. FOR AN EMPLOYEE HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS  
17 SECTION, IF AN EMPLOYER DISAGREES WITH A WRITTEN DETERMINATION MADE BY THE  
18 STATE SOCIAL SECURITY SECTION 218 ADMINISTRATOR OF THE EMPLOYEE'S INCLUSION  
19 UNDER AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD  
20 AGE AND SURVIVORS INSURANCE SYSTEM OR THE APPLICATION OR USE OF THAT WRITTEN  
21 DETERMINATION BY ASRS FOR ASRS MEMBERSHIP, THE EMPLOYER SHALL ENROLL THE  
22 EMPLOYEE PURSUANT TO SECTION 38-956 IN THE PLAN ESTABLISHED BY ASRS PURSUANT  
23 TO SECTION 38-955 DURING THE SOCIAL SECURITY ADMINISTRATION OR ASRS  
24 ADMINISTRATIVE APPEALS PROCESS, UNLESS THE EMPLOYEE HAS ENTERED INTO AN  
25 AGREEMENT WITH THE EMPLOYER THAT REQUIRES PARTICIPATION IN AN ALTERNATIVE  
26 RETIREMENT PLAN OR FOR OTHER COMPENSATION PROVIDED IN LIEU OF RETIREMENT  
27 BENEFITS. IF THE EMPLOYEE IS DETERMINED:

28 1. TO BE ELIGIBLE FOR ASRS, THE EMPLOYER SHALL ENROLL THE EMPLOYEE IN  
29 ASRS AND SECTION 38-738 APPLIES.

30 2. TO BE NOT ELIGIBLE FOR ASRS AND IS PARTICIPATING PURSUANT TO  
31 SECTION 38-956 IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955,  
32 THE EMPLOYEE SHALL CONTINUE PARTICIPATION IN THAT PLAN.

33 3. TO BE NOT ELIGIBLE FOR ASRS AND THE EMPLOYER HAS OPTED NOT TO  
34 PROVIDE COVERAGE UNDER SECTION 38-956, SUBSECTION B, THE RETIRED EMPLOYEE IS  
35 ENTITLED TO THE ASSETS IN THE EMPLOYEE'S ANNUITY ACCOUNT AND EARNINGS ON  
36 THOSE CONTRIBUTIONS ARE IMMEDIATELY VESTED.

37 B. FOR AN EMPLOYEE WHO IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS  
38 SECTION, IF AN EMPLOYER DISAGREES WITH A WRITTEN DETERMINATION MADE BY THE  
39 STATE SOCIAL SECURITY SECTION 218 ADMINISTRATOR OF THE EMPLOYEE'S INCLUSION  
40 UNDER AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD  
41 AGE AND SURVIVORS INSURANCE SYSTEM OR THE APPLICATION OR USE OF THAT WRITTEN  
42 DETERMINATION BY ASRS FOR ASRS MEMBERSHIP AND THE EMPLOYEE IS ENROLLED IN  
43 ASRS, THE FOLLOWING SHALL OCCUR:

44 1. THE EMPLOYEE'S ASRS ACCOUNT SHALL BE SUSPENDED, ADDITIONAL  
45 CONTRIBUTIONS SHALL NOT BE COLLECTED OR PERMITTED AND SERVICE CREDIT SHALL

1 NOT BE APPLIED DURING THE SOCIAL SECURITY ADMINISTRATION OR ASRS  
2 ADMINISTRATIVE APPEALS PROCESS.

3 2. THE EMPLOYEE SHALL BE ENROLLED PURSUANT TO SECTION 38-956 IN THE  
4 PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955, UNLESS THE EMPLOYEE HAS  
5 ENTERED INTO AN AGREEMENT WITH THE EMPLOYER THAT REQUIRES PARTICIPATION IN AN  
6 ALTERNATIVE RETIREMENT PLAN OR FOR OTHER COMPENSATION PROVIDED IN LIEU OF  
7 RETIREMENT BENEFITS.

