

State of Arizona  
Senate  
Fifty-third Legislature  
Second Regular Session  
2018

**CHAPTER 210**  
**SENATE BILL 1054**

AN ACT

AMENDING SECTION 38-751, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA  
STATE 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 38-751, Arizona Revised Statutes, is amended to  
3 read:

4 38-751. Nonparticipatory employer liability allocation;  
5 exemption; definitions

6 A. ASRS shall ~~allocate a liability to~~ ESTABLISH A SEPARATE FUND FOR  
7 an employer OTHER THAN A CHARTER SCHOOL that is:

8 1. No longer participating in ASRS ~~if that nonparticipation is~~  
9 ~~based on~~ AS A RESULT OF any of the following:

10 ~~1. (a) The character of the employer changes from a public entity~~  
11 ~~to a private entity.~~

12 ~~2. An employer, other than this state or a charter school, files~~  
13 ~~for bankruptcy or otherwise dissolves.~~

14 ~~3. An employer is no longer participating.~~

15 ~~4. For this state, the character of a state agency, board or~~  
16 ~~commission changes from public to private.~~

17 ~~B. ASRS shall determine the schedule and method of payment of the~~  
18 ~~allocated liability.~~

19 ~~C. The liability allocated to an employer under this section is~~  
20 ~~equal to the sum of the following:~~

21 ~~1. The plan employer actuarial accrued liability multiplied by the~~  
22 ~~plan total deficit percentage.~~

23 ~~2. The LTD program employer actuarial accrued liability multiplied~~  
24 ~~by the LTD program total deficit percentage.~~

25 (b) AN EMPLOYER, OTHER THAN THIS STATE, DISSOLVES.

26 (c) THROUGH LEGISLATIVE ACTION, THE EMPLOYER IS NO LONGER ENROLLING  
27 NEW EMPLOYEES IN ASRS OR NO LONGER CONTRIBUTING TO ASRS ON BEHALF OF  
28 CURRENT EMPLOYEES OR GROUPS OF EMPLOYEES WHO OTHERWISE WOULD BE ELIGIBLE  
29 FOR ASRS MEMBERSHIP.

30 2. BASED ON THE NUMBER OF CONTRIBUTING EMPLOYEES AS OF THE  
31 EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION BOTH OF THE FOLLOWING  
32 APPLY:

33 (a) CONSIDERED TO EMPLOY A MINIMUM OF FIFTY EMPLOYEES AS OF ONE  
34 YEAR PRECEDING THE EMPLOYER'S NONPARTICIPATION DATE.

35 (b) IS NO LONGER PARTICIPATING IN ASRS AS A RESULT OF REDUCING THE  
36 NUMBER OF ACTIVELY CONTRIBUTING EMPLOYEES BY THIRTY PERCENT OR MORE OVER A  
37 THREE-YEAR PERIOD OR BY FIFTY PERCENT OR MORE OVER ANY PERIOD OF TIME BY  
38 FILLING A POSITION ORDINARILY FILLED BY AN EMPLOYEE OF THE EMPLOYER WITH  
39 AN EMPLOYEE WHO IS NOT OTHERWISE ACTIVELY CONTRIBUTING, UNLESS THE  
40 EMPLOYEE PARTICIPATES IN ANOTHER ARIZONA RETIREMENT PLAN SPECIFIED IN  
41 ARTICLE 3, 4 OR 6 OF THIS CHAPTER, OR AN OPTIONAL RETIREMENT PLAN  
42 SPECIFIED IN TITLE 15, CHAPTER 12, ARTICLE 3.

43 B. SUBSECTION A, PARAGRAPH 2 OF THIS SECTION DOES NOT APPLY TO THIS  
44 STATE UNLESS THE REDUCTION OF ACTIVELY CONTRIBUTING EMPLOYEES IS THE  
45 RESULT OF HIRING ONE OR MORE LEASED EMPLOYEES.

