

REFERENCE TITLE: retirement; return to work

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2056

Introduced by
Representative Allen

AN ACT

AMENDING SECTION 38-766, ARIZONA REVISED STATUTES; REPEALING SECTION 38-766.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 38-766.02, 38-843.05 AND 38-891.01, ARIZONA REVISED STATUTES; RELATING TO PUBLIC PENSION PLANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-766, Arizona Revised Statutes, is amended to
3 read:

4 38-766. Retired members; return to work; suspension of
5 benefits; exceptions; maximum benefit

6 A. A retired member who is engaged to work by an employer for at least
7 twenty weeks in each fiscal year and at least twenty hours per week resumes
8 active membership in ASRS. ASRS shall suspend payment of the member's
9 retirement benefits until the member either:

10 1. Terminates employment and files an application for reretirement on
11 a form that is approved by the director.

12 2. Attains a normal retirement date, no longer meets the requirements
13 for active membership pursuant to this subsection and files an application
14 for reretirement on a form that is approved by the director.

15 B. A retired member whose retirement benefits have been suspended
16 pursuant to subsection A of this section shall repay ASRS any retirement
17 benefits received by the member from the date ASRS notifies the member in
18 writing that the member's employment resulted in active membership in ASRS
19 pursuant to subsection A of this section, from the date ASRS determines that
20 the member knew or should have known that the member's employment resulted in
21 membership in ASRS pursuant to subsection A of this section or for any other
22 period that approximates the duration of the violation, as determined by
23 ASRS.

24 C. A member who satisfies subsection A, paragraph 1 or 2 of this
25 section is entitled to receive an annuity recomputed to include the
26 additional compensation and credited service. However, the recomputed
27 annuity shall be in the original optional form chosen pursuant to section
28 38-760, with the same beneficiary, if applicable, as when the member first
29 retired, unless the member has resumed active membership for at least sixty
30 consecutive months. A member who retired under a provision of law allowing
31 increased benefits if the retirement occurred during a specific period of
32 time and who subsequently becomes an employee under ASRS shall not retain the
33 increased benefits under the prior law when benefits are computed for the
34 member's most recent retirement.

35 D. Notwithstanding subsection A of this section, ASRS shall not
36 suspend the payment of retirement benefits if a retired member begins or
37 returns to employment with an employer in a position that satisfies all of
38 the following:

39 1. Results in a true change in position, job duties and job title from
40 the position occupied by the member before ASRS retirement.

41 2. Either:

42 (a) Requires participation in another state retirement system, plan or
43 program and the retired member makes contributions or waives participation
44 pursuant to section 38-804, subsection A.

1 (b) Permits a member to elect to participate in another state
2 retirement system, plan or program and the member makes such an election.

3 3. Does not require membership in the defined benefit plan established
4 by this article.

5 E. A retired member who returns to work pursuant to subsection D of
6 this section does not accrue credited service, member service as provided in
7 section 15-1628, subsection B, paragraph 4, additional account balances,
8 retirement benefits or long-term disability program benefits pursuant to
9 article 2.1 of this chapter for the period the retired member returns to
10 work. The period the retired member returns to work is not eligible for
11 purchase under section 38-743 or 38-744.

12 F. Section 38-769, subsection L applies when determining the maximum
13 benefit that may be paid to a retired member who resumes active membership
14 and subsequently retires.

15 ~~G. An employer that engaged the retired member to work pursuant to
16 this section shall pay to ASRS an amount equal to the rate established by the
17 actuary pursuant to section 38-766.02, subsection B for the period starting
18 with the first day the retired member began working after retirement through
19 the earlier of:~~

- 20 ~~1. The date the member terminates employment.~~
- 21 ~~2. The date the employer begins payment for that member pursuant to~~
22 ~~section 38-766.02.~~

23 ~~3.~~ G. BEGINNING ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
24 SECTION, ON the date the member resumes active membership pursuant to
25 subsection A of this section, and the member and employer are required to
26 make contributions pursuant to ~~section 38-736, 38-737 or 38-738~~ THIS ARTICLE
27 AND ARTICLE 2.1 OF THIS CHAPTER.