8 3. IF THE EMPLOYEE IS DETERMINED ELIGIBLE FOR ASRS, THE EMPLOYEE SHALL  
9 BE ENROLLED IN ASRS AND SECTION 38-738 APPLIES.

10 4. IF THE EMPLOYEE IS DETERMINED INELIGIBLE FOR ASRS AND IS  
11 PARTICIPATING IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955, THE  
12 EMPLOYEE SHALL CONTINUE PARTICIPATION PURSUANT TO SECTION 38-956 IN THE PLAN  
13 ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955.

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

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

17 38-797. Definitions

18 In this article, unless the context otherwise requires:

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

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

22 3. "Board" means the ASRS board established pursuant to section  
23 38-713.

24 4. "Compensation" has the same meaning prescribed in section 38-711.

25 5. "Depository" means a bank in which the monies of the LTD program  
26 are deposited and collateralized as provided by law.

27 6. "Employer" has the same meaning prescribed in section 38-711.

28 7. "Employer contributions" means all amounts paid into the LTD  
29 program by an employer.

30 8. "Fiscal year" has the same meaning prescribed in section 38-711.

31 9. "LTD program" means the long-term disability program established by  
32 this article.

33 10. "Member":

34 (a) Has the same meaning prescribed in section 38-711.

35 (b) INCLUDES AN EMPLOYEE DESCRIBED IN SECTION 38-956.

36 11. "Monthly compensation" means one-twelfth of a member's annual  
37 compensation paid and payable in the fiscal year during which a member  
38 becomes disabled.

39 12. "Normal retirement date":

40 (a) Has the same meaning prescribed in section 38-711 FOR MEMBERS  
41 ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER.

42 (b) MEANS SIXTY-FIVE YEARS OF AGE FOR MEMBERS ELIGIBLE PURSUANT TO  
43 SECTION 38-956.

1           13. "Political subdivision" has the same meaning prescribed in section  
2 38-711.

3           14. "State" has the same meaning prescribed in section 38-711.

4           Sec. 4. Section 38-797.07, Arizona Revised Statutes, is amended to  
5 read:

6           38-797.07. LTD program benefits; limitations; definitions

7           A. The LTD program is subject to the following limitations:

8           1. Except as provided in paragraph 9 of this subsection, monthly LTD  
9 program benefits shall not exceed two-thirds of a member's monthly  
10 compensation at the time disability commences, reduced by:

11           (a) For a member whose disability commences before July 1, 2008,  
12 sixty-four per cent of social security disability benefits that the member  
13 and the member's dependents are eligible to receive.

14           (b) For a member whose disability commences on or after July 1, 2008,  
15 eighty-five per cent of social security disability benefits that the member  
16 and the member's dependents are eligible to receive, but not including:

17           (i) The amount of attorney fees approved pursuant to social security  
18 administration rules and reasonable documented costs paid to an attorney to  
19 secure that disability benefit.

20           (ii) Any cost-of-living adjustments that are granted after the member  
21 commences benefits under this section.

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

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

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

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

32           (i) The veteran's disability payment is for the same condition or a  
33 condition related to the condition currently causing the member's total  
34 disability.

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

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

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

44           2. For a member whose disability commences on or after ~~the effective~~  
45 ~~date of this amendment to this section~~ AUGUST 2, 2012, a member's monthly

1 income from the monthly LTD program benefits and sources listed in paragraph  
2 1 of this subsection shall not exceed one hundred per cent of the member's  
3 monthly compensation at the time disability commences. ASRS shall offset the  
4 member's monthly LTD program benefits by the amount necessary to reduce the  
5 member's total monthly income to meet the limit prescribed in this paragraph.

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

8 4. Monthly LTD program benefits are not payable to a member who files  
9 an initial claim for disability more than twelve months after the date of the  
10 member's date of disability unless the member demonstrates to ASRS good cause  
11 for not filing the initial claim within twelve months after the date of  
12 disability.

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

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

17 (a) An intentionally self-inflicted injury.

