

REFERENCE TITLE: CORP; defined benefit election

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2800

Introduced by
Representatives Hernandez A: Campbell, Chávez, Hernandez D, Payne

AN ACT

**AMENDING SECTIONS 38-865, 38-881 AND 38-881.01, ARIZONA REVISED STATUTES;
RELATING TO PUBLIC RETIREMENT PLANS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-865, Arizona Revised Statutes, is amended to
3 read:

4 38-865. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Annuity account" means an account that is established for each
7 participant to record the deposit of participant contributions, employer
8 contributions and interest, dividends or other accumulations credited on
9 behalf of the participant.

10 2. "Board" means the board of trustees of the public safety
11 personnel retirement system established by section 38-848.

12 3. "Compensation":

13 (a) For participants as defined in paragraph 7, subdivision (a) of
14 this section and section 38-865.01, has the same meaning prescribed in
15 section 38-842.

16 (b) For participants as defined in paragraph 7, subdivision (b) of
17 this section, means salary as defined in section 38-881.

18 4. "Defined contribution plan" means the public safety personnel
19 defined contribution retirement plan established pursuant to this article.

20 5. "Employer" has the same meaning prescribed in section 38-842 or
21 38-881, as applicable.

22 6. "Employer contribution" means an amount deposited by an
23 employer, from the employer's own monies, in the participant's annuity
24 account on a periodic basis coinciding with the participant's regular pay
25 period.

26 7. "Participant" means:

27 (a) A member as defined in section 38-842, paragraph 31,
28 subdivision (a), excluding subdivision (a), item (vi), who is one of the
29 following:

30 (i) An employee who is hired on or after July 1, 2017, who makes
31 the irrevocable election to participate solely in the defined contribution
32 plan established pursuant to this article and who was not an active, an
33 inactive or a retired member of the system or a member of the system with
34 a disability on June 30, 2017.

35 (ii) An employee who is hired on or after July 1, 2017, who is not
36 covered by the federal old age and survivors insurance system and who
37 makes the irrevocable election to participate in the system or is enrolled
38 in the system pursuant to section 38-842.01, subsection A.

39 (b) A member as defined in section 38-881, paragraph 27,
40 subdivision (a) who is one of the following:

41 (i) An employee who is hired on or after July 1, 2018 **AND BEFORE**
42 **JANUARY 1, 2021**, who is not in a designated position as defined in section
43 38-881, paragraph 13, subdivision (g) and who was not an active, an
44 inactive or a retired member of the corrections officer retirement plan or

1 a member of the corrections officer retirement plan with a disability on
2 June 30, 2018.

3 (ii) An employee who is hired on or after July 1, 2018, who is in a
4 designated position as defined in section 38-881, paragraph 13,
5 subdivision (g), who makes the irrevocable election pursuant to section
6 38-881.01 to participate solely in the defined contribution plan
7 established pursuant to this article and who was not an active, an
8 inactive or a retired member of the corrections officer retirement plan or
9 a member of the corrections officer retirement plan with a disability on
10 June 30, 2018.

11 (iii) AN EMPLOYEE WHO IS HIRED ON OR AFTER JANUARY 1, 2021, WHO
12 MAKES THE IRREVOCABLE ELECTION PURSUANT TO SECTION 38-881.01 TO
13 PARTICIPATE SOLELY IN THE DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT
14 TO THIS ARTICLE AND WHO WAS NOT AN ACTIVE, AN INACTIVE OR A RETIRED MEMBER
15 OF THE CORRECTIONS OFFICER RETIREMENT PLAN OR A MEMBER OF THE CORRECTIONS
16 OFFICER RETIREMENT PLAN WITH A DISABILITY ON DECEMBER 31, 2020.

17 8. "Pensionable compensation" means the amount of the participant's
18 annual compensation that does not exceed the limitation specified in
19 section 38-843.04 or 38-895.01, as applicable.

