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

HB 2653

Introduced by
Representatives Mitchell: Kwasman, Lesko, Livingston, Montenegro,
Petersen, Seel, Thorpe

AN ACT

AMENDING SECTION 38-727, ARIZONA REVISED STATUTES: AMENDING TITLE 38, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.2; RELATING TO THE ARIZONA STATE DEFINED CONTRIBUTION RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-727, Arizona Revised Statutes, is amended to read:

38-727. Eligibility; options

The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article who as a result of state service or service for the political subdivision are included in agreements providing for their coverage under the federal old age and survivors insurance system are subject to this article, except that membership is not mandatory:
   (a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.
   (b) For a state elected official who is subject to term limits, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this section.
   (c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

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

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

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

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

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

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

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

7. A state elected official who is subject to term limits and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS BUT ONLY IF THE STATE ELECTED OFFICIAL WAS ELECTED BEFORE JANUARY 1, 2014. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. Every full-time superior court commissioner who is appointed on or after July 1 of the first fiscal year after the social security administration approves the inclusion of superior court commissioners on this state's section 218 agreement is a member of ASRS and is subject to this article.

9. Before July 1, 2015 JANUARY 1, 2014, a person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in
writing and file the election with ASRS within thirty days of employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

10. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER JANUARY 1, 2014 ARE INELIGIBLE FOR MEMBERSHIP IN ASRS.

Sec. 2. Title 38, chapter 5, Arizona Revised Statutes, is amended by adding article 2.2, to read:

ARTICLE 2.2. ARIZONA STATE DEFINED CONTRIBUTION RETIREMENT SYSTEM

38-798. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "ANNUITY ACCOUNT" MEANS AN ACCOUNT THAT IS ESTABLISHED FOR EACH MEMBER TO RECORD THE DEPOSIT OF MEMBER CONTRIBUTIONS AND EMPLOYER CONTRIBUTIONS AND INTEREST, DIVIDENDS OR OTHER ACCUMULATIONS CREDITED ON BEHALF OF THE MEMBER.
2. "ASRS" MEANS THE ARIZONA STATE RETIREMENT SYSTEM THAT IS ESTABLISHED BY ARTICLE 2 OF THIS CHAPTER.
3. "BOARD" MEANS THE ASRS BOARD THAT IS ESTABLISHED BY SECTION 38-713.
4. "COMPENSATION" MEANS THE FULL COMPENSATION ACTUALLY RECEIVED BY A MEMBER FOR SERVICE WHETHER OR NOT PART OF THE COMPENSATION IS RECEIVED FROM MONIES OTHER THAN THOSE PROVIDED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.
5. "DEFINED CONTRIBUTION SYSTEM" MEANS THE ARIZONA STATE DEFINED CONTRIBUTION RETIREMENT SYSTEM ESTABLISHED BY THIS ARTICLE.
6. "EMPLOYER" MEANS:
   (a) THIS STATE.
   (b) POLITICAL SUBDIVISIONS OF THIS STATE THAT ARE PARTICIPATING IN ASRS ON THE EFFECTIVE DATE OF THIS ARTICLE.
7. "EMPLOYER CONTRIBUTION" MEANS AN AMOUNT DEPOSITED IN A MEMBER'S INDIVIDUAL ANNUITY ACCOUNT ON A PERIODIC BASIS COINCIDING WITH THE EMPLOYEE'S REGULAR PAY PERIOD BY AN EMPLOYER FROM THE EMPLOYER'S OWN MONIES.
8. "EXISTING EMPLOYER" MEANS ANY EMPLOYER WHO EMPLOYED OR EMPLOYS A MEMBER OF THE EXISTING RETIREMENT SYSTEM.
9. "EXISTING RETIREMENT SYSTEM" MEANS THE DEFINED BENEFIT PROGRAM THAT IS ESTABLISHED BY ARTICLE 2 OF THIS CHAPTER.
10. "MEMBER":
   (a) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER JANUARY 1, 2014, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHO ARE ENGAGED TO WORK AT LEAST TWENTY WEEKS IN EACH FISCAL YEAR AND AT LEAST TWENTY HOURS EACH WEEK.
(b) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER JANUARY 1, 2014, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHOSE WORK FOR MORE THAN ONE EMPLOYER TOTALS AT LEAST TWENTY WEEKS IN A FISCAL YEAR AND AT LEAST TWENTY HOURS EACH WEEK AND INCLUDES WORK PROVIDED ON A PART-TIME BASIS TO AN EMPLOYER WHO IS NOT THE FULL-TIME EMPLOYER OF THE EMPLOYEE.

(c) MEANS ANY PERSON RECEIVING A BENEFIT UNDER THIS ARTICLE.