18 (b) War, whether declared or not.

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

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

26 (i) Has been an active member of an employer for twelve continuous  
27 months.

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

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

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

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

38 (b) The date the member:

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

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

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

3 (d) The later of the following:

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

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

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

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

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

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

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

20 10. Members are eligible to receive the LTD program benefits and  
21 payments described in paragraph 1 of this subsection, and the reductions  
22 provided by paragraph 1 of this subsection apply even though the social  
23 security benefits are not actually paid as follows:

24 (a) For primary and dependent social security benefits, the members  
25 are eligible for the social security benefits until the social security  
26 benefits are actually awarded, or if the social security benefits are denied,  
27 until the member pursues the social security appeal process through a hearing  
28 before a social security administrative law judge or until the insurance  
29 company or claims administrator determines that the member is not eligible  
30 for social security benefits.

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

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

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

41 (b) For a member who has received monthly LTD program benefits for  
42 twenty-four months within a five-year period, the member is unable to perform  
43 any work for compensation or gain for which the member is reasonably  
44 qualified by education, training or experience in an amount at least equal to

1 the scheduled LTD program benefits prescribed in paragraph 1 of this  
2 subsection.

3 B. A member WHO IS ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER AND  
4 who receives monthly LTD program benefits is entitled to receive service  
5 credit pursuant to article 2 of this chapter from the time disability  
6 commences until LTD program benefits cease to be payable, except that for a  
7 member who receives monthly LTD program benefits on or after June 30, 1999  
8 the number of years of service credited to the member's retirement account  
9 during the period the member receives LTD program benefit payments shall not  
10 cause the member's total credited service for retirement benefits to exceed  
11 the greater of thirty years or the total years of service credited to the  
12 member's retirement account on the commencement of disability.

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

20 D. ASRS may suspend or terminate benefits under this article if a  
21 member fails to provide information, data, paperwork or other materials that  
22 are requested by ASRS or the insurance company or claims administrator that  
23 is selected by the board to administer the LTD program. If the member  
24 provides the information requested, ASRS shall retroactively reinstate the  
25 benefits or claim for which the member qualifies under this article.

26 E. For the purposes of this section:

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

32 2. "Received medical treatment" means that the member consulted with  
33 or received the advice of a licensed medical or dental practitioner,  
34 including advice given during a routine examination, and it includes  
35 situations in which the member received medical or dental care, treatment or  
36 services, including the taking of drugs, medication, insulin or similar  
37 substances.

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

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

42 38-847. Local boards

43 A. The administration of the system and responsibility for making the  
44 provisions of the system effective for each employer are vested in a local  
45 board. The department of public safety, the Arizona game and fish

1 department, the department of emergency and military affairs, the university  
2 of Arizona, Arizona state university, northern Arizona university, each  
3 county sheriff's office, each county attorney's office, each county parks  
4 department, each municipal fire department, each eligible fire district, each  
5 community college district, each municipal police department, the department  
6 of law, the department of liquor licenses and control, the Arizona department  
7 of agriculture, the Arizona state parks board, each Indian reservation police  
8 agency and each Indian reservation fire fighting agency shall have a local  
9 board. A nonprofit corporation operating pursuant to sections 28-8423 and  
10 28-8424 shall have one local board for all of its members. Each local board  
11 shall be constituted as follows:

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

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

27 3. For fire districts organized pursuant to section 48-804, the  
28 secretary-treasurer as chairman, two members elected by secret ballot by  
29 members employed by the fire district and two citizens appointed by the  
30 secretary-treasurer, one of whom is a resident of the fire district and one  
31 of whom has experience in personnel administration but who is not required to  
32 be a resident of the fire district.

