

House Engrossed

ASRS; supplemental deferral plan; participation

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

## **CHAPTER 52**

# **HOUSE BILL 2029**

AN ACT

AMENDING SECTION 38-781, 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 38-781, Arizona Revised Statutes, is amended to  
3 read:

4 38-781. Supplemental employee deferral plan; public  
5 employees; administration; immunity; definitions

6 A. One or more supplemental employee deferral plans may be  
7 established pursuant to this section to provide public employees an  
8 opportunity to save additional tax-deferred monies for retirement.

9 B. ASRS may establish, administer, manage and operate supplemental  
10 employee deferral plans for employers.

11 C. ASRS may:

12 1. Employ services it deems necessary, including legal services,  
13 for the operation and administration of the plans.

14 2. Administer the plans through contracts with multiple vendors.

15 3. Perform all acts, whether or not expressly authorized, that it  
16 deems necessary and proper for the operation and protection of the plans.

17 4. For the purposes of this section, enter into intergovernmental  
18 agreements pursuant to title 11, chapter 7, article 3.

19 D. A supplemental employee deferral plan does not replace an  
20 employee's existing state defined benefit retirement plan.

21 E. If an employer, including this state, elects to participate in a  
22 supplemental employee deferral plan, any employee of the employer who  
23 meets the eligibility requirements that are prescribed by ASRS for  
24 participation in the supplemental employee deferral plan may participate  
25 in the supplemental employee deferral plan.

26 F. Notwithstanding subsection E of this section, on or after  
27 July 1, 2022, an employee of an employer who is not eligible to  
28 participate in a public retirement system established by article 3, 3.1,  
29 4, 4.1 or 6 of this chapter may elect to participate in a supplemental  
30 employee deferral plan if the employee meets the eligibility requirements  
31 that are prescribed by ASRS for participation in the supplemental employee  
32 deferral plan.

33 G. Employee participation in a supplemental employee deferral plan  
34 requires the participant's employer to make salary reductions from the  
35 participant's compensation at no cost to the employee, ASRS or any vendor  
36 retained by ASRS and contribute such salary reductions to the plan. An  
37 employer may make employer contributions to the supplemental employee  
38 deferral plan if the plan allows. The employer shall submit any reports  
39 required by the plan. If the participant is an active member, any  
40 compensation deferred by an employee under a plan shall be included as  
41 regular compensation or compensation for the purpose of computing the  
42 retirement and pension benefits provided in this article earned by any  
43 employee participating in the plan.

44 H. Employee contributions and earnings on employee contributions  
45 are immediately vested. Employer contributions, if any, and the earnings

1 on employer contributions shall vest according to the schedule established  
2 by the employer, if the employer completes and submits a schedule to  
3 ASRS. If the employer does not complete and submit a schedule to ASRS,  
4 employer contributions, if any, and the earnings on employer contributions  
5 shall vest according to the default schedule established by ASRS.

6 I. Notwithstanding any other law, this state and its officers and  
7 employees, the board and ASRS are immune from civil liability and are not  
8 subject to suit directly or by way of contribution for any act or omission  
9 resulting in any damage or injury arising out of the supplemental employee  
10 deferral plan.

11 J. A POLITICAL SUBDIVISION OR A POLITICAL SUBDIVISION ENTITY THAT  
12 IS NOT PARTICIPATING IN ASRS MAY ELECT TO ALLOW ITS EMPLOYEES TO  
13 PARTICIPATE IN A SUPPLEMENTAL EMPLOYEE DEFERRAL PLAN THAT IS OVERSEEN BY  
14 ASRS PURSUANT TO THIS SECTION BY ENTERING INTO AN AGREEMENT WITH ASRS. A  
15 POLITICAL SUBDIVISION OR POLITICAL SUBDIVISION ENTITY THAT ELECTS TO ALLOW  
16 ITS EMPLOYEES TO PARTICIPATE IN A SUPPLEMENTAL EMPLOYEE DEFERRAL PLAN  
17 PURSUANT TO THIS SUBSECTION:

18 1. IS NOT AN EMPLOYER FOR THE PURPOSES OF THIS ARTICLE AND ITS  
19 EMPLOYEES ARE NOT MEMBERS FOR THE PURPOSES OF THIS ARTICLE.

20 2. MAY NOT PROVIDE ANY INFORMATION INDICATING OR IMPLYING THAT THE  
21 POLITICAL SUBDIVISION OR POLITICAL SUBDIVISION ENTITY OFFERS ANY ASRS  
22 BENEFITS OTHER THAN PARTICIPATION IN A SUPPLEMENTAL EMPLOYEE DEFERRAL PLAN  
23 PURSUANT TO THIS SUBSECTION. A POLITICAL SUBDIVISION OR POLITICAL  
24 SUBDIVISION ENTITY THAT VIOLATES THIS PARAGRAPH MAY NOT ELECT TO ALLOW NEW  
25 EMPLOYEES TO PARTICIPATE IN A SUPPLEMENTAL EMPLOYEE DEFERRAL PLAN PURSUANT  
26 TO THIS SUBSECTION UNTIL THE VIOLATION IS CORRECTED AT THE DISCRETION OF  
27 ASRS.

28 3. MAY ELECT TO JOIN ASRS PURSUANT TO SECTION 38-729.

29 ~~J.~~ K. For the purposes of this section:

30 1. "State" means this state, including any department, office,  
31 board, commission, agency or university, but does not mean any school  
32 district or community college district.

33 2. "Supplemental employee deferral plan" means a tax deferred  
34 annuity described in section 403(b) of the internal revenue code,  
35 including a custodial account described in 403(b)(7) of the internal  
36 revenue code, and an eligible deferred compensation plan described in  
37 section 457(b) of the internal revenue code. A supplemental employee  
38 deferral plan shall comply with all applicable provisions of the section  
39 of the internal revenue code under which such plan is adopted and  
40 maintained.

APPROVED BY THE GOVERNOR APRIL 13, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2023.