20 9. "System" means the public safety personnel retirement system
21 established by article 4 of this chapter.

22 Sec. 2. Section 38-881, Arizona Revised Statutes, is amended to
23 read:

24 38-881. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Accidental disability" means a physical or mental condition
27 that the local board finds totally and permanently prevents an employee
28 from performing a reasonable range of duties within the employee's
29 department and was incurred in the performance of the employee's duties.

30 2. "Accumulated member contributions" means for each member the sum
31 of the amount of all the member's contributions deducted from the member's
32 salary and paid to the fund, plus member contributions transferred to the
33 fund by another retirement plan covering public employees of this state,
34 plus previously withdrawn accumulated member contributions that are repaid
35 to the fund in accordance with this article, minus any benefits paid to or
36 on behalf of a member.

37 3. "Actuarial equivalent" means equality in present value of the
38 aggregate amounts expected to be received under two different forms of
39 payment, based on mortality and interest assumptions adopted by the board.

40 4. "Alternate payee" means the spouse or former spouse of a
41 participant as designated in a domestic relations order.

42 5. "Alternate payee's portion" means benefits that are payable to
43 an alternate payee pursuant to a plan approved domestic relations order.

44 6. "Annuitant" means a person who is receiving a benefit pursuant
45 to section 38-911.

- 1 7. "Average monthly salary" means:
- 2 (a) For an employee who becomes a member of the plan:
- 3 (i) Before January 1, 2012, one-thirty-sixth of the aggregate
- 4 amount of salary that is paid a member by a participating employer during
- 5 a period of thirty-six consecutive months of service in which the member
- 6 received the highest salary within the last one hundred twenty months of
- 7 service.
- 8 (ii) On or after January 1, 2012 and before July 1, 2018,
- 9 one-sixtieth of the aggregate amount of salary that is paid a member by a
- 10 participating employer during a period of sixty consecutive months of
- 11 service in which the member received the highest salary within the last
- 12 one hundred twenty months of service.
- 13 (iii) On or after July 1, 2018, one-sixtieth of the aggregate
- 14 amount of salary that is paid a member by a participating employer during
- 15 a period of sixty consecutive months of service in which the member
- 16 received the highest salary within the last one hundred twenty months of
- 17 service.
- 18 (b) The aggregate amount of salary that is paid a member divided by
- 19 the member's months of service if the member has less than thirty-six or
- 20 sixty months of service. In the computation under this paragraph, a
- 21 period of nonpaid or partially paid industrial leave shall be considered
- 22 based on the salary the employee would have received in the employee's job
- 23 classification if the employee was not on industrial leave.
- 24 8. "Beneficiary" means an individual who is being paid or who has
- 25 entitlement to the future payment of a pension on account of a reason
- 26 other than the individual's membership in the retirement plan.
- 27 9. "Board" means the board of trustees of the public safety
- 28 personnel retirement system.
- 29 10. "Claimant" means a member, beneficiary or estate that files an
- 30 application for benefits with the retirement plan.
- 31 11. "Credited service" means credited service transferred to the
- 32 retirement plan from another retirement system or plan for public
- 33 employees of this state, plus those compensated periods of service as a
- 34 member of the retirement plan for which member contributions are on
- 35 deposit in the fund.
- 36 12. "Cure period" means the ninety-day period in which a
- 37 participant or alternate payee may submit an amended domestic relations
- 38 order and request a determination, calculated from the time the plan
- 39 issues a determination finding that a previously submitted domestic
- 40 relations order did not qualify as a plan approved domestic relations
- 41 order.
- 42 13. "Designated position" means:
- 43 (a) For a county:
- 44 (i) A county detention officer.

