

REFERENCE TITLE: retirement plans; elected officials; opt-out

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1206

Introduced by
Senators Worsley, Begay, Driggs: Allen S, Donahue, Farnsworth D, Miranda,
Shooter

AN ACT

AMENDING SECTIONS 38-727, 38-801, 38-804, 38-810, 38-831 AND 38-833, ARIZONA
REVISED STATUTES; RELATING TO STATE 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 38-727, Arizona Revised Statutes, is amended to
3 read:

4 38-727. Eligibility; options

5 A. The following provisions apply to all employees hired on or after
6 the effective date:

7 1. All employees and officers of this state and all officers and
8 employees of political subdivisions establishing a retirement plan
9 administered by the board pursuant to this article are subject to this
10 article, except that membership is not mandatory:

11 (a) On the part of any employee who is eligible and who elects to
12 participate in the optional retirement programs established by the Arizona
13 board of regents pursuant to the authority conferred by section 15-1628 or by
14 a community college district board pursuant to authority conferred by section
15 15-1451.

16 (b) For a state elected official who is subject to term limits, who is
17 **INITIALLY** elected or appointed before January 1, 2014, who is eligible for
18 participation in ASRS because the state elected official **HAS CONTINUOUSLY**
19 elected not to participate in the elected officials' retirement plan **AS**
20 **SPECIFIED IN SECTION 38-804, SUBSECTION K AND** as provided in section 38-804,
21 subsection A and who ~~elects~~ **HAS CONTINUOUSLY ELECTED** not to participate in
22 ASRS as provided in paragraph 7 of this subsection.

23 (c) On the part of any employee or officer who is eligible to
24 participate and who participates in the elected officials' retirement plan
25 pursuant to article 3 of this chapter, the elected officials' defined
26 contribution retirement system pursuant to article 3.1 of this chapter, the
27 public safety personnel retirement system pursuant to article 4 of this
28 chapter or the corrections officer retirement plan pursuant to article 6 of
29 this chapter.

30 2. All employees and officers of political subdivisions whose
31 compensation is provided wholly or in part from state monies and who are
32 declared to be state employees and officers by the legislature for retirement
33 purposes are subject, on legislative enactment, to this article and are
34 members of ASRS.

35 3. Any member whose service terminates other than by death or
36 withdrawal from membership is deemed to be a member of ASRS until the
37 member's death benefit is paid.

38 4. Employees and officers shall not become members of ASRS and, if
39 they are members immediately before becoming employed as provided by this
40 section, shall have their membership status suspended while they are employed
41 by state departments paying the salaries of their officers and employees
42 wholly or in part from monies received from sources other than appropriations
43 from the state general fund for the period or periods payment of the employer
44 contributions is not made by or on behalf of the departments.

1 5. Notwithstanding other provisions of this section, a temporary
2 employee of the legislature whose projected term of employment is for not
3 more than six months is ineligible for membership in ASRS. If the employment
4 continues beyond six successive months, the employee may elect to either:

5 (a) Receive credit for service for the first six months of employment
6 and establish membership in ASRS as of the beginning of the current term of
7 employment if, within forty-five days after the first six months of
8 employment, both the employer and the employee contribute to ASRS the amount
9 that would have been required to be contributed to ASRS during the first six
10 months of employment as if the employee had been a member of ASRS during
11 those six months.

12 (b) Establish membership in ASRS as of the day following the
13 completion of six months of employment.

14 6. A person who is employed in postgraduate training in an approved
15 medical residency training program of an employer or a postdoctoral scholar
16 who is employed by a university under the jurisdiction of the Arizona board
17 of regents is ineligible for membership in ASRS.

18 7. A state elected official who is subject to term limits, who is
19 **INITIALLY** elected or appointed before January 1, 2014 and who is eligible for
20 participation in ASRS because the state elected official **HAS CONTINUOUSLY**
21 elected not to participate in the elected officials' retirement plan **AS**
22 **SPECIFIED IN SECTION 38-804, SUBSECTION K AND** as provided in section 38-804,
23 subsection A may elect not to participate in ASRS. The election not to
24 participate is specific for that term of office. The state elected official
25 who is subject to term limits shall make the election in writing and file the
26 election with ASRS within thirty days after the elected official's retirement
27 plan mails the notice to the state elected official of the state elected
28 official's eligibility to participate in ASRS. The election is effective on
29 the first day of the state elected official's eligibility. If a state
30 elected official who is subject to term limits fails to make an election as
31 provided in this paragraph, the state elected official is deemed to have
32 elected to participate in ASRS. The election not to participate in ASRS is
33 irrevocable and constitutes a waiver of all benefits provided by ASRS for the
34 state elected official's entire term, except for any benefits accrued by the
35 state elected official in ASRS for periods of participation before being
36 elected to an office subject to term limits or any benefits expressly
37 provided by law.

38 8. A person may elect not to participate in ASRS if the person becomes
39 employed by an employer after the person has attained at least sixty-five
40 years of age, is not an active member, inactive member, retired member or
41 receiving benefits pursuant to article 2.1 of this chapter and does not have
42 any credited service or prior service in ASRS. The employee shall make the
43 election not to participate in writing and file the election with ASRS within
44 thirty days after employment. The election not to participate is irrevocable
45 for the remainder of the person's employment for which the person made the

1 election and constitutes a waiver of all benefits provided by the Arizona
2 state retirement system. The period the person works is not eligible for
3 purchase under section 38-743 or 38-744.

