

REFERENCE TITLE: defined contribution retirement system

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)

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

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

4 38-727. Eligibility: options

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

7 1. All employees and officers of this state and all officers and
8 employees of political subdivisions establishing a retirement plan
9 administered by the board pursuant to this article who as a result of state
10 service or service for the political subdivision are included in agreements
11 providing for their coverage under the federal old age and survivors
12 insurance system are subject to this article, except that membership is not
13 mandatory:

14 (a) On the part of any employee who is eligible and who elects to
15 participate in the optional retirement programs established by the Arizona
16 board of regents pursuant to the authority conferred by section 15-1628 or by
17 a community college district board pursuant to authority conferred by section
18 15-1451.

19 (b) For a state elected official who is subject to term limits, who is
20 eligible for participation in ASRS because the state elected official elected
21 not to participate in the elected officials' retirement plan as provided in
22 section 38-804, subsection A and who elects not to participate in ASRS as
23 provided in paragraph 7 of this section.

24 (c) On the part of any employee or officer who is eligible to
25 participate and who participates in the elected officials' retirement plan
26 pursuant to article 3 of this chapter, the public safety personnel retirement
27 system pursuant to article 4 of this chapter or the corrections officer
28 retirement plan pursuant to article 6 of this chapter.

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

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

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

44 5. Notwithstanding other provisions of this section, a temporary
45 employee of the legislature whose projected term of employment is for not

1 more than six months is ineligible for membership in ASRS. ~~If the employment~~
2 ~~continues beyond six successive months, the employee may elect to either:~~

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

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

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

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

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

40 9. Before ~~July 1, 2015~~ **JANUARY 1, 2014**, a person may elect not to
41 participate in ASRS if the person becomes employed by an employer after the
42 person has attained at least sixty-five years of age, is not an active
43 member, inactive member, retired member or receiving benefits pursuant to
44 article 2.1 of this chapter and does not have any credited service or prior
45 service in ASRS. The employee shall make the election not to participate in

1 writing and file the election with ASRS within thirty days of employment.
2 The election not to participate is irrevocable for the remainder of the
3 person's employment for which the person made the election and constitutes a
4 waiver of all benefits provided by the Arizona state retirement system. The
5 period the person works is not eligible for purchase under section 38-743 or
6 38-744.

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

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

12 ARTICLE 2.2. ARIZONA STATE DEFINED
13 CONTRIBUTION RETIREMENT SYSTEM

14 38-798. Definitions

15 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

16 1. "ANNUITY ACCOUNT" MEANS AN ACCOUNT THAT IS ESTABLISHED FOR EACH
17 MEMBER TO RECORD THE DEPOSIT OF MEMBER CONTRIBUTIONS AND EMPLOYER
18 CONTRIBUTIONS AND INTEREST, DIVIDENDS OR OTHER ACCUMULATIONS CREDITED ON
19 BEHALF OF THE MEMBER.

20 2. "ASRS" MEANS THE ARIZONA STATE RETIREMENT SYSTEM THAT IS
21 ESTABLISHED BY ARTICLE 2 OF THIS CHAPTER.

22 3. "BOARD" MEANS THE ASRS BOARD THAT IS ESTABLISHED BY SECTION 38-713.

23 4. "COMPENSATION" MEANS THE FULL COMPENSATION ACTUALLY RECEIVED BY A
24 MEMBER FOR SERVICE WHETHER OR NOT PART OF THE COMPENSATION IS RECEIVED FROM
25 MONIES OTHER THAN THOSE PROVIDED BY THIS STATE OR A POLITICAL SUBDIVISION OF
26 THIS STATE.

27 5. "DEFINED CONTRIBUTION SYSTEM" MEANS THE ARIZONA STATE DEFINED
28 CONTRIBUTION RETIREMENT SYSTEM ESTABLISHED BY THIS ARTICLE.

29 6. "EMPLOYER" MEANS:

30 (a) THIS STATE.

31 (b) POLITICAL SUBDIVISIONS OF THIS STATE THAT ARE PARTICIPATING IN
32 ASRS ON THE EFFECTIVE DATE OF THIS ARTICLE.

