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REFERENCE TITLE: **ASRS; nonparticipatory employer liability**

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SB 1053

Introduced by
Senator Livingston

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 establish a separate fund for an employer, other than
7 a charter school, that is:

8 ~~1.~~ no longer participating in ASRS as a result of any of the
9 following:

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

12 ~~(b)~~ 2. An employer, other than this state, dissolves.

13 ~~(c)~~ 3. Through legislative action, the employer is no longer
14 enrolling new employees in ASRS or no longer contributing to ASRS on
15 behalf of current employees or groups of employees who otherwise would be
16 eligible for ASRS membership.

17 ~~2. Based on the number of contributing employees as of August 3,~~
18 ~~2018 both of the following apply:~~

19 ~~(a) Considered to employ a minimum of fifty employees as of one~~
20 ~~year preceding the employer's nonparticipation date.~~

21 ~~(b) Is no longer participating in ASRS as a result of reducing the~~
22 ~~number of actively contributing employees by thirty percent or more over a~~
23 ~~three-year period or by fifty percent or more over any period of time by~~
24 ~~filling a position ordinarily filled by an employee of the employer with~~
25 ~~an employee who is not otherwise actively contributing, unless the~~
26 ~~employee participates in another Arizona retirement plan specified in~~
27 ~~article 3, 4 or 6 of this chapter, or an optional retirement plan~~
28 ~~specified in title 15, chapter 12, article 3.~~

29 ~~B. Subsection A, paragraph 2 of this section does not apply to this~~
30 ~~state unless the reduction of actively contributing employees is the~~
31 ~~result of hiring one or more leased employees.~~

32 ~~C.~~ B. For a nonparticipating employer described in subsection A of
33 this section, ASRS shall allocate an actuarial accrued liability and a
34 designated asset amount to the nonparticipating employer's separate fund
35 as of the nonparticipation date, which shall be calculated as follows:

36 1. The actuarial accrued liability shall equal the sum of the plan
37 employer actuarial accrued liability and the LTD program employer
38 actuarial accrued liability. Actuarial accrued liability shall be
39 calculated based on the same actuarial assumptions and methods as the
40 actuarial valuation performed immediately preceding the nonparticipating
41 employer's nonparticipation date.

42 2. The designated asset amount shall equal the sum of the
43 following:

44 (a) The plan employer actuarial accrued liability multiplied by the
45 plan funded percentage.

1 (b) The LTD program employer actuarial accrued liability multiplied
2 by the LTD program funded percentage.

3 ~~D.~~ C. All monies and securities transferred to the
4 nonparticipating employer's separate fund shall be credited to that fund.
5 A record of the market value and the cost value of such transferred
6 contributions shall be maintained for actuarial and investment purposes.
7 ASRS shall make all decisions regarding the nonparticipating employer's
8 separate fund.

9 ~~E.~~ D. After establishing the nonparticipating employer's separate
10 fund, the fund shall be adjusted for all of the following:

11 1. All contributions made by employees of the nonparticipating
12 employer.

13 2. All contributions made by the nonparticipating employer.

14 3. All plan, ALL LTD program and any other benefits paid to the
15 nonparticipating employer's members who are active, inactive, retired or
16 on long-term disability.

17 4. All plan, ALL LTD program and any other benefits paid to the
18 survivors of the nonparticipating employer's members.

19 5. The applicable share of the investment gains and losses.

20 6. Expenses associated with the administration of the
21 nonparticipating employer's separate fund, including any administrative,
22 development, actuarial, legal, custodial and investment management costs
23 associated with the fund. These expenses shall be paid directly by the
24 nonparticipating employer or included in the employer's liability for the
25 purposes of determining the employer's contribution rate.

26 ~~F.~~ E. After establishing the nonparticipating employer's separate
27 fund, the nonparticipating employer and any employees of that employer who
28 are enrolled in ASRS shall continue to have contribution requirements to
29 the nonparticipating employer's separate fund. The contribution
30 requirements shall be calculated as follows:

31 1. All employees of the nonparticipating employer who are enrolled
32 in ASRS shall continue to make contributions through payroll deductions
33 based on the contribution rate determined for the employees of
34 participating employers of ASRS pursuant to section 38-736.

35 2. The nonparticipating employer shall continue to make
36 contributions through lump sum payments in accordance with section 38-735,
37 equal to the sum of:

38 (a) Contributions owed through payroll deductions based on the
39 contribution rate determined for participating employers pursuant to
40 section 38-737.

41 (b) The amount required to amortize the past service funding
42 requirement in the nonparticipating employer's separate fund over a period
43 that is determined by the board and THAT IS consistent with generally
44 accepted actuarial standards. In determining the past service funding
45 period, the board shall seek to improve the funded status whenever the

1 nonparticipating employer's separate fund is less than one hundred percent
2 funded.

3 ~~G.~~ F. The ASRS actuary shall determine the actuarial assumptions
4 used to determine the contribution requirements for the nonparticipating
5 employer under subsection ~~F~~ E of this section. Notwithstanding section
6 38-737, the contribution for the nonparticipating employer may not be
7 determined as a percentage of compensation due to the anticipated decline
8 of compensation for employees of the nonparticipating employer
9 participating in ASRS. The nonparticipating employer shall certify on
10 each payroll the amount to be contributed and shall remit that amount to
11 ASRS at a rate that is consistent with the rate paid by the participating
12 employers. Each fiscal year, amounts that are not remitted through
13 payroll contributions pursuant to this section shall be invoiced to the
14 employer and shall be paid within the same fiscal year the
15 nonparticipating employer is invoiced.

16 ~~H.~~ G. This section does not permit an employer to alter the
17 irrevocable agreement approved by the board under section 38-729.

18 ~~I.~~ H. For the purposes of calculating an employer's liability
19 under this section, members who are active, inactive, retired or on
20 long-term disability are considered employees of the nonparticipating
21 employer if the member's most recent employer was the nonparticipating
22 employer as of the nonparticipation date.

23 ~~J. An employer that is no longer participating pursuant to this
24 section is not eligible to participate in ASRS after the employer's
25 nonparticipation date.~~

26 ~~K.~~ I. This section does not apply to an employer whose existence
27 was terminated by legislative action or otherwise became a
28 nonparticipating employer as described in subsection A of this section on
29 or before January 1, 2013.

30 ~~L.~~ J. For the purposes of this section:

31 1. "LTD program" means the program established by article 2.1 of
32 this chapter.

33 2. "LTD program employer actuarial accrued liability" means the
34 actuarial accrued liability for the employer's active and inactive members
35 and the open LTD program claims for the employees of the employer as of
36 the nonparticipation date.

37 3. "LTD program funded percentage" means the total market value of
38 LTD program assets divided by the total LTD program actuarial accrued
39 liabilities, as of the actuarial valuation performed immediately preceding
40 the nonparticipation date. If the percentage is greater than one hundred
41 percent, the LTD program funded percentage is one hundred percent.

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

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

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

6 7. "Plan funded percentage" means the plan's total market value of
7 assets divided by the plan's actuarial accrued liability for all benefits
8 provided under this article, including benefits established in section
9 38-783, for all active, inactive or retired members as of the actuarial
10 valuation performed immediately preceding the nonparticipation date. If
11 the percentage is greater than one hundred percent, the plan funded
12 percentage is one hundred percent.