4 9. The following are ineligible for membership in ASRS:

5 (a) A person who performs services in a hospital, home or other
6 institution as an inmate or patient at the hospital, home or other
7 institution.

8 (b) A person who performs agricultural labor services, as defined in
9 section 210 of the social security act.

10 (c) A person who is a nonresident alien temporarily residing in the
11 United States and who holds an F-1, J-1, M-1 or Q-1 visa when services are
12 performed.

13 (d) A person who performs services for a school, college or university
14 in this state at which the person is enrolled as a student, as defined by the
15 employing institution. The employing institution shall maintain an appeal
16 process for a person who disagrees with the employing institution's
17 determination that the person is a student and not eligible for membership in
18 ASRS.

19 (e) A person who performs services under a program designed to relieve
20 the person from unemployment.

21 B. The following elected officials are subject to this article if the
22 member's employer is an employer under article 3 of this chapter:

23 1. A state elected official who is subject to term limits, who is
24 elected or appointed on or before December 31, 2013 and who is an active, an
25 inactive or a retired member of ASRS or a member of ASRS with a disability
26 because the state elected official had previously elected not to participate
27 in the elected officials' retirement plan as provided in section 38-804,
28 subsection A.

29 2. An elected official, as defined in section 38-831, who is an
30 active, an inactive or a retired member of ASRS or a member of ASRS with a
31 disability, if the elected official's employer is a participating employer
32 under this article.

33 Sec. 2. Section 38-801, Arizona Revised Statutes, is amended to read:

34 38-801. Definitions

35 In this article, unless the context otherwise requires:

36 1. "Accumulated contributions" means the sum of all member
37 contributions deducted from the member's salary pursuant to section 38-810,
38 subsection A plus the amount transferred to the fund on behalf of the member
39 plus the amount deposited in the fund pursuant to section 38-816.

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

43 3. "Alternate payee" means the spouse or former spouse of a
44 participant as designated in a domestic relations order.

1 4. "Alternate payee's portion" means benefits that are payable to an
2 alternate payee pursuant to a plan approved domestic relations order.

3 5. "Average yearly salary" means the result obtained by dividing the
4 total salary paid to an employee during a considered period by the number of
5 years, including fractional years, in which the salary was received. The
6 considered period shall be:

7 (a) For an elected official who becomes a member of the plan before
8 January 1, 2012, the three consecutive years within the last ten completed
9 years of credited service as an elected official that yield the highest
10 average. If a member does not have three consecutive years of credited
11 service as an elected official, the considered period is the member's last
12 consecutive period of employment with a plan employer immediately before
13 retirement.

14 (b) For an elected official who becomes a member of the plan on or
15 after January 1, 2012, the five consecutive years within the last ten
16 completed years of credited service as an elected official that yield the
17 highest average. If a member does not have five consecutive years of
18 credited service as an elected official, the considered period is the
19 member's last consecutive period of employment with a plan employer
20 immediately before retirement.

21 6. "Board" means the board of trustees of the system.

22 7. "Credited service" means the number of whole and fractional years
23 of a member's service as an elected official after the elected official's
24 effective date of participation for which member and employer contributions
25 are on deposit with the fund, plus credited service transferred to the plan
26 from another retirement system or plan for public employees of this state,
27 plus service as an elected official before the elected official's effective
28 date of participation that is being funded pursuant to a joinder agreement
29 pursuant to section 38-815 or service that was redeemed pursuant to section
30 38-816. Credited service does not include periods of service for which an
31 active member is uncompensated by the employer and for which no contributions
32 to the plan are made.

33 8. "Cure period" means the ninety-day period in which a participant or
34 alternate payee may submit an amended domestic relations order and request a
35 determination, calculated from the time the plan issues a determination
36 finding that a previously submitted domestic relations order did not qualify
37 as a plan approved domestic relations order.

38 9. "Determination" means a written document that indicates to a
39 participant and alternate payee whether a domestic relations order qualifies
40 as a plan approved domestic relations order.

41 10. "Determination period" means the ninety-day period in which the
42 plan must review a domestic relations order that is submitted by a
43 participant or alternate payee to determine whether the domestic relations
44 order qualifies as a plan approved domestic relations order, calculated from

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

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

5 12. "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 13. "Domestic relations order" means an order of a court of this state
9 that is made pursuant to the domestic relations laws of this state and that
10 creates or recognizes the existence of an alternate payee's right to, or
11 assigns to an alternate payee the right to, receive a portion of the benefits
12 payable to a participant.

13 14. "Effective date of participation" means August 7, 1985, except
14 with respect to employers and their elected officials whose contributions to
15 the plan commence after that date, in which case the effective date of their
16 participation in the plan is specified in the applicable joinder agreement.

17 15. "Elected official" means:

18 (a) Every elected official of this state who was a member of the plan
19 on December 31, 2013.

20 (b) Every elected official of each county of this state who was a
21 member of the plan on December 31, 2013.

22 (c) Every justice of the supreme court, every judge of the court of
23 appeals, every judge of the superior court and every full-time superior court
24 commissioner, except full-time superior court commissioners who failed to
25 make a timely election of membership under the judges' retirement plan,
26 repealed on August 7, 1985, who was a member of the plan on December 31,
27 2013.

28 (d) The administrator of the board if the administrator is a natural
29 person but only if the administrator is employed by the board before January
30 1, 2012.

31 (e) Each elected official of an incorporated city or town whose
32 employer has executed a proper joinder agreement for coverage of its elected
33 officials and who was a member of the plan on December 31, 2013.