33 7. "EMPLOYER CONTRIBUTION" MEANS AN AMOUNT DEPOSITED IN A MEMBER'S
34 INDIVIDUAL ANNUITY ACCOUNT ON A PERIODIC BASIS COINCIDING WITH THE EMPLOYEE'S
35 REGULAR PAY PERIOD BY AN EMPLOYER FROM THE EMPLOYER'S OWN MONIES.

36 8. "EXISTING EMPLOYER" MEANS ANY EMPLOYER WHO EMPLOYED OR EMPLOYS A
37 MEMBER OF THE EXISTING RETIREMENT SYSTEM.

38 9. "EXISTING RETIREMENT SYSTEM" MEANS THE DEFINED BENEFIT PROGRAM THAT
39 IS ESTABLISHED BY ARTICLE 2 OF THIS CHAPTER.

40 10. "MEMBER":

41 (a) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER
42 JANUARY 1, 2014, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHO ARE
43 ENGAGED TO WORK AT LEAST TWENTY WEEKS IN EACH FISCAL YEAR AND AT LEAST TWENTY
44 HOURS EACH WEEK.

1 (b) MEANS ALL EMPLOYEES OF AN EMPLOYER WHO ARE HIRED ON OR AFTER
2 JANUARY 1, 2014, WHO ARE ELIGIBLE PURSUANT TO THIS ARTICLE AND WHOSE WORK FOR
3 MORE THAN ONE EMPLOYER TOTALS AT LEAST TWENTY WEEKS IN A FISCAL YEAR AND AT
4 LEAST TWENTY HOURS EACH WEEK AND INCLUDES WORK PROVIDED ON A PART-TIME BASIS
5 TO AN EMPLOYER WHO IS NOT THE FULL-TIME EMPLOYER OF THE EMPLOYEE.

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

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

15 11. "MEMBER CONTRIBUTION" MEANS AN AMOUNT REDUCED FROM THE MEMBER'S
16 REGULAR PAY AND DEPOSITED IN THE MEMBER'S INDIVIDUAL ANNUITY ACCOUNT IN THE
17 DEFINED CONTRIBUTION SYSTEM.

18 12. "RETIREMENT" MEANS A MEMBER'S WITHDRAWAL FROM THE ACTIVE EMPLOYMENT
19 OF AN EMPLOYER AND COMPLETION OF ALL CONDITIONS PRECEDENT TO RETIREMENT.

20 38-798.01. Defined contribution system; purpose

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

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

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

35 38-798.02. Participation in defined contribution system;
36 limited participation in existing retirement
37 system

38 A. BEGINNING JANUARY 1, 2014, THE DEFINED CONTRIBUTION SYSTEM IS THE
39 SINGLE RETIREMENT PROGRAM FOR ALL NEW EMPLOYEES WHOSE EMPLOYMENT BEGINS ON OR
40 AFTER THAT DATE. NO ADDITIONAL NEW EMPLOYEES EXCEPT AS MAY BE PROVIDED IN
41 THIS SECTION MAY BE ADMITTED TO THE EXISTING RETIREMENT SYSTEM. MEMBERS OF
42 THE EXISTING RETIREMENT SYSTEM WHOSE EMPLOYMENT CONTINUES BEYOND JANUARY 1,
43 2014 ARE NOT AFFECTED BY THIS ARTICLE AND ARE ENTITLED TO CONTINUE TO
44 CONTRIBUTE AND PARTICIPATE IN THE EXISTING RETIREMENT SYSTEM WITHOUT A CHANGE
45 IN PROVISIONS OR BENEFITS. EMPLOYEES WHO QUALIFY AS MEMBERS UNDER THIS

1 ARTICLE SHALL BE ENROLLED IN THE DEFINED CONTRIBUTION SYSTEM ESTABLISHED BY
2 ASRS PURSUANT TO SECTION 38-952.

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

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

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

16 38-798.03. Voluntary participation in defined contribution
17 system

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

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

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

37 B. IF A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP IN
38 THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO SUBSECTION A, PARAGRAPH 2 OF THIS
39 SECTION, THE MEMBER'S YEARS OF CREDITED SERVICE IN THE EXISTING RETIREMENT
40 SYSTEM SHALL BE APPLIED TOWARD YEARS OF CREDITED SERVICE REQUIRED BY SECTION
41 38-954.

