

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

CHAPTER 216
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. IF THERE IS A DETERMINATION OF THE
25 EMPLOYEE'S ELIGIBILITY THAT IS FINAL AND IS NOT APPEALABLE AND THE EMPLOYEE
26 IS DETERMINED:

27 1. TO BE ELIGIBLE FOR ASRS, THE EMPLOYER SHALL ENROLL THE EMPLOYEE IN
28 ASRS AND SECTION 38-738 APPLIES, AND THE EMPLOYER SHALL DISCONTINUE THE
29 EMPLOYEE'S PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION
30 38-955.

31 2. TO BE NOT ELIGIBLE FOR ASRS, THE EMPLOYEE SHALL CONTINUE
32 PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955,
33 UNLESS THE EMPLOYEE HAS ENTERED INTO AN AGREEMENT WITH THE EMPLOYER THAT
34 REQUIRES PARTICIPATION IN AN ALTERNATIVE RETIREMENT PLAN OR FOR OTHER
35 COMPENSATION PROVIDED IN LIEU OF RETIREMENT BENEFITS AND THAT AGREEMENT IS
36 EXECUTED WITHIN TWO YEARS OF THE DATE THAT THE EMPLOYEE FIRST COMMENCED
37 PARTICIPATION IN THE PLAN AND IS IRREVOCABLE FOR THE REMAINDER OF THE
38 EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER.

39 3. TO BE NOT ELIGIBLE FOR ASRS AND THE EMPLOYER ELECTS NOT TO PROVIDE
40 COVERAGE UNDER SECTION 38-956, SUBSECTION B, THE RETIRED EMPLOYEE'S
41 PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955
42 SHALL BE DISCONTINUED.

43 B. FOR AN EMPLOYEE WHO IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS
44 SECTION, IF AN EMPLOYER DISAGREES WITH A WRITTEN DETERMINATION MADE BY THE
45 STATE SOCIAL SECURITY SECTION 218 ADMINISTRATOR OF THE EMPLOYEE'S INCLUSION
46 UNDER AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD

1 AGE AND SURVIVORS INSURANCE SYSTEM OR THE APPLICATION OR USE OF THAT WRITTEN
2 DETERMINATION BY ASRS FOR ASRS MEMBERSHIP AND THE EMPLOYEE IS ENROLLED IN
3 ASRS, THE FOLLOWING SHALL OCCUR:

4 1. THE EMPLOYEE'S PARTICIPATION IN ASRS SHALL BE SUSPENDED, ADDITIONAL
5 CONTRIBUTIONS SHALL NOT BE COLLECTED OR PERMITTED AND SERVICE CREDIT SHALL
6 NOT BE APPLIED DURING THE SOCIAL SECURITY ADMINISTRATION OR ASRS
7 ADMINISTRATIVE APPEALS PROCESS.

8 2. THE EMPLOYEE SHALL BE ENROLLED PURSUANT TO SECTION 38-956 IN THE
9 PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955.

10 3. IF THERE IS A DETERMINATION OF THE EMPLOYEE'S ELIGIBILITY THAT IS
11 FINAL AND IS NOT APPEALABLE AND THE EMPLOYEE IS DETERMINED ELIGIBLE FOR ASRS,
12 THE EMPLOYEE'S SUSPENSION FROM PARTICIPATION IN ASRS SHALL CEASE AND SECTION
13 38-738 APPLIES, AND THE EMPLOYER SHALL DISCONTINUE THE EMPLOYEE'S
14 PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955.

15 4. IF THERE IS A DETERMINATION OF THE EMPLOYEE'S ELIGIBILITY THAT IS
16 FINAL AND IS NOT APPEALABLE AND THE EMPLOYEE IS DETERMINED INELIGIBLE FOR
17 ASRS, THE EMPLOYEE SHALL CONTINUE PARTICIPATION PURSUANT TO SECTION 38-956 IN
18 THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955, EXCEPT:

19 (a) IF THE EMPLOYER ELECTS NOT TO PROVIDE COVERAGE UNDER SECTION
20 38-956, SUBSECTION B, A RETIRED EMPLOYEE'S PARTICIPATION IN THE PLAN
21 ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955 SHALL BE DISCONTINUED.