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

40 C. Each local board shall be fully constituted pursuant to subsection  
41 A of this section within sixty days after the employer's effective date of  
42 participation in the system. If the deadline is not met, on the written  
43 request of any member who is covered by the local board or the employer to  
44 the board of trustees, the board of trustees may appoint all vacancies of the  
45 local board pursuant to subsection A of this section and designate whether



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

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

14 1. To decide all questions of eligibility ~~and~~ FOR MEMBERSHIP, service  
15 credits, ~~AND BENEFITS~~ and determine the amount, manner and time of payment  
16 of any benefits under the system.

17 2. To prescribe procedures to be followed by claimants in filing  
18 applications for benefits.

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

40 4. To request and receive from the employers and from members such  
41 information as is necessary for the proper administration of the system and  
42 action on claims for ELIGIBILITY FOR MEMBERSHIP AND benefits, and to forward  
43 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.

1           0. The local board shall issue directions to the board of trustees  
2 concerning all benefits that are to be paid from the employer's account  
3 pursuant to the provisions of the fund. The local board shall keep on file,  
4 in such manner as it may deem convenient or proper, all reports from the  
5 board of trustees and the actuary.

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

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

14           38-847.01. Membership in retirement plan; eligibility

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

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

- 21           1. THE DATE THE EMPLOYEE WAS HIRED OR APPOINTED TO THE POSITION.
- 22           2. THE EMPLOYEE'S POSITION TITLE.
- 23           3. A DESCRIPTION OF THE ESSENTIAL FUNCTIONS FOR THE POSITION.

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

26           Sec. 7. Heading change

27           The article heading of title 38, chapter 5, article 8, Arizona Revised  
28 Statutes, is changed from "SUPPLEMENTAL DEFINED CONTRIBUTION PLANS" to  
29 "DEFINED CONTRIBUTION PLANS".

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

31           38-951. Definitions

32           In this article, unless the context otherwise requires:

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

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

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

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

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

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

44           (e) An optional retirement program established pursuant to section  
45 15-1451 or 15-1628.

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

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

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

8           38-955. Defined contribution plan; establishment;  
9           administration

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

13           B. THE ARIZONA STATE RETIREMENT SYSTEM BOARD MAY:

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

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

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

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

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

23           C. NOTWITHSTANDING TITLE 41, CHAPTER 23, THE ARIZONA STATE RETIREMENT  
24 SYSTEM BOARD MAY EMPLOY THE SERVICES OF THE THIRD-PARTY ADMINISTRATOR THAT IS  
25 CONTRACTED ON THE EFFECTIVE DATE OF THIS SECTION TO ADMINISTER THE  
26 SUPPLEMENTAL DEFINED CONTRIBUTION PLAN PURSUANT TO THIS ARTICLE TO ALSO  
27 ADMINISTER THE DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THIS SECTION  
28 UNTIL THE END OF THE CURRENT CONTRACT. ON EXPIRATION OF THAT CONTRACT, THE  
29 ARIZONA STATE RETIREMENT SYSTEM BOARD SHALL PARTICIPATE IN A COMPETITIVE BID  
30 PROCESS AT LEAST ONCE EVERY FIVE YEARS TO CONTRACT WITH A PRIVATE PERSON OR  
31 ANY QUALIFIED COMPANY OR COMPANIES TO ADMINISTER THE DEFINED CONTRIBUTION  
32 PLAN ESTABLISHED PURSUANT TO THIS SECTION.

33           D. THE DEFINED CONTRIBUTION PLAN SHALL BE DESIGNED TO BE A QUALIFIED  
34 GOVERNMENTAL PLAN UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE. THE  
35 LEGISLATURE INTENDS THAT THE DEFINED CONTRIBUTION PLAN IS A QUALIFIED PLAN  
36 UNDER SECTION 401 OF THE INTERNAL REVENUE CODE, AS AMENDED, OR SUCCESSOR  
37 PROVISIONS OF LAW, AND THAT THE PLAN IS EXEMPT FROM TAXATION UNDER SECTION  
38 501 OF THE INTERNAL REVENUE CODE. THE BOARD MAY ADOPT ANY ADDITIONAL  
39 PROVISIONS TO THE PLAN THAT ARE NECESSARY TO FULFILL THIS INTENT.