- 1 (ii) A nonuniformed employee of a sheriff's department whose
2 primary duties require direct contact with inmates.
- 3 (b) For the state department of corrections and the department of
4 juvenile corrections, only the following specifically designated
5 positions:
- 6 (i) Food service.
 - 7 (ii) Nursing personnel.
 - 8 (iii) Corrections physician assistant.
 - 9 (iv) Therapist.
 - 10 (v) Corrections dental assistant.
 - 11 (vi) Hygienist.
 - 12 (vii) Corrections medical assistant.
 - 13 (viii) Correctional service officer, including assistant deputy
14 warden, deputy warden, warden and superintendent.
 - 15 (ix) State correctional program officer.
 - 16 (x) Parole or community supervision officers.
 - 17 (xi) Investigators.
 - 18 (xii) Teachers.
 - 19 (xiii) Institutional maintenance workers.
 - 20 (xiv) Youth corrections officer.
 - 21 (xv) Youth program officer.
 - 22 (xvi) Behavioral health treatment unit managers.
 - 23 (xvii) The director and assistant directors of the department of
24 juvenile corrections and the superintendent of the state educational
25 system for committed youth.
 - 26 (xviii) The director, deputy directors and assistant directors of
27 the state department of corrections.
 - 28 (xix) Other positions designated by the local board of the state
29 department of corrections or the local board of the department of juvenile
30 corrections pursuant to section 38-891.
- 31 (c) For a city or town, a city or town detention officer.
- 32 (d) For an employer of an eligible group as defined in section
33 38-842, full-time dispatchers.
- 34 (e) For the judiciary, juvenile detention officers and those
35 positions designated by the local board of the judiciary pursuant to
36 section 38-891.
- 37 (f) For the department of public safety, state detention officers.
- 38 (g) For the judiciary, probation and surveillance officers.
- 39 14. "Determination" means a written document that indicates to a
40 participant and alternate payee whether a domestic relations order
41 qualifies as a plan approved domestic relations order.
- 42 15. "Determination period" means the ninety-day period in which the
43 plan must review a domestic relations order that is submitted by a
44 participant or alternate payee to determine whether the domestic relations
45 order qualifies as a plan approved domestic relations order, calculated

1 from the time the plan mails a notice of receipt to the participant and
2 alternate payee.

3 16. "Direct rollover" means a payment by the plan to an eligible
4 retirement plan that is specified by the distributee.

5 17. "Distributee" means a member, a member's surviving spouse or a
6 member's spouse or former spouse who is the alternate payee under a plan
7 approved domestic relations order.

8 18. "Domestic relations order" means an order of a court of this
9 state that is made pursuant to the domestic relations laws of this state
10 and that creates or recognizes the existence of an alternate payee's right
11 to, or assigns to an alternate payee the right to, receive a portion of
12 the benefits payable to a participant.

13 19. "Eligible child" means an unmarried child of a deceased active
14 or retired member who meets one of the following qualifications:

15 (a) Is under eighteen years of age.

16 (b) Is at least eighteen years of age and under twenty-three years
17 of age only during any period that the child is a full-time student.

18 (c) Is under a disability that began before the child attained
19 twenty-three years of age and remains a dependent of the surviving spouse
20 or guardian.

21 20. "Eligible retirement plan" means any of the following that
22 accepts a distributee's eligible rollover distribution:

23 (a) An individual retirement account described in section 408(a) of
24 the internal revenue code.

25 (b) An individual retirement annuity described in section 408(b) of
26 the internal revenue code.

27 (c) An annuity plan described in section 403(a) of the internal
28 revenue code.

29 (d) A qualified trust described in section 401(a) of the internal
30 revenue code.

31 (e) An annuity contract described in section 403(b) of the internal
32 revenue code.

33 (f) An eligible deferred compensation plan described in section
34 457(b) of the internal revenue code that is maintained by a state, a
35 political subdivision of a state or any agency or instrumentality of a
36 state or a political subdivision of a state and that agrees to separately
37 account for amounts transferred into the eligible deferred compensation
38 plan from this plan.