(d) DOES NOT INCLUDE ANY EMPLOYEE OF AN EMPLOYER WHO IS HIRED ON OR AFTER JANUARY 1, 2014, WHO IS OTHERWISE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHO BEGINS SERVICE IN A LIMITED APPOINTMENT FOR NOT MORE THAN EIGHTEEN MONTHS. IF THE EMPLOYMENT EXCEEDS EIGHTEEN MONTHS, THE EMPLOYEE SHALL BE COVERED BY THE DEFINED CONTRIBUTION SYSTEM AS OF THE BEGINNING OF THE NINETEENTH MONTH OF EMPLOYMENT. IN ORDER TO BE EXCLUDED UNDER THIS SUBDIVISION, CLASSIFICATIONS OF EMPLOYEES DESIGNATED BY EMPLOYERS AS LIMITED APPOINTMENTS MUST BE APPROVED BY THE BOARD.

11. “MEMBER CONTRIBUTION” MEANS AN AMOUNT REDUCED FROM THE MEMBER’S REGULAR PAY AND DEPOSITED IN THE MEMBER’S INDIVIDUAL ANNUITY ACCOUNT IN THE DEFINED CONTRIBUTION SYSTEM.

12. “RETIREMENT” MEANS A MEMBER’S WITHDRAWAL FROM THE ACTIVE EMPLOYMENT OF AN EMPLOYER AND COMPLETION OF ALL CONDITIONS PRECEDENT TO RETIREMENT.

38-798.01. Defined contribution system; purpose

A. THE ARIZONA STATE DEFINED CONTRIBUTION RETIREMENT SYSTEM IS ESTABLISHED TO PROVIDE FOR THE SECURE, FAIR AND ORDERLY RETIREMENT OF EMPLOYEES OF THIS STATE AND POLITICAL SUBDIVISIONS OF THIS STATE.

B. THE PURPOSE OF THIS ARTICLE IS TO PROVIDE A DEFINED CONTRIBUTION RETIREMENT PROGRAM THAT IS FULLY FUNDED ON A CURRENT BASIS FROM EMPLOYER AND EMPLOYEE CONTRIBUTIONS.

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

38-798.02. Participation in defined contribution system; limited participation in existing retirement system

A. BEGINNING JANUARY 1, 2014, THE DEFINED CONTRIBUTION SYSTEM IS THE SINGLE RETIREMENT PROGRAM FOR ALL NEW EMPLOYEES WHOSE EMPLOYMENT BEGINS ON OR AFTER THAT DATE. NO ADDITIONAL NEW EMPLOYEES EXCEPT AS MAY BE PROVIDED IN THIS SECTION MAY BE ADMITTED TO THE EXISTING RETIREMENT SYSTEM. MEMBERS OF THE EXISTING RETIREMENT SYSTEM WHOSE EMPLOYMENT CONTINUES BEYOND JANUARY 1, 2014 ARE NOT AFFECTED BY THIS ARTICLE AND ARE ENTITLED TO CONTINUE TO CONTRIBUTE AND PARTICIPATE IN THE EXISTING RETIREMENT SYSTEM WITHOUT A CHANGE IN PROVISIONS OR BENEFITS. EMPLOYEES WHO QUALIFY AS MEMBERS UNDER THIS
ARTICLE SHALL BE ENROLLED IN THE DEFINED CONTRIBUTION SYSTEM ESTABLISHED BY ASRS PURSUANT TO SECTION 38-952.

B. NOTWITHSTANDING ARTICLE 2 OF THIS CHAPTER, ANY EMPLOYEE WHOSE EMPLOYMENT TERMINATES AFTER DECEMBER 31, 2013 AND WHO IS LATER REEMPLOYED BY AN EMPLOYER IS ELIGIBLE FOR MEMBERSHIP ONLY IN THE DEFINED CONTRIBUTION SYSTEM, EXCEPT THAT IF REEMPLOYMENT WITH AN EXISTING EMPLOYER OCCURS NOT MORE THAN SIX MONTHS AFTER THE EMPLOYEE’S PREVIOUS EMPLOYMENT AND THE EMPLOYEE HAS NOT WITHDRAWN CONTRIBUTIONS FROM THE EXISTING RETIREMENT SYSTEM, THE EMPLOYEE IS ENTITLED TO READMISSION TO THE EXISTING RETIREMENT SYSTEM.

C. AN EMPLOYEE WHOSE EMPLOYMENT WITH AN EMPLOYER OR AN EXISTING EMPLOYER IS SUSPENDED AS A RESULT OF AN APPROVED LEAVE OF ABSENCE IS ELIGIBLE FOR READMISSION TO THE EXISTING RETIREMENT SYSTEM IN WHICH THE EMPLOYEE WAS A MEMBER.

D. THE BOARD SHALL RESOLVE ANY QUESTION THAT EXISTS REGARDING READMISSION TO MEMBERSHIP IN THE EXISTING RETIREMENT SYSTEM.