22 (b) IF THE EMPLOYEE HAS ENTERED INTO AN AGREEMENT WITH THE EMPLOYER
23 THAT REQUIRES PARTICIPATION IN AN ALTERNATIVE RETIREMENT PLAN OR FOR OTHER
24 COMPENSATION PROVIDED IN LIEU OF RETIREMENT BENEFITS AND THAT AGREEMENT WAS
25 EXECUTED WITHIN TWO YEARS OF THE DATE THAT THE EMPLOYEE FIRST COMMENCED
26 PARTICIPATION IN THE PLAN AND IS IRREVOCABLE FOR THE REMAINDER OF THE
27 EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER, THE EMPLOYEE'S PARTICIPATION IN THE
28 PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-955 SHALL BE DISCONTINUED.

29 C. IF AN EMPLOYEE'S PARTICIPATION IN THE PLAN ESTABLISHED BY ASRS
30 PURSUANT TO SECTION 38-955 IS DISCONTINUED PURSUANT TO THIS SECTION, NO
31 ADDITIONAL EMPLOYEE OR EMPLOYER CONTRIBUTIONS SHALL BE MADE TO THE PLAN AND
32 THE EMPLOYEE IS ENTITLED TO THE EMPLOYEE'S RETIREMENT SAVINGS ACCOUNT AND
33 EARNINGS ON THE ACCOUNT AS PERMITTED UNDER THE TERMS OF THE PLAN.

34 D. AN EMPLOYER IS NOT REQUIRED TO FORMALLY ADOPT THE PLAN ESTABLISHED
35 BY ASRS PURSUANT TO SECTION 38-955.

36 E. THIS SECTION ONLY APPLIES TO AN EMPLOYER THAT HAS ENTERED INTO AN
37 AGREEMENT APPROVED BY THE BOARD UNDER SECTION 38-729.

38 Sec. 3. Section 38-797, Arizona Revised Statutes, is amended to read:
39 38-797. Definitions

40 In this article, unless the context otherwise requires:

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

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

44 3. "Board" means the ASRS board established pursuant to section
45 38-713.

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

- 1 5. "Depository" means a bank in which the monies of the LTD program
2 are deposited and collateralized as provided by law.
- 3 6. "Employer" has the same meaning prescribed in section 38-711.
- 4 7. "Employer contributions" means all amounts paid into the LTD
5 program by an employer.
- 6 8. "Fiscal year" has the same meaning prescribed in section 38-711.
- 7 9. "LTD program" means the long-term disability program established by
8 this article.
- 9 10. "Member":
- 10 (a) Has the same meaning prescribed in section 38-711.
- 11 (b) **INCLUDES AN EMPLOYEE DESCRIBED IN SECTION 38-956.**
- 12 11. "Monthly compensation" means one-twelfth of a member's annual
13 compensation paid and payable in the fiscal year during which a member
14 becomes disabled.
- 15 12. "Normal retirement date":
- 16 (a) Has the same meaning prescribed in section 38-711 **FOR MEMBERS**
17 **ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER.**
- 18 (b) **MEANS SIXTY-FIVE YEARS OF AGE FOR MEMBERS ELIGIBLE PURSUANT TO**
19 **SECTION 38-956.**
- 20 13. "Political subdivision" has the same meaning prescribed in section
21 38-711.
- 22 14. "State" has the same meaning prescribed in section 38-711.
- 23 Sec. 4. Section 38-797.07, Arizona Revised Statutes, is amended to
24 read:
- 25 **38-797.07. LTD program benefits; limitations; definitions**
- 26 A. The LTD program is subject to the following limitations:
- 27 1. Except as provided in paragraph 9 of this subsection, monthly LTD
28 program benefits shall not exceed two-thirds of a member's monthly
29 compensation at the time disability commences, reduced by:
- 30 (a) For a member whose disability commences before July 1, 2008,
31 sixty-four per cent of social security disability benefits that the member
32 and the member's dependents are eligible to receive.
- 33 (b) For a member whose disability commences on or after July 1, 2008,
34 eighty-five per cent of social security disability benefits that the member
35 and the member's dependents are eligible to receive, but not including:
- 36 (i) The amount of attorney fees approved pursuant to social security
37 administration rules and reasonable documented costs paid to an attorney to
38 secure that disability benefit.
- 39 (ii) Any cost-of-living adjustments that are granted after the member
40 commences benefits under this section.
- 41 (c) For a member whose disability commences before July 1, 2008,
42 eighty-three per cent of social security retirement benefits that the member
43 is eligible to receive.
- 44 (d) For a member whose disability commences on or after July 1, 2008,
45 eighty-five per cent of social security retirement benefits that the member