34 (f) A STATE ELECTED OFFICIAL WHO IS SUBJECT TO TERM LIMITS, WHO IS
35 INITIALLY ELECTED OR APPOINTED BEFORE JANUARY 1, 2014, WHO HAS CONTINUOUSLY
36 ELECTED NOT TO PARTICIPATE IN THE PLAN PURSUANT TO SECTION 38-804, SUBSECTION
37 A AND IN THE ARIZONA STATE RETIREMENT SYSTEM PURSUANT TO SECTION 38-727,
38 SUBSECTION A SINCE INITIALLY BEING ELECTED AS A STATE ELECTED OFFICIAL WHO IS
39 SUBJECT TO TERM LIMITS AND WHO IS SUBSEQUENTLY ELECTED OR APPOINTED AS A
40 STATE ELECTED OFFICIAL WHO IS SUBJECT TO TERM LIMITS ON OR AFTER JANUARY 1,
41 2014.

42 16. "Eligible child" means an unmarried child of a deceased active or
43 retired member who meets one of the following qualifications:

44 (a) Is under eighteen years of age.

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

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

6 17. "Eligible retirement plan" means any of the following that accepts
7 a distributee's eligible rollover distribution:

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

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

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

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

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

18 (f) An eligible deferred compensation plan described in section 457(b)
19 of the internal revenue code that is maintained by a state, a political
20 subdivision of a state or any agency or instrumentality of a state or a
21 political subdivision of a state and that agrees to separately account for
22 amounts transferred into the eligible deferred compensation plan from this
23 plan.

24 18. "Eligible rollover distribution" means a payment to a distributee,
25 but does not include any of the following:

26 (a) Any distribution that is one of a series of substantially equal
27 periodic payments made not less frequently than annually for the life or life
28 expectancy of the member or the joint lives or joint life expectancies of the
29 member and the member's beneficiary or for a specified period of ten years or
30 more.

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

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

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

37 (e) Hardship distributions.

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

41 19. "Employer" means a department, agency or political subdivision of
42 this state that makes employer contributions to the plan pursuant to section
43 38-810 on behalf of an elected official who participates in the plan.

44 20. "Fund" means the elected officials' retirement plan fund.

1 21. "Notice of receipt" means a written document that is issued by the
2 plan to a participant and alternate payee and that states that the plan has
3 received a domestic relations order and a request for a determination that
4 the domestic relations order is a plan approved domestic relations order.

5 22. "Participant" means a member who is subject to a domestic
6 relations order.

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

9 24. "Pension" means a series of monthly payments to a person who is
10 entitled to receive benefits under the plan.

11 25. "Personal representative" means the personal representative of a
12 deceased alternate payee.

13 26. "Physician" means a physician who is licensed pursuant to title
14 32, chapter 13 or 17.

15 27. "Plan" means the elected officials' retirement plan.

16 28. "Plan approved domestic relations order" means a domestic
17 relations order that the plan approves as meeting all the requirements for a
18 plan approved domestic relations order as otherwise prescribed in this
19 article.

20 29. "Plan year" or "fiscal year" means the period beginning on July 1
21 of any year and ending on June 30 of the next succeeding year.

22 30. "Retired member" means a person who is being paid a pension based
23 on the person's credited service as a member of the plan.

24 31. "Segregated funds" means the amount of benefits that would
25 currently be payable to an alternate payee pursuant to a domestic relations
26 order under review by the plan, or a domestic relations order submitted to
27 the plan that failed to qualify as a plan approved domestic relations order,
28 if the domestic relations order were determined to be a plan approved
29 domestic relations order.

30 32. "System" means the public safety personnel retirement system.

31 Sec. 3. Section 38-804, Arizona Revised Statutes, is amended to read:
32 38-804. Membership; termination; definition

33 A. Except as otherwise provided in this section, all elected officials
34 are members of the plan, except that a state elected official who is subject
35 to term limits may elect not to participate in the plan. The state elected
36 official who is subject to term limits shall make the election in writing and
37 file the election with the board within thirty days after the state elected
38 official assumes office. The election is effective on the first day of the
39 state elected official's eligibility for that term of office. The election
40 not to participate is specific for that term of office. If a state elected
41 official who is subject to term limits fails to make an election as provided
42 in this subsection, the state elected official is deemed to have elected to
43 participate in the plan. The election not to participate in the plan is
44 irrevocable and constitutes a waiver of all benefits provided by the plan for
45 the state elected official's entire term, except for any benefits accrued by

1 the state elected official in the plan for periods of participation before
2 being elected to an office subject to term limits or any benefits expressly
3 provided by law. The state elected official who elects not to participate in
4 the plan shall participate in the Arizona state retirement system unless the
5 state elected official makes an irrevocable election not to participate in
6 the Arizona state retirement system as provided in section 38-727.

7 B. All elected officials who are members of the plan on December 31,
8 2013 may remain members of the plan under the terms and limitations of this
9 article.

10 C. If a member who becomes a member of the plan before January 1, 2012
11 ceases to hold office for any reason other than death or retirement, within
12 twenty days after filing a completed application with the board, the member
13 is entitled to receive the following amounts, less any benefit payments the
14 member has received and any amount the member may owe to the plan:

15 1. If the member has less than five years of credited service with the
16 plan, the member may withdraw the member's accumulated contributions from the
17 plan.

18 2. If the member has five or more years of credited service with the
19 plan, the member may withdraw the member's accumulated contributions plus an
20 amount equal to the amount determined as follows:

21 (a) 5.0 to 5.9 years of credited service, twenty-five percent of all
22 member contributions deducted from the member's salary pursuant to section
23 38-810, subsection A.