42 C. THE BOARD SHALL ALLOW AN ELECTION UNDER THIS SECTION ON A
43 RETROACTIVE BASIS TO JANUARY 1, 2014.

1 D. AFTER A MEMBER OF THE EXISTING RETIREMENT SYSTEM ELECTS MEMBERSHIP
2 IN THE DEFINED CONTRIBUTION SYSTEM PURSUANT TO THIS SECTION, THE MEMBER MAY
3 NOT CHANGE THE ELECTION OR AGAIN BECOME A MEMBER OF THE EXISTING RETIREMENT
4 SYSTEM.

5 38-798.04. Member and employer contributions; vesting

6 A. EACH EMPLOYEE WHO IS A MEMBER OF THE DEFINED CONTRIBUTION SYSTEM
7 SHALL CONTRIBUTE A PRESCRIBED AMOUNT OF THE EMPLOYEE'S GROSS COMPENSATION,
8 WHICH SHALL BE A PERCENTAGE OF THE EMPLOYEE'S GROSS COMPENSATION, A FIXED
9 DOLLAR AMOUNT, AN AMOUNT PRESCRIBED IN THE PLAN OR SOME OTHER DEFINITIVE
10 AMOUNT THAT MAY NOT BE MODIFIED OR REVOKED BY THE EMPLOYEE. THE EMPLOYEE'S
11 CONTRIBUTION SHALL BE MADE BY SALARY REDUCTION THAT SHALL BE DEPOSITED IN THE
12 EMPLOYEE'S ANNUITY ACCOUNT.

13 B. EACH PARTICIPATING EMPLOYER SHALL ANNUALLY MAKE A CONTRIBUTION
14 EQUAL TO ONE HUNDRED PER CENT OF EACH MEMBER'S CONTRIBUTION, EXCEPT THAT THE
15 EMPLOYER'S CONTRIBUTION SHALL NOT BE MORE THAN FIVE PER CENT OF EACH MEMBER'S
16 GROSS COMPENSATION. THE PRO RATA SHARE OF THIS AMOUNT SHALL BE PAID ON EACH
17 DATE THAT A MEMBER CONTRIBUTION IS MADE AND SHALL BE REMITTED FOR CREDIT TO
18 THE MEMBER'S ANNUITY ACCOUNT.

19 C. EACH PARTICIPATING EMPLOYER HAS A FIDUCIARY DUTY TO ITS EMPLOYEES
20 TO ENSURE THAT THE EMPLOYER CONTRIBUTIONS ARE MADE IN A TIMELY MANNER.

21 D. MEMBER CONTRIBUTIONS AND EARNINGS ON THOSE CONTRIBUTIONS ARE
22 IMMEDIATELY VESTED. EMPLOYER CONTRIBUTIONS SHALL VEST PURSUANT TO SECTION
23 38-954.

24 38-798.05. Amount of annuity payments

25 A. THE AMOUNT OF ANNUITY PAYMENTS A RETIRED MEMBER RECEIVES SHALL BE
26 BASED SOLELY ON THE BALANCE IN THE MEMBER'S ANNUITY ACCOUNT AT THE DATE OF
27 RETIREMENT, THE RETIREMENT OPTION SELECTED OR, IF AN ANNUITY OPTION IS
28 SELECTED, THE ACTUARIAL LIFE EXPECTANCY OF THE MEMBER AND SUCH OTHER FACTORS
29 AS NORMALLY GOVERN ANNUITY PAYMENTS.

30 B. ON RETIREMENT OF A MEMBER AND WITH THE APPROVAL OF THAT MEMBER, THE
31 BOARD OR ITS DESIGNEE MAY PURCHASE AN ANNUITY WITH THE BALANCE OF THE
32 MEMBER'S ACCOUNT. ON DELIVERY OF THE ANNUITY TO THE MEMBER ON THE MEMBER'S
33 RETIREMENT, THE MEMBER SHALL EXECUTE A RELEASE SURRENDERING ANY CLAIM THE
34 MEMBER MAY HAVE AGAINST THE RETIREMENT TRUST.