39 21. "Eligible rollover distribution" means a payment to a
40 distributee, but does not include any of the following:

41 (a) Any distribution that is one of a series of substantially equal
42 periodic payments made not less frequently than annually for the life or
43 life expectancy of the member or the joint lives or joint life
44 expectancies of the member and the member's beneficiary or for a specified
45 period of ten years or more.

1 (b) Any distribution to the extent the distribution is required
2 under section 401(a)(9) of the internal revenue code.

3 (c) The portion of any distribution that is not includable in gross
4 income.

5 (d) Any distribution made to satisfy the requirements of section
6 415 of the internal revenue code.

7 (e) Hardship distributions.

8 (f) Similar items designated by the commissioner of the United
9 States internal revenue service in revenue rulings, notices and other
10 guidance published in the internal revenue bulletin.

11 22. "Employee" means a person employed by a participating employer
12 in a designated position.

13 23. "Employer" means an agency or department of this state or a
14 political subdivision of this state that has one or more employees in a
15 designated position.

16 24. "Fund" means the corrections officer retirement plan fund.

17 25. "Juvenile detention officer" means a juvenile detention officer
18 responsible for the direct custodial supervision of juveniles who are
19 detained in a county juvenile detention center.

20 26. "Local board" means the retirement board of the employer that
21 consists of persons appointed or elected to administer the plan as it
22 applies to the employer's members in the plan.

23 27. "Member":

24 (a) Means any employee who meets all of the following
25 qualifications:

26 (i) Who is a full-time paid person employed by a participating
27 employer in a designated position.

28 (ii) Who is receiving salary for personal services rendered to a
29 participating employer or would be receiving salary except for an
30 authorized leave of absence.

31 (iii) Whose customary employment is at least forty hours each week.

32 (b) Includes an employee who meets the requirements of subdivision
33 (a) of this paragraph, who is hired on or after July 1, 2018, who is in a
34 designated position as defined in paragraph 13, subdivision (g) of this
35 section and who makes the irrevocable election to participate in the plan
36 pursuant to section 38-881.01.

37 (c) INCLUDES AN EMPLOYEE WHO MEETS THE REQUIREMENTS OF SUBDIVISION
38 (a) OF THIS PARAGRAPH, WHO IS HIRED ON OR AFTER JANUARY 1, 2021 AND WHO
39 MAKES THE IRREVOCABLE ELECTION TO PARTICIPATE IN THE PLAN PURSUANT TO
40 SECTION 38-881.01.

41 ~~(c)~~ (d) Except as provided in subdivision (b) of this paragraph,
42 does not include an employee who is hired on or after July 1, 2018 AND
43 BEFORE JANUARY 1, 2021, unless the employee was an active, an inactive or
44 a retired member of the plan or a member of the plan with a disability on
45 June 30, 2018.

1 28. "Normal retirement date" means:

2 (a) For an employee who becomes a member of the plan before January
3 1, 2012, the first day of the calendar month immediately following the
4 employee's completion of twenty years of service or, in the case of a
5 dispatcher, twenty-five years of service, the employee's sixty-second
6 birthday and completion of ten years of service or the month in which the
7 sum of the employee's age and years of credited service equals eighty.

8 (b) For an employee who becomes a member of the plan on or after
9 January 1, 2012 and before July 1, 2018, the first day of the calendar
10 month immediately following the employee's completion of twenty-five years
11 of service if the employee is at least fifty-two and one-half years of age
12 or the employee's sixty-second birthday and completion of ten years of
13 service.

14 (c) For an employee who becomes a member of the plan on or after
15 July 1, 2018, the first day of the calendar month immediately following
16 the employee's completion of ten years of credited service if the employee
17 is at least fifty-five years of age.

18 29. "Notice of receipt" means a written document that is issued by
19 the plan to a participant and alternate payee and that states that the
20 plan has received a domestic relations order and a request for a
21 determination that the domestic relations order is a plan approved
22 domestic relations order.