40           E. ALTHOUGH DESIGNATED AS EMPLOYEE CONTRIBUTIONS, ALL EMPLOYEE  
41 CONTRIBUTIONS MADE TO THE PLAN SHALL BE PICKED UP AND PAID BY THE EMPLOYER IN  
42 LIEU OF CONTRIBUTIONS BY THE EMPLOYEE. THE CONTRIBUTIONS PICKED UP BY AN  
43 EMPLOYER MAY BE MADE THROUGH A REDUCTION IN THE EMPLOYEE'S COMPENSATION OR AN  
44 OFFSET AGAINST FUTURE COMPENSATION INCREASES, OR A COMBINATION OF BOTH. AN  
45 EMPLOYEE PARTICIPATING IN THE PLAN DOES NOT HAVE THE OPTION OF CHOOSING TO

1 RECEIVE THE CONTRIBUTED AMOUNTS DIRECTLY INSTEAD OF THE EMPLOYER PAYING THE  
2 AMOUNTS TO THE PLAN. IT IS INTENDED THAT ALL EMPLOYEE CONTRIBUTIONS THAT ARE  
3 PICKED UP BY THE EMPLOYER AS PROVIDED IN THIS SUBSECTION SHALL BE TREATED AS  
4 EMPLOYER CONTRIBUTIONS UNDER SECTION 414(h) OF THE INTERNAL REVENUE CODE,  
5 SHALL BE EXCLUDED FROM EMPLOYEES' GROSS INCOME FOR FEDERAL AND STATE INCOME  
6 TAX PURPOSES AND ARE INCLUDABLE IN THE GROSS INCOME OF THE EMPLOYEES OR THEIR  
7 BENEFICIARIES ONLY IN THE TAXABLE YEAR IN WHICH THEY ARE DISTRIBUTED.

8 38-956. Defined contribution plan; eligibility; contribution;  
9 vesting

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

14 1. THE EMPLOYEE IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS  
15 SECTION.

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

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

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

25 5. THE EMPLOYEE HAS NOT ENTERED INTO AN AGREEMENT WITH THE EMPLOYER  
26 THAT REQUIRES PARTICIPATION IN AN ALTERNATIVE RETIREMENT PLAN OR FOR OTHER  
27 COMPENSATION PROVIDED IN LIEU OF RETIREMENT BENEFITS.

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

32 C. EACH EMPLOYEE SHALL CONTRIBUTE ONE-HALF OF THE TOTAL ASRS NORMAL  
33 COST PLUS ONE AND ONE-HALF PER CENT OF THE EMPLOYEE'S COMPENSATION, AS  
34 DEFINED IN SECTION 38-711, BY SALARY REDUCTION THAT SHALL BE DEPOSITED IN THE  
35 EMPLOYEE'S ANNUITY ACCOUNT. EACH EMPLOYER SHALL CONTRIBUTE ONE-HALF OF THE  
36 TOTAL ASRS NORMAL COST PLUS ONE AND ONE-HALF PER CENT OF THE EMPLOYEE'S  
37 COMPENSATION, AS DEFINED IN SECTION 38-711, THAT SHALL BE DEPOSITED IN THE  
38 EMPLOYEE'S ANNUITY ACCOUNT. EMPLOYEE AND EMPLOYER CONTRIBUTIONS AND EARNINGS  
39 ON THOSE CONTRIBUTIONS ARE IMMEDIATELY VESTED.

40 D. EACH EMPLOYEE AND EMPLOYER SHALL ALSO CONTRIBUTE TO THE LONG-TERM  
41 DISABILITY PROGRAM PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER. AN EMPLOYEE MAY  
42 RECEIVE BENEFITS PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER IF THE EMPLOYEE  
43 BECOMES TOTALLY DISABLED.

1           Sec. 10. Appropriation: ASRS: exemption

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

5           1. One FTE position and \$72,400 for personal services.

6           2. \$430,000 for professional services.

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