28 H. AN EMPLOYER MAY NOT CONTRACT WITH OR LEASE A RETIRED MEMBER TO WORK
29 IN ANY CAPACITY.

30 Sec. 2. Repeal

31 Section 38-766.01, Arizona Revised Statutes, is repealed.

32 Sec. 3. Section 38-766.02, Arizona Revised Statutes, is amended to
33 read:

34 38-766.02. Retired members; return to work; employer
35 contribution payments

36 A. ~~Notwithstanding section 38-766.01, subsection D, beginning July 1,~~
37 ~~2012,~~ An employer shall pay contributions at an alternate contribution rate
38 on behalf of a retired member who returns to work in any capacity in a
39 position ordinarily filled by an employee of the employer who is included in
40 agreements providing for their coverage under the federal old age and
41 survivors insurance system. This subsection applies to a retired member who
42 has reached a normal retirement age, ~~or~~ a retired member who retired under
43 section 38-758 if the retired member's retirement benefit has not been
44 suspended pursuant to section 38-766 OR A RETIRED MEMBER WHO IS ENGAGED TO

1 WORK BY AN EMPLOYER FOR FEWER THAN TWENTY WEEKS IN A FISCAL YEAR OR FEWER
2 THAN TWENTY HOURS PER WEEK.

3 B. The ASRS actuary shall determine the alternate contribution rate in
4 an annual valuation performed as of June 30. For the fiscal year beginning
5 on July 1 of the following calendar year, the valuation shall determine the
6 percentage to be applied to the compensation, ~~gross salary or contract fee~~ of
7 a retired member who meets the requirements of this section.

8 C. The alternate contribution rate shall not be less than two per cent
9 in any fiscal year. The alternate contribution rate is equal to the lesser
10 of:

11 1. The employer contribution rate established by the ASRS actuary
12 pursuant to section 38-737 plus the employer contribution rate established by
13 the ASRS actuary pursuant to section 38-797.06.

14 2. The total past service funding requirement rate established by the
15 ASRS actuary pursuant to section 38-737 plus the total past service funding
16 requirement rate established by the ASRS actuary pursuant to section
17 38-797.06.

18 D. ASRS shall determine the schedule and method of payment of the
19 alternate contribution rate. Subject to section 38-738, subsection A, all
20 contributions made by the employer and allocated to the fund established by
21 section 38-712 are irrevocable and shall be used as benefits under this
22 article or to pay the expenses of ASRS. Payments made pursuant to this
23 section by employers become delinquent after the due date prescribed in the
24 board's rules and thereafter shall be increased by interest from and after
25 that date until payment is received by ASRS. ASRS shall charge interest on
26 the delinquent payments as prescribed in section 38-711. ASRS may recover
27 delinquent payments due under this section, together with interest charges as
28 provided in this section, by action in a court of competent jurisdiction
29 against an employer liable for payments or, at the request of the director,
30 ASRS may deduct the delinquent payments and interest charges from any other
31 monies, including excise revenue taxes, payable to the employer by any
32 department or agency of this state.

33 E. An employer of a retired member shall submit any reports, data,
34 paperwork or materials that are requested by ASRS and that are necessary to
35 determine the compensation, ~~gross salary or contract fee~~ associated with a
36 retired member who returns to work or to determine the function, utilization,
37 efficacy or operation of the return to work program.

38 ~~F. For the purposes of this section:~~

39 ~~1. "Contract fee" means the gross amount paid to a retired member as~~
40 ~~an independent contractor minus an amount, not to exceed ten per cent, for an~~
41 ~~administrative fee.~~

42 ~~2. "Gross salary" means the gross amount paid to a retired member by a~~
43 ~~leasing company as salary or wages, including amounts that are subject to~~
44 ~~deferred compensation or tax shelter agreements, for services rendered or~~
45 ~~that would have been paid to the retired member except for the member's~~

1 ~~election or a legal requirement that all or part of the gross amount be used~~
2 ~~for other purposes.~~

3 Sec. 4. Section 38-843.05, Arizona Revised Statutes, is amended to
4 read:

5 38-843.05. Retired members; return to work; employer
6 contributions

7 A. An employer shall pay contributions at an alternate contribution
8 rate on behalf of a retired member who returns to work in any capacity in a
9 position ordinarily filled by an employee of the employer of an eligible
10 group, unless the retired member is required to participate in another state
11 retirement system and the retired member returned to work before July 20,
12 2011. For the purposes of this subsection, "returns to work in any capacity"
13 includes a retired member who returns to work and is ineligible for benefits
14 pursuant to section 38-849, subsection E.