24 (b) 6.0 to 6.9 years of credited service, forty percent of all member
25 contributions deducted from the member's salary pursuant to section 38-810,
26 subsection A.

27 (c) 7.0 to 7.9 years of credited service, fifty-five percent of all
28 member contributions deducted from the member's salary pursuant to section
29 38-810, subsection A.

30 (d) 8.0 to 8.9 years of credited service, seventy percent of all
31 member contributions deducted from the member's salary pursuant to section
32 38-810, subsection A.

33 (e) 9.0 to 9.9 years of credited service, eighty-five percent of all
34 member contributions deducted from the member's salary pursuant to section
35 38-810, subsection A.

36 (f) 10.0 or more years of credited service, one hundred percent of all
37 member contributions deducted from the member's salary pursuant to section
38 38-810, subsection A.

39 D. If a member has more than ten years of credited service with the
40 plan, leaves the monies prescribed in subsection C of this section on account
41 with the plan for more than thirty days after termination of employment and
42 after that time period requests a refund of those monies, the member is
43 entitled to receive the amount prescribed in subsection ~~B~~ C of this section
44 plus interest at a rate determined by the board for each year computed from
45 and after the member's termination of employment.

1 E. If an elected official who becomes a member of the plan on or after
2 January 1, 2012 ceases to hold office for any reason other than death or
3 retirement, within twenty days after filing a completed application with the
4 board, the member may withdraw the member's accumulated contributions from
5 the plan and shall be paid the member's accumulated contributions plus
6 interest at a rate determined by the board as of the date of termination,
7 less any benefit payments the member has received and any amount the member
8 may owe to the plan.

9 F. If the amount prescribed in subsection C, D or E of this section
10 includes monies that are an eligible rollover distribution and the member
11 elects to have the distribution paid directly to an eligible retirement plan
12 or individual retirement account or annuity and specifies the eligible
13 retirement plan or individual retirement account or annuity to which the
14 distribution is to be paid, the distribution shall be made in the form of a
15 direct trustee-to-trustee transfer to the specified eligible retirement plan.
16 The distribution shall be made in the form and at the time prescribed by the
17 board. A member who receives the amount prescribed in subsection C, D or E
18 of this section from the plan or who elects a transfer pursuant to this
19 subsection forfeits the member's credited service, and all rights to benefits
20 under the plan and membership in the plan terminate.

21 G. For distributions occurring from and after December 31, 2007, a
22 member or a member's beneficiary, including a nonspouse designated
23 beneficiary to the extent permitted under subsection H of this section, may
24 roll over an eligible rollover distribution as defined in section 402(c)(4)
25 of the internal revenue code to a roth individual retirement account, if, for
26 distributions occurring before January 1, 2010, the member or the member's
27 beneficiary satisfies the requirements for making a roth individual
28 retirement account contribution under section 408A(c)(3)(B) of the internal
29 revenue code, as in effect on the date of the rollover. Any amount rolled
30 over to a roth individual retirement account is included in the gross income
31 of the member or the member's beneficiary to the extent the amounts would
32 have been included in gross income if not rolled over as required under
33 section 408A(d)(3)(A) of the internal revenue code. For the purposes of this
34 subsection, the administrator is not responsible for ensuring the member or
35 the member's beneficiary is eligible to make a rollover to a roth individual
36 retirement account.

37 H. For distributions made from and after December 31, 2009, a
38 nonspouse designated beneficiary as defined in section 401(a)(9)(E) of the
39 internal revenue code may elect to directly rollover an eligible rollover
40 distribution to an individual retirement account under section 408(a) of the
41 internal revenue code or an individual retirement annuity under section
42 408(b) of the internal revenue code that is established on behalf of the
43 designated beneficiary and that will be treated as an inherited individual
44 retirement plan pursuant to section 402(c)(11) of the internal revenue
45 code. In order to be able to roll over the distribution, the distribution

1 otherwise must satisfy the definition of an eligible rollover distribution as
2 defined in section 402(c)(4) of the internal revenue code. In applying this
3 subsection, a nonspouse rollover is not subject to the direct rollover
4 requirements under section 401(a)(31) of the internal revenue code, the
5 rollover notice requirements under section 402(f) of the internal revenue
6 code or the mandatory withholding requirements under section 3405(c) of the
7 internal revenue code.

8 I. For plan years occurring before January 1, 2007, the period for
9 providing the rollover notice as required under section 402(f) of the
10 internal revenue code is no less than thirty days and no more than ninety
11 days before the date of distribution and, for plan years beginning from and
12 after December 31, 2006, the period for providing the rollover notice as
13 required under section 402(f) of the internal revenue code is no less than
14 thirty days and no more than one hundred eighty days before the date of
15 distribution.

16 J. In no case shall more than twelve months of credited service be
17 credited on account of all service rendered by a member in any one year.