1 C. FOR A NONPARTICIPATING EMPLOYER DESCRIBED IN SUBSECTION A OF  
2 THIS SECTION, ASRS SHALL ALLOCATE AN ACTUARIAL ACCRUED LIABILITY AND A  
3 DESIGNATED ASSET AMOUNT TO THE NONPARTICIPATING EMPLOYER'S SEPARATE FUND  
4 AS OF THE NONPARTICIPATION DATE, WHICH SHALL BE CALCULATED AS FOLLOWS:

5 1. THE ACTUARIAL ACCRUED LIABILITY SHALL EQUAL THE SUM OF THE PLAN  
6 EMPLOYER ACTUARIAL ACCRUED LIABILITY AND THE LTD PROGRAM EMPLOYER  
7 ACTUARIAL ACCRUED LIABILITY. ACTUARIAL ACCRUED LIABILITY SHALL BE  
8 CALCULATED BASED ON THE SAME ACTUARIAL ASSUMPTIONS AND METHODS AS THE  
9 ACTUARIAL VALUATION PERFORMED IMMEDIATELY PRECEDING THE NONPARTICIPATING  
10 EMPLOYER'S NONPARTICIPATION DATE.

11 2. THE DESIGNATED ASSET AMOUNT SHALL EQUAL THE SUM OF THE  
12 FOLLOWING:

13 (a) THE PLAN EMPLOYER ACTUARIAL ACCRUED LIABILITY MULTIPLIED BY THE  
14 PLAN FUNDED PERCENTAGE.

15 (b) THE LTD PROGRAM EMPLOYER ACTUARIAL ACCRUED LIABILITY MULTIPLIED  
16 BY THE LTD PROGRAM FUNDED PERCENTAGE.

17 D. ALL MONIES AND SECURITIES TRANSFERRED TO THE NONPARTICIPATING  
18 EMPLOYER'S SEPARATE FUND SHALL BE CREDITED TO THAT FUND. A RECORD OF THE  
19 MARKET VALUE AND THE COST VALUE OF SUCH TRANSFERRED CONTRIBUTIONS SHALL BE  
20 MAINTAINED FOR ACTUARIAL AND INVESTMENT PURPOSES. ASRS SHALL MAKE ALL  
21 DECISIONS REGARDING THE NONPARTICIPATING EMPLOYER'S SEPARATE FUND.

22 E. AFTER ESTABLISHING THE NONPARTICIPATING EMPLOYER'S SEPARATE  
23 FUND, THE FUND SHALL BE ADJUSTED FOR ALL OF THE FOLLOWING:

24 1. ALL CONTRIBUTIONS MADE BY EMPLOYEES OF THE NONPARTICIPATING  
25 EMPLOYER.

26 2. ALL CONTRIBUTIONS MADE BY THE NONPARTICIPATING EMPLOYER.

27 3. ALL PLAN, LTD PROGRAM AND ANY OTHER BENEFITS PAID TO THE  
28 NONPARTICIPATING EMPLOYER'S MEMBERS WHO ARE ACTIVE, INACTIVE, RETIRED OR  
29 ON LONG-TERM DISABILITY.

30 4. ALL PLAN, LTD PROGRAM AND ANY OTHER BENEFITS PAID TO THE  
31 SURVIVORS OF THE NONPARTICIPATING EMPLOYER'S MEMBERS.

32 5. THE APPLICABLE SHARE OF THE INVESTMENT GAINS AND LOSSES.

33 6. EXPENSES ASSOCIATED WITH THE ADMINISTRATION OF THE  
34 NONPARTICIPATING EMPLOYER'S SEPARATE FUND, INCLUDING ANY ADMINISTRATIVE,  
35 DEVELOPMENT, ACTUARIAL, LEGAL, CUSTODIAL AND INVESTMENT MANAGEMENT COSTS  
36 ASSOCIATED WITH THE FUND. THESE EXPENSES SHALL BE PAID DIRECTLY BY THE  
37 NONPARTICIPATING EMPLOYER OR INCLUDED IN THE EMPLOYER'S LIABILITY FOR THE  
38 PURPOSES OF DETERMINING THE EMPLOYER'S CONTRIBUTION RATE.