23 30. "Ordinary disability" means a physical condition that the local
24 board determines will totally and permanently prevent an employee from
25 performing a reasonable range of duties within the employee's department
26 or a mental condition that the local board determines will totally and
27 permanently prevent an employee from engaging in any substantial gainful
28 activity.

29 31. "Participant" means a member who is subject to a domestic
30 relations order.

31 32. "Participant's portion" means benefits that are payable to a
32 participant pursuant to a plan approved domestic relations order.

33 33. "Participating employer" means an employer that the board has
34 determined to have one or more employees in a designated position or a
35 county, city, town or department of this state that has entered into a
36 joinder agreement pursuant to section 38-902.

37 34. "Pension" means a series of monthly payments by the retirement
38 plan but does not include an annuity that is payable pursuant to section
39 38-911.

40 35. "Personal representative" means the personal representative of
41 a deceased alternate payee.

42 36. "Physician" means a physician who is licensed pursuant to title
43 32, chapter 13 or 17.

44 37. "Plan approved domestic relations order" means a domestic
45 relations order that the plan approves as meeting all the requirements for

1 a plan approved domestic relations order as otherwise prescribed in this
2 article.

3 38. "Plan year" or "fiscal year" means the period beginning on July
4 1 of any year and ending on June 30 of the next succeeding year.

5 39. "Probation or surveillance officer" means an officer appointed
6 pursuant to section 8-203, 12-251 or 12-259 but does not include other
7 personnel, office assistants or support staff.

8 40. "Retired member" means an individual who terminates employment
9 and who is receiving a pension pursuant to either section 38-885 or
10 38-886.

11 41. "Retirement" or "retired" means termination of employment after
12 a member has fulfilled all requirements for a pension or, for an employee
13 who becomes a member of the plan on or after January 1, 2012, attains the
14 age and service requirements for a normal retirement date.

15 42. "Retirement plan" or "plan" means the corrections officer
16 retirement plan established by this article.

17 43. "Salary" means the base salary, shift differential pay,
18 military differential wage pay and holiday pay paid a member for personal
19 services rendered in a designated position to a participating employer on
20 a regular monthly, semimonthly or biweekly payroll basis. Salary includes
21 amounts that are subject to deferred compensation or tax shelter
22 agreements. Salary does not include payment for any remuneration or
23 reimbursement other than as prescribed by this paragraph. For the
24 purposes of this paragraph, "base salary" means the amount of compensation
25 each member is regularly paid for personal services rendered to an
26 employer before the addition of any extra monies, including overtime pay,
27 shift differential pay, holiday pay, fringe benefit pay and similar extra
28 payments.

29 44. "Segregated funds" means the amount of benefits that would
30 currently be payable to an alternate payee pursuant to a domestic
31 relations order under review by the plan, or a domestic relations order
32 submitted to the plan that failed to qualify as a plan approved domestic
33 relations order, if the domestic relations order were determined to be a
34 plan approved domestic relations order.

35 45. "Service" means employment rendered to a participating employer
36 as an employee in a designated position. Any absence that is authorized
37 by an employer, including any periods during which the employee is on an
38 employer-sponsored long-term disability program, is considered as service
39 if the employee returns or is deemed by the employer to have returned to a
40 designated position within the period of the authorized absence.

41 46. "Total and permanent disability" means a physical or mental
42 condition that is not an accidental disability, that the local board finds
43 totally and permanently prevents a member from engaging in any gainful
44 employment and that is the direct and proximate result of the member's

1 performance of the member's duty as an employee of a participating
2 employer.