18 K. ~~EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,~~ if an elected
19 official who has terminated the member's membership in the plan pursuant to
20 subsection ~~C~~ A of this section is subsequently elected, appointed or hired
21 on or after January 1, 2014, the elected official is not eligible to become a
22 member of the plan but is subject to article 3.1 of this chapter. ~~IF A STATE
23 ELECTED OFFICIAL WHO IS SUBJECT TO TERM LIMITS, WHO IS INITIALLY ELECTED OR
24 APPOINTED BEFORE JANUARY 1, 2014 AND WHO HAS CONTINUOUSLY ELECTED NOT TO
25 PARTICIPATE IN THE PLAN PURSUANT TO SUBSECTION A OF THIS SECTION AND IN THE
26 ARIZONA STATE RETIREMENT SYSTEM PURSUANT TO SECTION 38-727, SUBSECTION A
27 SINCE INITIALLY BEING ELECTED AS A STATE ELECTED OFFICIAL WHO IS SUBJECT TO
28 TERM LIMITS IS SUBSEQUENTLY ELECTED OR APPOINTED AS A STATE ELECTED OFFICIAL
29 WHO IS SUBJECT TO TERM LIMITS ON OR AFTER JANUARY 1, 2014, THE STATE ELECTED
30 OFFICIAL IS ELIGIBLE TO BECOME A MEMBER OF THE PLAN OR MAY ELECT NOT TO
31 PARTICIPATE IN THE PLAN PURSUANT TO SUBSECTION A OF THIS SECTION. IF THE
32 STATE ELECTED OFFICIAL BECOMES A MEMBER OF THE PLAN, CREDITED SERVICE ONLY
33 ACCRUES FROM THE DATE OF THE MEMBER'S MOST RECENT ELIGIBILITY AS A STATE
34 ELECTED OFFICIAL.~~

35 L. Notwithstanding subsection K of this section ~~RELATING TO AN ELECTED
36 OFFICIAL WHO HAS TERMINATED THE MEMBER'S MEMBERSHIP IN THE PLAN,~~ if an
37 elected official files a written election form with the board within ninety
38 days after the day of the member's reemployment as an elected official and
39 repays the amount previously withdrawn pursuant to subsection C or D of this
40 section within one year after the date of the member's reemployment as an
41 elected official, with interest on that amount at the rate of nine ~~per-cent~~
42 PERCENT for each year, compounded each year from the date of withdrawal to
43 the date of repayment, credited service shall be restored. Credited service
44 shall not be restored until complete repayment is made to the fund.

1 M. EXCEPT AS PROVIDED IN SUBSECTION K OF THIS SECTION, an elected
 2 official who is elected, appointed or hired on or after January 1, 2014 and
 3 who was not a member of the plan on December 31, 2013 is not eligible to
 4 become a member of the plan but is subject to article 3.1 of this chapter.

5 N. If a retired member subsequently becomes an elected official,
 6 contributions shall not be made by the retired member and credited service
 7 shall not accrue while the retired member is holding office.

8 O. In addition to subsection N of this section, if a retired member
 9 subsequently becomes, by reason of election or reelection, an elected
 10 official of the same office from which the member retired within a time
 11 period following the member's retirement that is less than one full term for
 12 that office, the member shall not receive a pension. If the elected official
 13 ceases to hold the same office, the elected official is entitled to receive
 14 the same pension the elected official was receiving when the elected
 15 official's pension was discontinued pursuant to this subsection. Nothing in
 16 this subsection prohibits a retired judge called by the supreme court to
 17 active duties of a judge pursuant to section 38-813 from receiving retirement
 18 benefits.

19 Sec. 4. Section 38-810, Arizona Revised Statutes, is amended to read:

20 38-810. Contributions; appropriations

21 A. Each member shall contribute to the fund an amount equal to the
 22 amount prescribed in subsection G of this section. Contributions of members
 23 shall be made by payroll deductions. Every member is deemed to consent to
 24 these deductions. Payment of a member's compensation, less these payroll
 25 deductions, constitutes a full and complete discharge and satisfaction of all
 26 claims and demands by the member relating to remuneration for the member's
 27 services rendered during the period covered by the payment, except with
 28 respect to the benefits provided under the plan. A member may not, under any
 29 circumstance, borrow from, take a loan against or remove contributions from
 30 the member's account before the termination of membership in the plan or the
 31 receipt of a pension.

32 B. The board's office shall be credited monthly with monies collected
 33 pursuant to section 12-119.01, subsection B, paragraph 2, section 12-120.31,
 34 subsection D, paragraph 2, section 12-284.03, subsection A, paragraph 6,
 35 section 22-281, subsection C, paragraph 3 and section 41-178. The monies
 36 credited to the fund pursuant to this subsection shall be deposited in the
 37 fund on a monthly basis, and there shall be a complete accounting of the
 38 determination of these monies deposited in the fund.

39 C. Beginning on January 1, 2014 through June 30, 2044, EXCEPT AS
 40 OTHERWISE PROVIDED IN THIS SUBSECTION, each employer shall make level ~~per~~
 41 ~~cent~~ PERCENT compensation contributions of twenty-three and one-half ~~per cent~~
 42 PERCENT of the compensation of all employees of the employer who are either
 43 members under this article, article 3.1 of this chapter or article 2 of this
 44 chapter pursuant to section 38-727, subsection B to meet the normal cost plus
 45 an amount to amortize the unfunded accrued liability and the employer's

1 contribution under the elected officials' defined contribution retirement
2 system established pursuant to article 3.1 of this chapter and the employer's
3 contribution under article 2 of this chapter for members eligible pursuant to
4 section 38-727, subsection B. **IF A MEMBER HAS ELECTED NOT TO ACCEPT THE**
5 **EMPLOYER'S CONTRIBUTION PURSUANT TO SECTION 38-833, THE EMPLOYER IS NOT**
6 **REQUIRED TO CONTRIBUTE THAT PERCENT OF COMPENSATION FOR THAT MEMBER.** The
7 employer also shall pay the amount required by section 38-797.05 for members
8 under article 2 of this chapter who are eligible pursuant to section 38-727,
9 subsection B and the amount required by article 3.2 of this chapter for
10 members under article 3.1 of this chapter. The monies deposited in the fund
11 pursuant to subsection B of this section shall be used to supplement the
12 contributions required of all employers under the plan. The employer level
13 ~~per-cent~~ **PERCENT** compensation contribution that is paid pursuant to this
14 subsection, less the amount contributed by the employer pursuant to section
15 38-833 and section 38-737 for members eligible pursuant to section 38-727,
16 subsection B, shall not be used to pay for an increase in benefits that is
17 otherwise payable to members but shall be used to meet the normal cost plus
18 an amount to amortize the unfunded accrued liability.