39 F. AFTER ESTABLISHING THE NONPARTICIPATING EMPLOYER'S SEPARATE  
40 FUND, THE NONPARTICIPATING EMPLOYER AND ANY EMPLOYEES OF THAT EMPLOYER WHO  
41 ARE ENROLLED IN ASRS SHALL CONTINUE TO HAVE CONTRIBUTION REQUIREMENTS TO  
42 THE NONPARTICIPATING EMPLOYER'S SEPARATE FUND. THE CONTRIBUTION  
43 REQUIREMENTS SHALL BE CALCULATED AS FOLLOWS:

44 1. ALL EMPLOYEES OF THE NONPARTICIPATING EMPLOYER WHO ARE ENROLLED  
45 IN ASRS SHALL CONTINUE TO MAKE CONTRIBUTIONS THROUGH PAYROLL DEDUCTIONS

1 BASED ON THE CONTRIBUTION RATE DETERMINED FOR THE EMPLOYEES OF  
2 PARTICIPATING EMPLOYERS OF ASRS PURSUANT TO SECTION 38-736.

3 2. THE NONPARTICIPATING EMPLOYER SHALL CONTINUE TO MAKE  
4 CONTRIBUTIONS THROUGH LUMP SUM PAYMENTS IN ACCORDANCE WITH SECTION 38-735,  
5 EQUAL TO THE SUM OF:

6 (a) CONTRIBUTIONS OWED THROUGH PAYROLL DEDUCTIONS BASED ON THE  
7 CONTRIBUTION RATE DETERMINED FOR PARTICIPATING EMPLOYERS PURSUANT TO  
8 SECTION 38-737.

9 (b) THE AMOUNT REQUIRED TO AMORTIZE THE PAST SERVICE FUNDING  
10 REQUIREMENT IN THE NONPARTICIPATING EMPLOYER'S SEPARATE FUND OVER A PERIOD  
11 THAT IS DETERMINED BY THE BOARD AND CONSISTENT WITH GENERALLY ACCEPTED  
12 ACTUARIAL STANDARDS. IN DETERMINING THE PAST SERVICE FUNDING PERIOD, THE  
13 BOARD SHALL SEEK TO IMPROVE THE FUNDED STATUS WHENEVER THE  
14 NONPARTICIPATING EMPLOYER'S SEPARATE FUND IS LESS THAN ONE HUNDRED PERCENT  
15 FUNDED.

16 G. THE ASRS ACTUARY SHALL DETERMINE THE ACTUARIAL ASSUMPTIONS USED  
17 TO DETERMINE THE CONTRIBUTION REQUIREMENTS FOR THE NONPARTICIPATING  
18 EMPLOYER UNDER SUBSECTION F OF THIS SECTION. NOTWITHSTANDING SECTION  
19 38-737, THE CONTRIBUTION FOR THE NONPARTICIPATING EMPLOYER MAY NOT BE  
20 DETERMINED AS A PERCENTAGE OF COMPENSATION DUE TO THE ANTICIPATED DECLINE  
21 OF COMPENSATION FOR EMPLOYEES OF THE NONPARTICIPATING EMPLOYER  
22 PARTICIPATING IN ASRS. THE NONPARTICIPATING EMPLOYER SHALL CERTIFY ON  
23 EACH PAYROLL THE AMOUNT TO BE CONTRIBUTED AND SHALL REMIT THAT AMOUNT TO  
24 ASRS AT A RATE THAT IS CONSISTENT WITH THE RATE PAID BY THE PARTICIPATING  
25 EMPLOYERS. EACH FISCAL YEAR, AMOUNTS THAT ARE NOT REMITTED THROUGH  
26 PAYROLL CONTRIBUTIONS PURSUANT TO THIS SECTION SHALL BE INVOICED TO THE  
27 EMPLOYER AND SHALL BE PAID WITHIN THE SAME FISCAL YEAR THE  
28 NONPARTICIPATING EMPLOYER IS INVOICED.

29 ~~D.~~ H. This section does not permit an employer to alter the  
30 irrevocable agreement approved by the board under section 38-729.