1 is eligible to receive, but not including any cost-of-living adjustments that
2 are granted after the member commences benefits under this section.

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

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

6 (i) The veteran's disability payment is for the same condition or a
7 condition related to the condition currently causing the member's total
8 disability.

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

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

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

18 2. For a member whose disability commences on or after ~~the effective~~
19 ~~date of this amendment to this section~~ AUGUST 2, 2012, a member's monthly
20 income from the monthly LTD program benefits and sources listed in paragraph
21 1 of this subsection shall not exceed one hundred per cent of the member's
22 monthly compensation at the time disability commences. ASRS shall offset the
23 member's monthly LTD program benefits by the amount necessary to reduce the
24 member's total monthly income to meet the limit prescribed in this paragraph.

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

27 4. Monthly LTD program benefits are not payable to a member who files
28 an initial claim for disability more than twelve months after the date of the
29 member's date of disability unless the member demonstrates to ASRS good cause
30 for not filing the initial claim within twelve months after the date of
31 disability.

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

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

36 (a) An intentionally self-inflicted injury.

37 (b) War, whether declared or not.

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

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

45 (i) Has been an active member of an employer for twelve continuous
46 months.

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

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

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

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

11 (b) The date the member:

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

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

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

20 (d) The later of the following:

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

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

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

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

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

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

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

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

41 (a) For primary and dependent social security benefits, the members
42 are eligible for the social security benefits until the social security
43 benefits are actually awarded, or if the social security benefits are denied,
44 until the member pursues the social security appeal process through a hearing
45 before a social security administrative law judge or until the insurance

1 company or claims administrator determines that the member is not eligible
2 for social security benefits.

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

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

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

13 (b) For a member who has received monthly LTD program benefits for
14 twenty-four months within a five-year period, the member is unable to perform
15 any work for compensation or gain for which the member is reasonably
16 qualified by education, training or experience in an amount at least equal to
17 the scheduled LTD program benefits prescribed in paragraph 1 of this
18 subsection.

19 B. A member WHO IS ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER AND
20 who receives monthly LTD program benefits is entitled to receive service
21 credit pursuant to article 2 of this chapter from the time disability
22 commences until LTD program benefits cease to be payable, except that for a
23 member who receives monthly LTD program benefits on or after June 30, 1999
24 the number of years of service credited to the member's retirement account
25 during the period the member receives LTD program benefit payments shall not
26 cause the member's total credited service for retirement benefits to exceed
27 the greater of thirty years or the total years of service credited to the
28 member's retirement account on the commencement of disability.

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

36 D. ASRS may suspend or terminate benefits under this article if a
37 member fails to provide information, data, paperwork or other materials that
38 are requested by ASRS or the insurance company or claims administrator that
39 is selected by the board to administer the LTD program. If the member
40 provides the information requested, ASRS shall retroactively reinstate the
41 benefits or claim for which the member qualifies under this article.

42 E. For the purposes of this section:

43 1. "Objective medical evidence" means evidence that established facts
44 and conditions, as perceived without distortion by personal feelings,
45 prejudices or interpretations, and includes x-rays, quantitative tests,

1 laboratory findings, data, records, reports from the attending physician and
2 reports from a consulting physician, as applicable.

3 2. "Received medical treatment" means that the member consulted with
4 or received the advice of a licensed medical or dental practitioner,
5 including advice given during a routine examination, and it includes
6 situations in which the member received medical or dental care, treatment or
7 services, including the taking of drugs, medication, insulin or similar
8 substances.

