

Senate Engrossed

public retirement systems; plan election

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

CHAPTER 6

SENATE BILL 1173

AN ACT

AMENDING SECTIONS 38-842.01, 38-870.04, 38-881.01, 38-891.01 AND 38-938,
ARIZONA REVISED STATUTES; 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. Section 38-842.01, Arizona Revised Statutes, is amended
3 to read:

4 38-842.01. Benefit election; eligibility; disability; death;
5 employees hired on or after July 1, 2017

6 A. An employee who is hired on or after July 1, 2017 and who was
7 not an active, an inactive or a retired member of the system or a member
8 of the system with a disability on June 30, 2017 is eligible to
9 participate in the system or the public safety personnel defined
10 contribution retirement plan established pursuant to article 4.1 of this
11 chapter, depending on the employee's election under this section. The
12 employee's participation in either the system or the public safety
13 personnel defined contribution retirement plan established pursuant to
14 article 4.1 of this chapter begins ninety days after the date the employee
15 is hired. Unless the elections made under this section are made before
16 the ninetieth day after the date of employment, the employee is
17 automatically enrolled in the system for the remainder of the employee's
18 employment with any employer under the system. Any election made under
19 this section is irrevocable and is the employee's election for the
20 remainder of the employee's employment with any employer under the system,
21 regardless of whether the employee's employment is continuous. The
22 employee may make one of the following irrevocable elections:

23 1. To participate solely in the system.

24 2. To participate solely in the public safety personnel defined
25 contribution retirement plan established pursuant to article 4.1 of this
26 chapter.

27 B. An employee who makes an election to participate solely in the
28 system or is automatically enrolled in the system pursuant to subsection A
29 of this section and who is not covered by the federal old age and
30 survivors insurance system is also enrolled in the public safety personnel
31 defined contribution retirement plan established pursuant to article 4.1
32 of this chapter during any period that the employee is not covered by the
33 federal old age and survivors insurance system through an employer under
34 the system. If such employee is subsequently covered by the federal old
35 age and survivors insurance system, the employee and the employer may not
36 make any contributions on the employee's behalf to the public safety
37 personnel defined contribution retirement plan established pursuant to
38 article 4.1 of this chapter that are described in section 38-867,
39 subsection A, paragraph 1 or subsection B during the period the employee
40 is covered by the federal old age and survivors insurance system. If at
41 any later time the employee is not covered by the federal old age and
42 survivors insurance system through an employer under the system, the
43 employee and the employer shall again be required to contribute on behalf
44 of the employee to the public safety personnel defined contribution
45 retirement plan established pursuant to article 4.1 of this chapter as

1 required by section 38-867, subsection A, paragraph 1 and, if the employee
2 made an irrevocable election to contribute more of the employee's gross
3 pensionable compensation to the public safety personnel defined
4 contribution retirement plan as provided in section 38-867, subsection B,
5 such contributions shall be reestablished for the period the employee is
6 not covered by the federal old age and survivors insurance system.

7 C. If an employee in the employee's first ninety days of employment
8 is determined to be eligible for an accidental or catastrophic disability
9 pension pursuant to section 38-844, the employee shall be automatically
10 enrolled in the system for the remainder of the employee's employment with
11 any employer under the system commencing on the employee's date of
12 disability and shall receive an accidental or catastrophic disability
13 pension as prescribed in this article.

14 D. If an employee in the employee's first ninety days of employment
15 is killed in the line of duty or dies from injuries suffered in the line
16 of duty, the employee shall be considered as having been enrolled in the
17 system and the surviving spouse of the deceased employee is eligible for
18 survivor benefits as prescribed in this article.

19 E. IF AN EMPLOYEE WHO IS HIRED ON OR AFTER JULY 1, 2017 AND WHO IS
20 AN ACTIVE OR INACTIVE MEMBER OF THE SYSTEM OR A PARTICIPANT IN THE PUBLIC
21 SAFETY PERSONNEL DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO ARTICLE
22 4.1 OF THIS CHAPTER IS SUBSEQUENTLY REHIRED BY THE EMPLOYEE'S PREVIOUS
23 EMPLOYER OR ANOTHER EMPLOYER UNDER THE SYSTEM, THE EMPLOYEE'S
24 PARTICIPATION IN EITHER THE SYSTEM OR THE PUBLIC SAFETY PERSONNEL DEFINED
25 CONTRIBUTION PLAN, FOR WHICH THE EMPLOYEE HAD ELECTED TO PARTICIPATE,
26 BEGINS ON THE DATE THE EMPLOYEE IS REHIRED OR HIRED BY ANOTHER EMPLOYER.