15 B. The alternate contribution rate shall be equal to that portion of
16 the total required contribution that is applied to the amortization of the
17 unfunded actuarial accrued liability for the fiscal year beginning July 1,
18 based on the system's actuary's calculation of the total required
19 contribution for the preceding fiscal year ended on June 30. The alternate
20 contribution rate shall be applied to the compensation, ~~gross salary or~~
21 ~~contract fee~~ of a retired member who meets the requirements of this section.

22 C. The alternate contribution rate shall not be less than eight per
23 cent in any fiscal year.

24 D. All contributions made by the employer and allocated to the fund
25 are irrevocable and shall be used as benefits under this article or to pay
26 the expenses of the system. Payments made pursuant to this section by
27 employers become delinquent after the due date prescribed in section 38-843,
28 subsection D, and thereafter shall be increased by interest from and after
29 that date until payment is received by the system.

30 E. An employer of a retired member shall immediately notify the local
31 board after the employment of a retired member and shall submit any reports,
32 data, paperwork or materials that are requested by the board or the local
33 board that are necessary to determine the compensation, ~~gross salary or~~
34 ~~contract fee~~ associated with a retired member who returns to work or to
35 determine the function, use, efficacy or operation of the return to work
36 program.

37 **F. AN EMPLOYER MAY NOT CONTRACT WITH OR LEASE A RETIRED MEMBER IN ANY**
38 **CAPACITY.**

39 Sec. 5. Section 38-891.01, Arizona Revised Statutes, is amended to
40 read:

41 38-891.01. Retired member; return to work; employer
42 contributions

43 A. An employer shall pay contributions at an alternate contribution
44 rate on behalf of a retired member who returns to work in any capacity in a
45 position ordinarily filled by an employee of the employer in a designated

1 position. This section applies to ~~a- ALL retired member who has been retired~~
2 ~~for more than twelve consecutive months~~ MEMBERS.

3 B. The alternate contribution rate shall be equal to that portion of
4 the total required contribution that is applied to the amortization of the
5 unfunded actuarial accrued liability for the fiscal year beginning July 1,
6 based on the fund's actuary's calculation of the total required contribution
7 for the preceding fiscal year ended on June 30. The alternate contribution
8 rate shall be applied to the ~~compensation, gross salary or contract fee~~
9 SALARY of a retired member who meets the requirements of this section.

10 C. The alternate contribution rate shall not be less than six per cent
11 in any fiscal year.

12 D. All contributions made by the employer and allocated to the fund
13 established by section 38-882 are irrevocable and shall be used as benefits
14 under this article or to pay the expenses of the plan. Payments made
15 pursuant to this section by employers become delinquent after the due date
16 prescribed in section 38-891, subsection C, and thereafter shall be increased
17 by interest from and after that date until payment is received by the plan.

18 E. An employer of a retired member shall submit any reports, data,
19 paperwork or materials that are requested by the board and that are necessary
20 to determine the ~~compensation, gross salary or contract fee~~ SALARY associated
21 with a retired member who returns to work or to determine the function, use,
22 efficacy or operation of the return to work program.

23 F. AN EMPLOYER MAY NOT CONTRACT WITH OR LEASE A RETIRED MEMBER IN ANY
24 CAPACITY.

25 Sec. 6. Current contracts; alternate contribution rate

26 A retired member who is currently working on contract or lease with an
27 employer under the Arizona state retirement system, the public safety
28 personnel retirement system or the corrections officer retirement plan may
29 complete the term of the member's current contract but may not renew the
30 contract or lease. Employers under the Arizona state retirement system, the
31 public safety personnel retirement system and the corrections officer
32 retirement plan shall continue to pay the alternate contribution rate for any
33 retired members on contract or lease with the employer.