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

12 Sec. 5. Section 38-847, Arizona Revised Statutes, is amended to read:
13 38-847. Local boards

14 A. The administration of the system and responsibility for making the
15 provisions of the system effective for each employer are vested in a local
16 board. The department of public safety, the Arizona game and fish
17 department, the department of emergency and military affairs, the university
18 of Arizona, Arizona state university, northern Arizona university, each
19 county sheriff's office, each county attorney's office, each county parks
20 department, each municipal fire department, each eligible fire district, each
21 community college district, each municipal police department, the department
22 of law, the department of liquor licenses and control, the Arizona department
23 of agriculture, the Arizona state parks board, each Indian reservation police
24 agency and each Indian reservation fire fighting agency shall have a local
25 board. A nonprofit corporation operating pursuant to sections 28-8423 and
26 28-8424 shall have one local board for all of its members. Each local board
27 shall be constituted as follows:

28 1. For political subdivisions or Indian tribes, the mayor or chief
29 elected official or a designee of the mayor or chief elected official
30 approved by the respective governing body as chairman, two members elected by
31 secret ballot by members employed by the appropriate employer and two
32 citizens, one of whom shall be the head of the merit system, or the head's
33 designee from among the other members of the merit system, if it exists for
34 the group of members, appointed by the mayor or chief elected official and
35 with the approval of the governing body of the city or the governing body of
36 the employer. The appointed two citizens shall serve on both local boards in
37 a city or Indian tribes where both fire and police department employees are
38 members.

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

43 3. For fire districts organized pursuant to section 48-804, the
44 secretary-treasurer as chairman, two members elected by secret ballot by
45 members employed by the fire district and two citizens appointed by the
46 secretary-treasurer, one of whom is a resident of the fire district and one

1 of whom has experience in personnel administration but who is not required to
2 be a resident of the fire district.

3 B. On the taking effect of this system for an employer, the
4 appointments and elections of local board members shall take place with one
5 elective and appointive local board member serving a term ending two years
6 after the effective date of participation for the employer and other local
7 board members serving a term ending four years after the effective date.
8 Thereafter, every second year, and as a vacancy occurs, an office shall be
9 filled for a term of four years in the same manner as previously provided.

10 C. Each local board shall be fully constituted pursuant to subsection
11 A of this section within sixty days after the employer's effective date of
12 participation in the system. If the deadline is not met, on the written
13 request of any member who is covered by the local board or the employer to
14 the board of trustees, the board of trustees may appoint all vacancies of the
15 local board pursuant to subsection A of this section and designate whether
16 each appointive position is for a two-year or four-year term. If the board
17 of trustees cannot find individuals to serve on the local board who meet the
18 requirements of subsection A of this section, the board of trustees may
19 appoint individuals to serve as interim local board members until qualified
20 individuals are appointed or elected. Each local board shall meet at least
21 twice a year. Each member of a local board, within ten days after the
22 member's appointment or election, shall take an oath of office that, so far
23 as it devolves on the member, the member shall diligently and honestly
24 administer the affairs of the local board and that the member shall not
25 knowingly violate or willingly permit to be violated any of the provisions of
26 law applicable to the system.

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

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

32 2. To prescribe procedures to be followed by claimants in filing
33 applications for benefits.

34 3. To make a determination as to the right of any claimant to a
35 benefit and to afford any claimant or the board of trustees, or both, a right
36 to a rehearing on the original determination. Except as otherwise required
37 by law, unless all parties involved in a matter presented to the local board
38 for determination otherwise agree, the local board shall commence a hearing
39 on the matter within ninety days after the date the matter is presented to
40 the local board for determination. If a local board fails to commence a
41 hearing as provided in this paragraph, on a matter presented to the local
42 board for determination, the relief demanded by the party petitioning the
43 local board is deemed granted and approved by the local board. The granting
44 and approval of this relief is considered final and binding unless a timely
45 request for rehearing or appeal is made as provided in this article, unless
46 the board of trustees determines that granting the relief requested would

1 violate the internal revenue code or threaten to impair the system's status
2 as a qualified plan under the internal revenue code. If the board of
3 trustees determines that granting the requested relief would violate the
4 internal revenue code or threaten to impair the system's status as a
5 qualified plan, the board of trustees may refuse to grant the relief by
6 issuing a written determination to the local board and the party petitioning
7 the local board for relief. The decision by the board of trustees is subject
8 to judicial review pursuant to title 12, chapter 7, article 6.