19 D. Beginning July 1, 2044, as determined by actuarial valuations
20 performed by the plan's actuary, each employer shall make level ~~per-cent~~
21 **PERCENT** compensation contributions sufficient under the actuarial valuation
22 to meet both the normal cost plus the actuarially determined amount required
23 to amortize the unfunded accrued liability over a rolling period of at least
24 twenty and not more than thirty years that is established by the board taking
25 into account the recommendation of the plan's actuary, except that the
26 employer contribution rate shall not be less than ten ~~per-cent~~ **PERCENT** of
27 salary. The monies deposited in the fund pursuant to subsection B of this
28 section shall be used to supplement the contributions required of all
29 employers under the plan. The minimum employer contribution that is paid and
30 that is in excess of the normal cost plus the actuarially determined amount
31 required to amortize the unfunded accrued liability as calculated pursuant to
32 this subsection shall be used to reduce future employer contribution
33 increases and shall not be used to pay for an increase in benefits that are
34 otherwise payable to members. The board shall separately account for these
35 monies in the fund. After the close of any fiscal year, if the plan's
36 actuary determines that the actuarial valuation of the fund contains excess
37 valuation assets and is more than one hundred ~~per-cent~~ **PERCENT** funded, the
38 board shall account for fifty ~~per-cent~~ **PERCENT** of the excess valuation assets
39 in a stabilization reserve account. After the close of any fiscal year, if
40 the plan's actuary determines that the actuarial valuation of the fund has a
41 valuation asset deficiency and an unfunded actuarial accrued liability, the
42 board shall use any valuation assets in the stabilization reserve account, to
43 the extent available, to limit the decline in the fund's funding ratio to not
44 more than two ~~per-cent~~ **PERCENT**.

1 E. The department of administration and the treasurer of each county
2 and participating city and town shall transfer to the board the contributions
3 provided for in subsections A, C and D of this section within ten working
4 days after each payroll date. The state, county treasurers and clerks of the
5 superior court shall transfer the monies credited under subsection B of this
6 section to the board on or before the fifteenth day of each calendar month
7 that follows the month in which the court fees were collected. Contributions
8 and monies credited under subsection B of this section and transferred after
9 these dates shall include a penalty equal to ten ~~per-cent~~ PERCENT a year,
10 compounded annually, for each day that the contributions or monies credited
11 under subsection B of this section are late. Delinquent payments due under
12 this subsection, together with interest charges as provided in this
13 subsection and court costs, may be recovered by action in a court of
14 competent jurisdiction against the person or persons responsible for the
15 payments or, at the request of the board, may be deducted from any other
16 monies, including excise revenue taxes, payable to a political subdivision by
17 any department or agency of this state. If requested by the board, the
18 state, county treasurers or clerks of the superior court shall transfer the
19 monies credited under subsection B of this section, in an amount determined
20 by the board, directly to the qualified governmental excess benefit
21 arrangement established pursuant to section 38-803.01.

22 F. The employer shall pay the member contributions required of members
23 on account of compensation earned after August 7, 1985. The paid
24 contributions shall be treated as employer contributions for the purpose of
25 determining tax treatment under the United States internal revenue code. The
26 effective date of the employer payment shall not be before the date the
27 retirement plan has received notification from the United States internal
28 revenue service that pursuant to section 414(h) of the United States internal
29 revenue code the member contributions paid will not be included in gross
30 income for income tax purposes until the paid contributions are distributed
31 by refund or pension payments. The employer shall pay the member
32 contributions from monies established and available in the retirement
33 deduction account, which monies would otherwise have been designated as
34 member contributions and paid to the retirement plan. Member contributions
35 paid pursuant to this subsection shall be treated for all other purposes, in
36 the same manner and to the same extent, as member contributions made before
37 August 7, 1985.

38 G. The amount contributed by a member pursuant to subsection A of this
39 section is:

- 40 1. Through June 30, 2011, seven ~~per-cent~~ PERCENT of the member's gross
41 salary.
- 42 2. For fiscal year 2011-2012, ten ~~per-cent~~ PERCENT of the member's
43 gross salary.
- 44 3. For fiscal year 2012-2013, eleven and one-half ~~per-cent~~ PERCENT of
45 the member's gross salary.

1 4. For fiscal year 2013-2014 and each fiscal year thereafter, thirteen
2 ~~per-cent~~ PERCENT of the member's gross salary.

3 H. For fiscal year 2011-2012 and each fiscal year thereafter, the
4 amount of the member's contribution that exceeds seven ~~per-cent~~ PERCENT of
5 the member's compensation shall not be used to reduce the employer's
6 contributions that are calculated pursuant to subsection C of this section.