31 I. FOR THE PURPOSES OF CALCULATING AN EMPLOYER'S LIABILITY UNDER  
32 THIS SECTION, MEMBERS WHO ARE ACTIVE, INACTIVE, RETIRED OR ON LONG-TERM  
33 DISABILITY ARE CONSIDERED EMPLOYEES OF THE NONPARTICIPATING EMPLOYER IF  
34 THE MEMBER'S MOST RECENT EMPLOYER WAS THE NONPARTICIPATING EMPLOYER AS OF  
35 THE NONPARTICIPATION DATE.

36 J. AN EMPLOYER THAT IS NO LONGER PARTICIPATING PURSUANT TO THIS  
37 SECTION IS NOT ELIGIBLE TO PARTICIPATE IN ASRS AFTER THE EMPLOYER'S  
38 NONPARTICIPATION DATE.

39 K. THIS SECTION DOES NOT APPLY TO AN EMPLOYER WHOSE EXISTENCE WAS  
40 TERMINATED BY LEGISLATIVE ACTION OR OTHERWISE BECAME A NONPARTICIPATING  
41 EMPLOYER AS DESCRIBED IN SUBSECTION A OF THIS SECTION ON OR BEFORE JANUARY  
42 1, 2013.

43 ~~E.~~ L. For the purposes of this section:

44 1. "LTD program" means the program established by article 2.1 of  
45 this chapter.

1           2. "LTD program employer actuarial accrued liability" means the  
2 ~~value of all of the employer's open LTD program claims as of the~~  
3 ~~nonparticipation date plus the value of any LTD program claims that~~  
4 ~~employees of the employer file within twenty-four months after the~~  
5 ~~nonparticipation date and that are approved by ASRS~~ ACTUARIAL ACCRUED  
6 LIABILITY FOR THE EMPLOYER'S ACTIVE AND INACTIVE MEMBERS AND THE OPEN LTD  
7 PROGRAM CLAIMS FOR THE EMPLOYEES OF THE EMPLOYER AS OF THE  
8 NONPARTICIPATION DATE.

9           3. "LTD program ~~total deficit~~ FUNDED percentage" means the total  
10 ~~LTD program actuarial accrued liabilities minus the total~~ market value of  
11 LTD program assets divided by the total LTD program actuarial accrued  
12 liabilities, as of the actuarial valuation performed immediately preceding  
13 the nonparticipation date. If the percentage is ~~less~~ GREATER than ~~zero~~  
14 ONE HUNDRED PERCENT, the LTD program ~~total deficit~~ FUNDED percentage is  
15 ~~zero~~ ONE HUNDRED PERCENT.

16           4. "Nonparticipation date" means the date on which the employer is  
17 no longer participating in ASRS.

18           5. "Plan" means the retirement plan established by this article.

19           6. "Plan employer actuarial accrued liability" means the plan's  
20 actuarial accrued liability for all benefits provided under this article,  
21 including benefits established in section 38-783, for the employer's  
22 active, inactive or retired members as of the actuarial valuation  
23 performed immediately preceding the nonparticipation date.

24           7. "Plan ~~total deficit~~ FUNDED percentage" means the plan's TOTAL  
25 MARKET VALUE OF ASSETS DIVIDED BY THE PLAN'S actuarial accrued liability  
26 for all benefits provided under this article, including benefits  
27 established in section 38-783, for all active, inactive or retired members  
28 ~~minus the market value of total plan assets divided by the plan's~~  
29 ~~actuarial accrued liability for all benefits provided under this article,~~  
30 ~~including benefits established in section 38-783, for all active, inactive~~  
31 ~~or retired members~~ as of the actuarial valuation performed immediately  
32 preceding the nonparticipation date. If the percentage is ~~less~~ GREATER  
33 than ~~zero~~ ONE HUNDRED PERCENT, the plan ~~total deficit~~ FUNDED percentage is  
34 ~~zero~~ ONE HUNDRED PERCENT.

APPROVED BY THE GOVERNOR APRIL 12, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2018.