27 Sec. 2. Section 38-870.04, Arizona Revised Statutes, is amended to
28 read:

29 38-870.04. Employer and participant contributions

30 A. Beginning July 1, 2017, employers shall contribute the
31 percentage of the gross pensionable compensation of all of the
32 participants under their employment so that the total employer
33 contributions equals the amount that the board determines is necessary to
34 pay one-half of all benefits under and costs of administering the
35 disability program.

36 B. Beginning July 1, 2017, a participant shall contribute a
37 percentage of the participant's gross pensionable compensation equal to
38 the employer contribution for the participant required pursuant to
39 subsection A of this section.

40 C. The employer shall pay the participant contributions required of
41 participants on account of gross pensionable compensation earned. All
42 employer and participant contributions shall be paid to the board. The
43 board shall allocate the contributions to the disability program trust
44 fund and shall place the contributions in the disability program's
45 depository.

1 D. Each employer shall certify on each payroll the amount to be
2 contributed to the disability program and shall remit that amount to the
3 board.

4 E. The department of administration and the treasurer of each
5 county and participating city and town shall transfer to the board the
6 contributions provided for in subsections A and B of this section within
7 ten working days after each payroll date. Contributions transferred after
8 these dates shall include a penalty equal to ten percent per annum,
9 compounded ~~daily~~ ANNUALLY, for each day that the contributions are late.
10 Delinquent payments due under this subsection, together with interest
11 charges as provided in this subsection and court costs, may be recovered
12 by action in a court of competent jurisdiction against the person or
13 persons responsible for the payments or, at the request of the board, may
14 be deducted from any other monies, including excise revenue taxes, payable
15 to a political subdivision by any department or agency of this state.

16 F. If more than the correct amount of contributions required is
17 paid by an employer, proper adjustment shall be made in connection with
18 subsequent payments. The board shall return excess contributions to the
19 employer if the employer requests return of the contributions within one
20 year after the date of overpayment.

21 G. Participant contributions are not refundable.

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

24 38-881.01. Employees hired on or after July 1, 2018; defined
25 contribution plan; benefit election; disability

26 A. Except as provided in subsection B of this section, an employee
27 who is hired on or after July 1, 2018, who is a member as defined in
28 section 38-881, paragraph 27, subdivision (a) and who was not an active,
29 an inactive or a retired member of the plan or a member of the plan with a
30 disability on June 30, 2018 shall participate in the public safety
31 personnel defined contribution retirement plan established pursuant to
32 article 4.1 of this chapter. For an employee who is hired on or after
33 September 1, 2019, the employee's participation in the public safety
34 personnel defined contribution retirement plan established pursuant to
35 article 4.1 of this chapter begins ninety days after the date the employee
36 is hired.

37 B. An employee who is hired on or after July 1, 2018, who is in a
38 designated position as defined in section 38-881, paragraph 13,
39 subdivision (g) and who was not an active, an inactive or a retired member
40 of the plan or a member of the plan with a disability on June 30, 2018 is
41 eligible to participate in the corrections officer retirement plan or the
42 public safety personnel defined contribution retirement plan established
43 pursuant to article 4.1 of this chapter, depending on the employee's
44 election under this section. During the first sixty days of an employee's
45 employment and before the employee makes a decision regarding the

1 individual's retirement plan, the board shall provide each probation and
2 surveillance officer who is hired on or after July 1, 2018 interactive,
3 objective educational training, counseling and participant-specific plan
4 information about both the corrections officer retirement plan and the
5 public safety personnel defined contribution retirement plan options. The
6 employee's participation in either the plan or the public safety personnel
7 defined contribution retirement plan established pursuant to article 4.1
8 of this chapter begins ninety days after the date the employee is
9 hired. Unless the elections made under this section are made before the
10 ninetieth day after the date of employment, the employee is automatically
11 enrolled in the plan for the remainder of the employee's employment with
12 any employer under the plan. Any election made under this section is
13 irrevocable and is the employee's election for the remainder of the
14 employee's employment with any employer under the plan, regardless of
15 whether the employee's employment is continuous, **UNLESS THE EMPLOYEE IS**
16 **SUBSEQUENTLY IN A POSITION THAT ALLOWS FOR AN ELECTION UNDER THIS SECTION.**
17 The employee may make one of the following irrevocable elections:

18 1. To participate solely in the corrections officer retirement
19 plan.