7 I. In fiscal years 2013-2014 through 2042-2043, the sum of \$5,000,000
8 is appropriated in each fiscal year from the state general fund to the
9 elected officials' retirement plan fund to supplement the normal cost plus an
10 amount to amortize the unfunded accrued liability pursuant to subsection C of
11 this section. Monies appropriated pursuant to this subsection shall not be
12 used to pay for an increase in benefits that is otherwise payable to members
13 and shall only be used as specified in this subsection. Monies appropriated
14 pursuant to this subsection are exempt from the provisions of section 35-190
15 relating to lapsing of appropriations.

16 Sec. 5. Section 38-831, Arizona Revised Statutes, is amended to read:

17 38-831. Definitions

18 In this article, unless the context otherwise requires:

19 1. "Annuity account" means an account that is established for each
20 member to record the deposit of member contributions, employer contributions
21 and interest, dividends or other accumulations credited on behalf of the
22 member.

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

25 3. "Defined contribution system" means the elected officials' defined
26 contribution retirement system established pursuant to this article.

27 4. "Elected official":

28 (a) Means:

29 ~~(a)~~ (i) Every elected official of this state who was elected or
30 appointed on or after January 1, 2014 and who was not an active, an
31 inactive, ~~a disabled~~ or a retired member of the plan OR A MEMBER OF THE PLAN
32 WITH A DISABILITY on December 31, 2013.

33 ~~(b)~~ (ii) Every elected official of each county of this state who was
34 elected or appointed on or after January 1, 2014 and who was not an active,
35 an inactive, ~~a disabled~~ or a retired member of the plan OR A MEMBER OF THE
36 PLAN WITH A DISABILITY on December 31, 2013.

37 ~~(c)~~ (iii) Every justice of the supreme court who was appointed on or
38 after January 1, 2014 and who was not an active, an inactive, ~~a disabled~~ or a
39 retired member of the plan OR A MEMBER OF THE PLAN WITH A DISABILITY on
40 December 31, 2013.

41 ~~(d)~~ (iv) Every judge of the court of appeals who was appointed on or
42 after January 1, 2014 and who was not an active, an inactive, ~~a disabled~~ or a
43 retired member of the plan OR A MEMBER OF THE PLAN WITH A DISABILITY on
44 December 31, 2013.

1 ~~(e)~~ (v) Every judge of the superior court who was elected or appointed
2 on or after January 1, 2014 and who was not an active, an inactive, ~~a~~
3 ~~disabled~~ or a retired member of the plan OR A MEMBER OF THE PLAN WITH A
4 DISABILITY on December 31, 2013.

5 ~~(f)~~ (vi) Every full-time superior court commissioner, except full-time
6 superior court commissioners who failed to make a timely election of
7 membership under the judges' retirement plan, repealed on August 7, 1985, who
8 was hired on or after January 1, 2014 and who was not an active, an
9 inactive, ~~a disabled~~ or a retired member of the plan OR A MEMBER OF THE PLAN
10 WITH A DISABILITY on December 31, 2013.

11 ~~(g)~~ (vii) Each elected official of an incorporated city or town whose
12 employer has executed a proper joinder agreement with the plan for coverage
13 of its elected officials, who was elected or appointed on or after January 1,
14 2014 and who was not an active, an inactive, ~~a disabled~~ or a retired member
15 of the plan OR A MEMBER OF THE PLAN WITH A DISABILITY on December 31, 2013.

16 (b) DOES NOT INCLUDE A STATE ELECTED OFFICIAL WHO IS SUBJECT TO TERM
17 LIMITS, WHO IS NOT AN ACTIVE, AN INACTIVE OR A RETIRED MEMBER OF THE PLAN OR
18 A MEMBER OF THE PLAN WITH A DISABILITY BECAUSE THE STATE ELECTED OFFICIAL HAS
19 CONTINUOUSLY ELECTED NOT TO PARTICIPATE IN THE PLAN PURSUANT TO SECTION
20 38-804, SUBSECTION A AND IN THE ARIZONA STATE RETIREMENT SYSTEM PURSUANT TO
21 SECTION 38-727, SUBSECTION A SINCE INITIALLY BEING ELECTED BEFORE JANUARY 1,
22 2014 AS A STATE ELECTED OFFICIAL WHO IS SUBJECT TO TERM LIMITS AND WHO IS
23 SUBSEQUENTLY ELECTED OR APPOINTED AS A STATE ELECTED OFFICIAL WHO IS SUBJECT
24 TO TERM LIMITS ON OR AFTER JANUARY 1, 2014.

25 5. "Employer" means a department or political subdivision of this
26 state that makes employer contributions to the defined contribution system on
27 behalf of a member.

28 6. "Employer contribution" means an amount deposited by an employer,
29 from the employer's own monies, in the member's annuity account on a periodic
30 basis coinciding with the member's regular pay period.

31 7. "Member" means an elected official under the defined contribution
32 system.

33 8. "Plan" means the elected officials' retirement plan established by
34 article 3 of this chapter.

35 Sec. 6. Section 38-833, Arizona Revised Statutes, is amended to read:
36 38-833. Member and employer contributions; disability

37 A. Beginning January 1, 2014, the defined contribution system is the
38 retirement program for elected officials, unless the elected official is
39 described in section 38-727, subsection B. Elected officials shall be
40 enrolled in the defined contribution plan established by the board pursuant
41 to this article.

42 B. Each elected official who is a member of the defined contribution
43 system shall contribute eight ~~per-cent~~ PERCENT of the member's gross
44 compensation by salary reduction that shall be deposited in the member's
45 annuity account. Each member shall also contribute to the elected officials'

1 defined contribution retirement system disability program pursuant to article
 2 3.2 of this chapter.