3 Sec. 3. Section 38-881.01, Arizona Revised Statutes, is amended to
4 read:

5 38-881.01. Employees hired on or after July 1, 2018; defined
6 contribution plan; benefit election; disability

7 A. Except as provided in subsection B of this section, an employee
8 who is hired on or after July 1, 2018 AND BEFORE JANUARY 1, 2021, who is a
9 member as defined in section 38-881, paragraph 27, subdivision (a) and who
10 was not an active, an inactive or a retired member of the plan or a member
11 of the plan with a disability on June 30, 2018 shall participate in the
12 public safety personnel defined contribution retirement plan established
13 pursuant to article 4.1 of this chapter. For an employee who is hired on
14 or after September 1, 2019 AND BEFORE JANUARY 1, 2021, the employee's
15 participation in the public safety personnel defined contribution
16 retirement plan established pursuant to article 4.1 of this chapter begins
17 ninety days after the date the employee is hired.

18 B. An employee ~~who is hired on or after July 1, 2018, who is in a~~
19 ~~designated position as defined in section 38-881, paragraph 13,~~
20 ~~subdivision (g) and who was not an active, an inactive or a retired member~~
21 ~~of the plan or a member of the plan with a disability on June 30, 2018~~ is
22 eligible to participate in the corrections officer retirement plan or the
23 public safety personnel defined contribution retirement plan established
24 pursuant to article 4.1 of this chapter, depending on the employee's
25 election under this section, IF EMPLOYEE IS EITHER:

26 1. HIRED ON OR AFTER JULY 1, 2018, IS IN A DESIGNATED POSITION AS
27 DEFINED IN SECTION 38-881, PARAGRAPH 13, SUBDIVISION (g) AND WAS NOT AN
28 ACTIVE, AN INACTIVE OR A RETIRED MEMBER OF THE PLAN OR A MEMBER OF THE
29 PLAN WITH A DISABILITY ON JUNE 30, 2018.

30 2. HIRED ON OR AFTER JANUARY 1, 2021 AND WAS NOT AN ACTIVE, AN
31 INACTIVE OR A RETIRED MEMBER OF THE PLAN OR A MEMBER OF THE PLAN WITH A
32 DISABILITY ON DECEMBER 31, 2020.

33 C. FOR EMPLOYEES DESCRIBED IN SUBSECTION B OF THIS SECTION, during
34 the first sixty days of an employee's employment and before the employee
35 makes a decision regarding the individual's retirement plan, the board
36 shall provide each ~~probation and surveillance officer who is hired on or~~
37 ~~after July 1, 2018~~ EMPLOYEE interactive, objective educational training,
38 counseling and participant-specific plan information about both the
39 corrections officer retirement plan and the public safety personnel
40 defined contribution retirement plan options. The employee's
41 participation in either the plan or the public safety personnel defined
42 contribution retirement plan established pursuant to article 4.1 of this
43 chapter begins ninety days after the date the employee is hired. Unless
44 the elections made under this section are made before the ninetieth day
45 after the date of employment, the employee is automatically enrolled in

1 the plan for the remainder of the employee's employment with any employer
2 under the plan. Any election made under this section is irrevocable and
3 is the employee's election for the remainder of the employee's employment
4 with any employer under the plan, regardless of whether the employee's
5 employment is continuous. The employee may make one of the following
6 irrevocable elections:

7 1. To participate solely in the corrections officer retirement
8 plan.

9 2. To participate solely in the public safety personnel defined
10 contribution retirement plan established pursuant to article 4.1 of this
11 chapter.

12 ~~C.~~ D. If an employee specified in subsection B of this section in
13 the employee's first ninety days of employment is determined to be
14 eligible for an accidental or total and permanent disability pension
15 pursuant to section 38-886, the employee shall be automatically enrolled
16 in the corrections officer retirement plan for the remainder of the
17 employee's employment with any employer under the plan commencing on the
18 employee's date of disability and shall receive an accidental or total and
19 permanent disability pension as prescribed in this article.

20 ~~D.~~ E. If an employee specified in subsection B of this section in
21 the employee's first ninety days of employment is killed in the line of
22 duty or dies from injuries suffered in the line of duty, the employee
23 shall be considered as having been enrolled in the corrections officer
24 retirement plan and the surviving spouse of the deceased employee is
25 eligible for survivor benefits as prescribed in this article.