38-798.03. Voluntary participation in defined contribution system

A. ON WRITTEN ELECTION ON OR AFTER JANUARY 1, 2014, A MEMBER OF THE EXISTING RETIREMENT SYSTEM MAY VOLUNTARILY ELECT MEMBERSHIP IN THE DEFINED CONTRIBUTION SYSTEM ON A PROSPECTIVE BASIS UNDER EITHER OF THE FOLLOWING:

1. ALL BENEFITS EARNED BY THE MEMBER UNDER THE EXISTING RETIREMENT SYSTEM BEFORE A VOLUNTARY ELECTION BY THE MEMBER SHALL BE FROZEN AND MADE AVAILABLE TO THAT MEMBER ON RETIREMENT AS PROVIDED BY THE EXISTING RETIREMENT SYSTEM. FOR THE PURPOSES OF THIS PARAGRAPH, "FROZEN" MEANS THAT THE MEMBER'S COMPENSATION AND CREDITED SERVICE AND ANY OTHER FACTOR USED TO DETERMINE BENEFITS SHALL BE CALCULATED AS OF THE DATE THE MEMBER ELECTED MEMBERSHIP IN THE DEFINED CONTRIBUTION SYSTEM, AND AFTER THAT DATE AN INCREASE IN COMPENSATION OR CREDITED SERVICE OR ANY OTHER FACTOR MAY NOT BE USED TO INCREASE THE MEMBER'S RETIREMENT BENEFIT ABOVE THE RETIREMENT BENEFIT THE MEMBER WOULD HAVE RECEIVED IF THE MEMBER HAD RETIRED ON THE DATE THE ELECTION WAS MADE.

2. WITHDRAWAL OF THE MEMBER'S CONTRIBUTIONS TO THE EXISTING RETIREMENT SYSTEM PLUS EMPLOYER CONTRIBUTIONS AND INTEREST ON THOSE CONTRIBUTIONS AS DETERMINED PURSUANT TO SECTION 38-740 AS IF THE MEMBER IS TERMINATING EMPLOYMENT AND DEPOSIT OF THAT WITHDRAWN AMOUNT IN THE DEFINED CONTRIBUTION SYSTEM.


C. THE BOARD SHALL ALLOW AN ELECTION UNDER THIS SECTION ON A RETROACTIVE BASIS TO JANUARY 1, 2014.
D. AFTER A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP IN THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO THIS SECTION, THE MEMBER MAY NOT CHANGE THE ELECTION OR AGAIN BECOME A MEMBER OF THE EXISTING RETIREMENT SYSTEM.

38-798.04. Member and employer contributions; vesting
A. EACH EMPLOYEE WHO IS A MEMBER OF THE DEFINED CONTRIBUTION SYSTEM SHALL CONTRIBUTE A PRESCRIBED AMOUNT OF THE EMPLOYEE’S GROSS COMPENSATION, WHICH SHALL BE A PERCENTAGE OF THE EMPLOYEE’S GROSS COMPENSATION, A FIXED DOLLAR AMOUNT, AN AMOUNT PRESCRIBED IN THE PLAN OR SOME OTHER DEFINITIVE AMOUNT THAT MAY NOT BE MODIFIED OR REVOKED BY THE EMPLOYEE. THE EMPLOYEE’S CONTRIBUTION SHALL BE MADE BY SALARY REDUCTION THAT SHALL BE DEPOSITED IN THE EMPLOYEE’S ANNUITY ACCOUNT.
B. EACH PARTICIPATING EMPLOYER SHALL ANNUALLY MAKE A CONTRIBUTION EQUAL TO ONE HUNDRED PER CENT OF EACH MEMBER’S CONTRIBUTION, EXCEPT THAT THE EMPLOYER’S CONTRIBUTION SHALL NOT BE MORE THAN FIVE PER CENT OF EACH MEMBER’S GROSS COMPENSATION. THE PRO RATA SHARE OF THIS AMOUNT SHALL BE PAID ON EACH DATE THAT A MEMBER CONTRIBUTION IS MADE AND SHALL BE REMITTED FOR CREDIT TO THE MEMBER’S ANNUITY ACCOUNT.
C. EACH PARTICIPATING EMPLOYER HAS A FIDUCIARY DUTY TO ITS EMPLOYEES TO ENSURE THAT THE EMPLOYER CONTRIBUTIONS ARE MADE IN A TIMELY MANNER.
D. MEMBER CONTRIBUTIONS AND EARNINGS ON THOSE CONTRIBUTIONS ARE IMMEDIATELY VESTED. EMPLOYER CONTRIBUTIONS SHALL VEST PURSUANT TO SECTION 38-954.

38-798.05. Amount of annuity payments