9 4. To request and receive from the employers and from members such
10 information as is necessary for the proper administration of the system and
11 action on claims for **ELIGIBILITY FOR MEMBERSHIP AND** benefits, and to forward
12 such information to the board of trustees.

13 5. To distribute, in such manner as the local board determines to be
14 appropriate, information explaining the system received from the board of
15 trustees.

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

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

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

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

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

26 E. A local board shall have no power to add to, subtract from, modify
27 or waive any of the terms of the system, change or add to any benefits
28 provided by the system or waive or fail to apply any requirement of
29 eligibility for membership or benefits under the system. Notwithstanding any
30 limitations periods imposed in this article, including subsection D,
31 paragraph 3 and subsections G and H of this section, if the board of trustees
32 determines a local board decision violates the internal revenue code or
33 threatens to impair the system's status as a qualified plan under the
34 internal revenue code, the local board's decision is not final and binding
35 and the board of trustees may refrain from implementing or complying with the
36 local board decision.

37 F. A local board, from time to time, shall establish and adopt such
38 rules as it deems necessary or desirable for its administration. All rules
39 and decisions of a local board shall be uniformly and consistently applied to
40 all members in similar circumstances. If a claim or dispute is presented to
41 a local board for determination but the local board has not yet adopted
42 uniform rules of procedure for adjudication of the claim or dispute, the
43 local board shall adopt and use the model uniform rules of local board
44 procedure that are issued by the board of trustees' fiduciary counsel to
45 adjudicate the claim or dispute.

1 G. Except as otherwise provided in this article, any action by a
2 majority vote of the members of a local board that is not inconsistent with
3 the provisions of the system and the internal revenue code shall be final,
4 conclusive and binding on all persons affected by it unless a timely
5 application for a rehearing or appeal is filed as provided in this article.
6 No later than twenty days after taking action, the local board shall submit
7 to the board of trustees the minutes from the local board meeting that
8 include the name of the member affected by its decision, a description of the
9 action taken and an explanation of the reasons and all documents submitted to
10 the local board for the action taken, including the reports of a medical
11 board. The board of trustees may not implement and comply with any local
12 board action that does not comply with the internal revenue code or that
13 threatens to jeopardize the system's status as a qualified plan under the
14 internal revenue code.

15 H. A claimant or the board of trustees may apply for a rehearing
16 before the local board within the time periods prescribed in this subsection,
17 except that if a decision of a local board violates the internal revenue code
18 or threatens to jeopardize the system's status as a qualified plan under the
19 internal revenue code, no limitation period for the board of trustees to seek
20 a rehearing of a local board decision applies. An application for a
21 rehearing shall be filed in writing with a member of the local board or its
22 secretary within sixty days after:

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

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

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

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

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

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

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

1 N. The fees of the medical board and of the local board's independent
2 legal counsel and all other expenses of the local board necessary for the
3 administration of the system shall be paid by the employer and not the board
4 of trustees or system at such rates and in such amounts as the local board
5 shall approve. Legal counsel that is employed by the local board is
6 independent of the employer and any employee organization or member and owes
7 its duty of loyalty only to the local board in connection with its
8 representation of the local board.

9 O. The local board shall issue directions to the board of trustees
10 concerning all benefits that are to be paid from the employer's account
11 pursuant to the provisions of the fund. The local board shall keep on file,
12 in such manner as it may deem convenient or proper, all reports from the
13 board of trustees and the actuary.

14 P. The local board and the individual members of the local board shall
15 be indemnified from the assets of the employer for any judgment against the
16 local board or its members, including attorney fees and costs, arising from
17 any act, or failure to act, made in good faith pursuant to the provisions of
18 the system, including expenses reasonably incurred in the defense of any
19 claim relating to the act or failure to act.