20 2. To participate solely in the public safety personnel defined
21 contribution retirement plan established pursuant to article 4.1 of this
22 chapter.

23 C. If an employee specified in subsection B of this section in the
24 employee's first ninety days of employment is determined to be eligible
25 for an accidental or total and permanent disability pension pursuant to
26 section 38-886, the employee shall be automatically enrolled in the
27 corrections officer retirement plan for the remainder of the employee's
28 employment with any employer under the plan commencing on the employee's
29 date of disability and shall receive an accidental or total and permanent
30 disability pension as prescribed in this article.

31 D. If an employee specified in subsection B of this section in the
32 employee's first ninety days of employment is killed in the line of duty
33 or dies from injuries suffered in the line of duty, the employee shall be
34 considered as having been enrolled in the corrections officer retirement
35 plan and the surviving spouse of the deceased employee is eligible for
36 survivor benefits as prescribed in this article.

37 **E. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, IF AN EMPLOYEE WHO**
38 **IS HIRED ON OR AFTER JULY 1, 2018 AND WHO IS AN ACTIVE OR INACTIVE MEMBER**
39 **OF THE PLAN OR A PARTICIPANT IN THE PUBLIC SAFETY PERSONNEL DEFINED**
40 **CONTRIBUTION PLAN ESTABLISHED PURSUANT TO ARTICLE 4.1 OF THIS CHAPTER IS**
41 **SUBSEQUENTLY REHIRED BY THE EMPLOYEE'S PREVIOUS EMPLOYER OR ANOTHER**
42 **EMPLOYER UNDER THE PLAN, THE EMPLOYEE'S PARTICIPATION IN EITHER THE PLAN**
43 **OR THE PUBLIC SAFETY PERSONNEL DEFINED CONTRIBUTION PLAN, FOR WHICH THE**
44 **EMPLOYEE HAD ELECTED TO PARTICIPATE, BEGINS ON THE DATE THE EMPLOYEE IS**
45 **REHIRED OR HIRED BY ANOTHER EMPLOYER. IF THE EMPLOYEE MAKES A NEW**

1 ELECTION PURSUANT TO SUBSECTION B OF THIS SECTION, THE EMPLOYEE'S
2 PARTICIPATION IN THE PREVIOUS PLAN CONTINUES UNTIL THE DATE IN WHICH THE
3 EMPLOYEE MAKES A DIFFERENT ELECTION, NOT TO EXCEED NINETY DAYS AFTER THE
4 DATE OF HIRE FOR THE ELIGIBLE POSITION.

5 Sec. 4. Section 38-891.01, Arizona Revised Statutes, is amended to
6 read:

7 38-891.01. Retired member; return to work; employer
8 contributions

9 A. An employer shall pay contributions at an alternate contribution
10 rate on behalf of a retired member who returns to work in any capacity in
11 a position ordinarily filled by an employee of the employer in a
12 designated position. This section applies to a retired member who has
13 been retired for more than ~~twelve~~ SIX consecutive months.

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

22 C. The alternate contribution rate shall not be less than six
23 percent in any fiscal year.

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

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

36 Sec. 5. Section 38-938, Arizona Revised Statutes, is amended to
37 read:

38 38-938. Annual financial statements; audit

39 ~~A.~~ The board shall cause the annual financial statements of the
40 prefunding plan to be prepared in accordance with the applicable
41 governmental accounting standards and an audit to be conducted of those
42 financial statements by a qualified independent certified accounting firm
43 for each fiscal year in accordance with the applicable governmental
44 auditing standards.

1 ~~B. For the purposes of the board's preparation of the annual~~
2 ~~employer actuarial valuation report regarding the defined benefit pension,~~
3 ~~a total asset amount comprised of the sum of the assets in the prefunding~~
4 ~~plan and the assets of the defined benefit pension shall be used in the~~
5 ~~calculation of the unfunded pension liability and the annual actuarial~~
6 ~~required contribution amount.~~

APPROVED BY THE GOVERNOR MARCH 28, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 28, 2023.