3 C. Although designated as employee contributions, all member
 4 contributions made to the defined contribution system shall be picked up and
 5 paid by the employer in lieu of contributions by the employee. The
 6 contributions picked up by an employer may be made through a reduction in the
 7 member's compensation. A member participating in the defined contribution
 8 system does not have the option of choosing to receive the contributed
 9 amounts directly instead of the employer paying the amounts to the defined
 10 contribution system. All member contributions that are picked up by the
 11 employer as provided in this subsection shall be treated as employer
 12 contributions under section 414(h) of the internal revenue code, shall be
 13 excluded from members' gross income for federal and state income tax purposes
 14 and are includable in the gross income of the members or the members'
 15 beneficiaries only in the taxable year in which they are distributed.

16 D. Each employer shall annually make a contribution:

17 1. Equal to six ~~per cent~~ PERCENT of each member's gross compensation.
 18 The pro rata share of this amount shall be paid on each date that a member
 19 contribution is made and shall be credited to the member's annuity account.
 20 A MEMBER WHO IS A STATE ELECTED OFFICIAL AND WHO IS SUBJECT TO TERM LIMITS
 21 MAY ELECT NOT TO ACCEPT THE EMPLOYER'S CONTRIBUTION TO THE MEMBER'S ANNUITY
 22 ACCOUNT THAT IS REQUIRED BY THIS SUBSECTION. THE STATE ELECTED OFFICIAL WHO
 23 IS SUBJECT TO TERM LIMITS SHALL MAKE THE ELECTION AS PROVIDED IN THIS
 24 PARAGRAPH IN WRITING AND FILE THE ELECTION WITH THE BOARD WITHIN THIRTY DAYS
 25 AFTER THE STATE ELECTED OFFICIAL ASSUMES OFFICE. THE ELECTION IS EFFECTIVE
 26 ON THE FIRST DAY OF THE STATE ELECTED OFFICIAL'S ELIGIBILITY FOR THAT TERM OF
 27 OFFICE. THE ELECTION NOT TO ACCEPT THE EMPLOYER'S CONTRIBUTION TO THE STATE
 28 ELECTED OFFICIAL'S ANNUITY ACCOUNT IS SPECIFIC FOR THAT TERM OF OFFICE. IF A
 29 STATE ELECTED OFFICIAL WHO IS SUBJECT TO TERM LIMITS FAILS TO MAKE AN
 30 ELECTION AS PROVIDED IN THIS PARAGRAPH, THE STATE ELECTED OFFICIAL IS DEEMED
 31 TO HAVE ELECTED TO ACCEPT THE EMPLOYER'S CONTRIBUTION TO THE STATE ELECTED
 32 OFFICIAL'S ANNUITY ACCOUNT. THE ELECTION NOT TO ACCEPT THE EMPLOYER'S
 33 CONTRIBUTION TO THE STATE ELECTED OFFICIAL'S ANNUITY ACCOUNT IS IRREVOCABLE
 34 AND CONSTITUTES A WAIVER OF THE EMPLOYER'S CONTRIBUTION TO THE STATE ELECTED
 35 OFFICIAL'S ANNUITY ACCOUNT FOR THE STATE ELECTED OFFICIAL'S ENTIRE TERM.

36 2. ~~Each employer shall also contribute~~ To the elected officials'
 37 defined contribution retirement system disability program pursuant to article
 38 3.2 of this chapter.

39 E. Member and employer contributions and earnings on those
 40 contributions are immediately vested. A member may receive benefits pursuant
 41 to article 3.2 of this chapter if the member develops a total disability.

42 F. AT THE ELECTION OF A STATE ELECTED OFFICIAL AS DESCRIBED IN SECTION
 43 38-831, PARAGRAPH 4, SUBDIVISION (b), THE BOARD SHALL DISTRIBUTE THE BALANCE
 44 OF THE STATE ELECTED OFFICIAL'S ANNUITY ACCOUNT TO THE STATE ELECTED OFFICIAL
 45 OR THE OFFICIAL'S BENEFICIARY.

1 Sec. 7. Refund of employer contribution: election

2 A state elected official who was subject to term limits, who was
3 enrolled in the elected officials' defined contribution retirement system
4 established pursuant to title 38, chapter 5, article 3.1, Arizona Revised
5 Statutes, because the state elected official was not an active, an inactive
6 or a retired member of the elected officials' retirement plan or a member of
7 the elected officials' retirement plan with a disability and who had
8 continuously elected not to participate in the elected officials' retirement
9 plan pursuant to section 38-804, subsection A, Arizona Revised Statutes, and
10 in the Arizona state retirement system pursuant to section 38-727, subsection
11 A, Arizona Revised Statutes, since initially being elected before January 1,
12 2014 as a state elected official who is subject to term limits may elect to
13 return the employer's contributions and the earnings on those contributions
14 that were deposited, pursuant to section 38-833, Arizona Revised Statutes, in
15 the state elected official's annuity account. The election under this
16 section shall be made within one hundred eighty days after the effective date
17 of this section or the employer's contributions and the earnings on those
18 contributions will remain in the state elected official's annuity account
19 until distribution.

20 Sec. 8. Retroactivity

21 Sections 38-727, 38-801, 38-804 and 38-831, Arizona Revised Statutes,
22 as amended by this act, apply retroactively to from and after September 12,
23 2013.