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

22 38-847.01. Membership in retirement plan; eligibility

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

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

- 29 1. THE DATE THE EMPLOYEE WAS HIRED OR APPOINTED TO THE POSITION.
- 30 2. THE EMPLOYEE'S POSITION TITLE.
- 31 3. A DESCRIPTION OF THE ESSENTIAL FUNCTIONS FOR THE POSITION.

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

34 Sec. 7. Heading change

35 The article heading of title 38, chapter 5, article 8, Arizona Revised
36 Statutes, is changed from "SUPPLEMENTAL DEFINED CONTRIBUTION PLANS" to
37 "DEFINED CONTRIBUTION PLANS".

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

39 38-951. Definitions

40 In this article, unless the context otherwise requires:

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

- 1 2. "Eligible group" means any of the following:
2 (a) The Arizona state retirement system established by article 2 of
3 this chapter.
4 (b) The elected officials' retirement plan established by article 3 of
5 this chapter.
6 (c) The public safety personnel retirement system established by
7 article 4 of this chapter.
8 (d) The corrections officer retirement plan established by article 6
9 of this chapter.
10 (e) An optional retirement program established pursuant to section
11 15-1451 or 15-1628.
12 3. "Employer" means an agency or department of this state or an agency
13 or department of a political subdivision of this state that has employees in
14 an eligible group.
15 4. "Plan" means a ~~supplemental~~ defined contribution plan authorized by
16 this article.

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

19 38-955. Defined contribution plan; establishment;
20 administration

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

24 B. THE ARIZONA STATE RETIREMENT SYSTEM BOARD MAY:

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

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

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

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

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

34 C. NOTWITHSTANDING TITLE 41, CHAPTER 23, THE ARIZONA STATE RETIREMENT
35 SYSTEM BOARD MAY EMPLOY THE SERVICES OF THE THIRD-PARTY ADMINISTRATOR THAT IS
36 CONTRACTED ON THE EFFECTIVE DATE OF THIS SECTION TO ADMINISTER THE
37 SUPPLEMENTAL DEFINED CONTRIBUTION PLAN PURSUANT TO THIS ARTICLE TO ALSO
38 ADMINISTER THE DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THIS SECTION
39 UNTIL THE END OF THE CURRENT CONTRACT. ON EXPIRATION OF THAT CONTRACT, THE
40 ARIZONA STATE RETIREMENT SYSTEM BOARD SHALL PARTICIPATE IN A COMPETITIVE BID
41 PROCESS AT LEAST ONCE EVERY FIVE YEARS TO CONTRACT WITH A PRIVATE PERSON OR
42 ANY QUALIFIED COMPANY OR COMPANIES TO ADMINISTER THE DEFINED CONTRIBUTION
43 PLAN ESTABLISHED PURSUANT TO THIS SECTION.

44 D. THE DEFINED CONTRIBUTION PLAN SHALL BE DESIGNED TO BE A QUALIFIED
45 GOVERNMENTAL PLAN UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE. THE
46 LEGISLATURE INTENDS THAT THE DEFINED CONTRIBUTION PLAN IS A QUALIFIED PLAN

1 UNDER SECTION 401 OF THE INTERNAL REVENUE CODE, AS AMENDED, OR SUCCESSOR
2 PROVISIONS OF LAW, AND THAT THE PLAN IS EXEMPT FROM TAXATION UNDER SECTION
3 501 OF THE INTERNAL REVENUE CODE. THE BOARD MAY ADOPT ANY ADDITIONAL
4 PROVISIONS TO THE PLAN THAT ARE NECESSARY TO FULFILL THIS INTENT.

5 E. ALTHOUGH DESIGNATED AS EMPLOYEE CONTRIBUTIONS, ALL EMPLOYEE
6 CONTRIBUTIONS MADE TO THE PLAN SHALL BE PICKED UP AND PAID BY THE EMPLOYER IN
7 LIEU OF CONTRIBUTIONS BY THE EMPLOYEE. THE CONTRIBUTIONS PICKED UP BY AN
8 EMPLOYER MAY BE MADE THROUGH A REDUCTION IN THE EMPLOYEE'S COMPENSATION OR AN
9 OFFSET AGAINST FUTURE COMPENSATION INCREASES, OR A COMBINATION OF BOTH. AN
10 EMPLOYEE PARTICIPATING IN THE PLAN DOES NOT HAVE THE OPTION OF CHOOSING TO
11 RECEIVE THE CONTRIBUTED AMOUNTS DIRECTLY INSTEAD OF THE EMPLOYER PAYING THE
12 AMOUNTS TO THE PLAN. IT IS INTENDED THAT ALL EMPLOYEE CONTRIBUTIONS THAT ARE
13 PICKED UP BY THE EMPLOYER AS PROVIDED IN THIS SUBSECTION SHALL BE TREATED AS
14 EMPLOYER CONTRIBUTIONS UNDER SECTION 414(h) OF THE INTERNAL REVENUE CODE,
15 SHALL BE EXCLUDED FROM EMPLOYEES' GROSS INCOME FOR FEDERAL AND STATE INCOME
16 TAX PURPOSES AND ARE INCLUDABLE IN THE GROSS INCOME OF THE EMPLOYEES OR THEIR
17 BENEFICIARIES ONLY IN THE TAXABLE YEAR IN WHICH THEY ARE DISTRIBUTED.

18 38-956. Defined contribution plan; eligibility; contribution;
19 vesting

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

24 1. THE EMPLOYEE IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS
25 SECTION.

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

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

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

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

39 C. EACH EMPLOYEE SHALL CONTRIBUTE ONE-HALF OF THE TOTAL ASRS NORMAL
40 COST PLUS ONE AND ONE-HALF PER CENT OF THE EMPLOYEE'S COMPENSATION, AS
41 DEFINED IN SECTION 38-711, BY SALARY REDUCTION THAT SHALL BE DEPOSITED IN THE
42 EMPLOYEE'S RETIREMENT SAVINGS ACCOUNT. EACH EMPLOYER SHALL CONTRIBUTE
43 ONE-HALF OF THE TOTAL ASRS NORMAL COST PLUS ONE AND ONE-HALF PER CENT OF THE
44 EMPLOYEE'S COMPENSATION, AS DEFINED IN SECTION 38-711, THAT SHALL BE
45 DEPOSITED IN THE EMPLOYEE'S RETIREMENT SAVINGS ACCOUNT. EMPLOYEE AND

1 EMPLOYER CONTRIBUTIONS AND EARNINGS ON THOSE CONTRIBUTIONS ARE IMMEDIATELY
2 VESTED.

3 D. EACH EMPLOYEE AND EMPLOYER SHALL ALSO CONTRIBUTE TO THE LONG-TERM
4 DISABILITY PROGRAM PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER. AN EMPLOYEE MAY
5 RECEIVE BENEFITS PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER IF THE EMPLOYEE
6 BECOMES TOTALLY DISABLED.

7 E. NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION,
8 AN EMPLOYEE SHALL NOT BE ENROLLED UNDER THIS SECTION IF THE EMPLOYEE HAS
9 ENTERED INTO AN AGREEMENT WITH THE EMPLOYER THAT REQUIRES PARTICIPATION IN AN
10 ALTERNATIVE RETIREMENT PLAN OR FOR OTHER COMPENSATION PROVIDED IN LIEU OF
11 RETIREMENT BENEFITS. THE AGREEMENT SHALL SPECIFY THAT IT IS IRREVOCABLE FOR
12 THE REMAINDER OF THE EMPLOYEE'S EMPLOYMENT WITH THE EMPLOYER AND SHALL BE
13 EXECUTED WITHIN TWO YEARS OF INITIAL ELIGIBILITY UNDER THIS SECTION.

14 Sec. 10. Appropriation; ASRS; exemption

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

- 18 1. One FTE position and \$72,400 for personal services.
- 19 2. \$430,000 for professional services.

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

APPROVED BY THE GOVERNOR JUNE 19, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 19, 2013.