

House Engrossed

PSPRS; CORP; reemployment; time period

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

# HOUSE BILL 2063

AN ACT

AMENDING SECTIONS 38-849 AND 38-884, ARIZONA REVISED STATUTES; RELATING TO  
THE 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 38-849, Arizona Revised Statutes, is amended to  
3 read:

4 38-849. Limitations on receiving pension; violation;  
5 classification; reemployment after severance;  
6 reinstatement of service credits; reemployment of  
7 retired member or member with a disability;  
8 definition

9 A. If a member is convicted of, or discharged because of, theft,  
10 embezzlement, fraud or misappropriation of an employer's property or  
11 property under the control of the employer, the member shall be subject to  
12 restitution and fines imposed by a court of competent jurisdiction. The  
13 court may order the restitution or fines to be paid from any payments  
14 otherwise payable to the member from the retirement system.

15 B. A person who knowingly makes any false statement or who  
16 falsifies or allows to be falsified any record of the system with an  
17 intent to defraud the system is guilty of a class 5 felony. If any change  
18 or error in the records results in any member or beneficiary receiving  
19 from the system more or less than the member or beneficiary would have  
20 been entitled to receive had the records been correct, the local board  
21 shall correct such error, and as far as practicable shall adjust the  
22 payments in such manner that the actuarial equivalent of the benefit to  
23 which such member or beneficiary was correctly entitled shall be paid. If  
24 a member is convicted of a crime specified in this subsection, section  
25 13-713 applies.

26 C. If a member who received a severance refund on termination of  
27 employment pursuant to section 38-846.02 becomes reemployed with the same  
28 employer within two years after the former member's termination date, the  
29 member may have forfeited credited service attributable to service  
30 rendered during a prior period of service as an employee restored on  
31 satisfaction of each of the following conditions:

32 1. The member files with the system a written application for  
33 reinstatement of forfeited credited service within ninety days after again  
34 becoming an employee.

35 2. The retirement fund is paid the total amount previously  
36 withdrawn pursuant to section 38-846.02 plus compound interest from the  
37 date of withdrawal to the date of repayment. Interest shall be computed  
38 at the rate of nine percent for each year compounded each year from the  
39 date of withdrawal to the date of repayment. Forfeited credited service  
40 shall not be restored until complete payment is received by the fund.

41 3. The required payment is completed within one year after  
42 returning to employee status.

43 D. If a member who received a severance refund on termination of  
44 employment, as provided in section 38-846.02, is subsequently reemployed  
45 by an employer, the member's prior service credits shall be cancelled and

1 service shall be credited only from the date the member's most recent  
2 reemployment period commenced. However, a present active member of the  
3 system who forfeited credited service, received a severance refund  
4 pursuant to section 38-846.02 and becomes reemployed with the same  
5 employer two years or more after the member's termination date or becomes  
6 reemployed with another employer may elect to redeem any part of that  
7 forfeited credited service by paying into the system any amounts required  
8 pursuant to this subsection. A present active member who elects to redeem  
9 any part of forfeited credited service for which the member is deemed  
10 eligible by the board shall pay into the system the amounts previously  
11 paid or transferred to the member as a severance refund plus an  
12 amount, ~~THAT IS~~ computed by the system's actuary that is necessary to  
13 equal the increase in the actuarial present value of projected benefits  
14 resulting from the redemption calculated using the actuarial methods and  
15 assumptions prescribed by the system's actuary. On satisfaction of this  
16 obligation, the member's prior service credits shall be reinstated.

17 E. If a retired member becomes reemployed in any capacity by the  
18 employer from which the member retired before ~~twelve~~ SIX months after the  
19 date of retirement or in the same position at any time following  
20 retirement:

21 1. The following apply:

22 (a) Within ten days after the retired member is reemployed, the  
23 local board shall advise the system in writing of the retired member's  
24 reemployment.

25 (b) The system shall not make pension payments to the retired  
26 member during the period of reemployment.

27 (c) Employee contributions shall not be made on the retired  
28 member's account, nor shall any service be credited during the period of  
29 reemployment. On subsequent termination of employment by the retired  
30 member, the retired member is entitled to receive a pension based on the  
31 member's service and compensation before the date of the member's  
32 reemployment. The employer shall pay the alternate contribution rate  
33 pursuant to section 38-843.05.

34 (d) Any pension payments received by the retired member, who  
35 retired on or after July 1, 2009, during the period of reemployment are  
36 considered overpayments pursuant to section 38-850, unless subsection B of  
37 this section applies. If the board determines in the board's sole  
38 discretion, for a member who retired on or after July 1, 2009, that the  
39 retired member's reemployment during the ~~twelve-month~~ SIX-MONTH period and  
40 the failure of the employer or the local board to suspend the member's  
41 pension were not intentional to circumvent the requirements of this  
42 subsection, the pension payments received by the retired member after the  
43 retired member's reemployment are subject to repayment up to only the  
44 amount received between the date of the member's reemployment and the  
45 expiration of the ~~twelve-month~~ SIX-MONTH period.

1           2. The retired member, who retired on or after July 1, 2009 and who  
2 is reemployed terminates employment, may be subsequently reemployed with  
3 the employer from which the member retired and resume receiving pension  
4 payments after a period of ~~twelve~~ SIX months, less the period of time the  
5 retired member was not reemployed after retirement with the employer from  
6 which the member retired, if at least sixty days of the ~~twelve~~ SIX months  
7 are consecutive.

8           3. Paragraph 1, subdivisions (a), (b) and (d) of this subsection do  
9 not apply if any of the following occurs:

10          (a) The retired member becomes reemployed after sixty consecutive  
11 days from the member's retirement date as a result of participating in an  
12 open competitive new hire process ~~for an entry level, nonsupervisory~~  
13 ~~position,~~ except if the retired member is hired for the same position OR  
14 IF THE RETIRED MEMBER HAS A PREARRANGED REEMPLOYMENT AGREEMENT WITH THE  
15 EMPLOYER.

16          (b) The retired member is hired as a fire inspector or arson  
17 investigator.

18          (c) The retired member who is receiving an accidental disability,  
19 ordinary disability, catastrophic disability or temporary disability  
20 pension accepts a job reassignment as an accommodation in accordance with  
21 the Americans with disabilities act of 1990 due to a disability that is  
22 directly related to the retired member being awarded an accidental  
23 disability, ordinary disability, catastrophic disability or temporary  
24 disability benefit.

25          F. If a retired member is assigned voluntary duties acting as a  
26 limited authority peace officer, pursuant to the Arizona peace officer  
27 standards and training board rules, employee contributions shall not be  
28 made on the retired member's account, and any service shall not be  
29 credited during the period of reemployment. The employer shall not pay  
30 the alternate contribution rate pursuant to section 38-843.05.

31          G. If after ~~twelve~~ SIX months after the date of retirement a  
32 retired member becomes reemployed by the employer from which the member  
33 retired in a position other than the same position from which the member  
34 retired, employee contributions shall not be made on the retired member's  
35 account, and any service shall not be credited during the period of  
36 reemployment. The employer shall pay the alternate contribution rate  
37 pursuant to section 38-843.05.

38          H. At any time following retirement, if the retired member becomes  
39 employed by an employer, other than the employer from which the member  
40 retired, in a position ordinarily filled by an employee of an eligible  
41 group, employee contributions shall not be made on the retired member's  
42 account, and any service shall not be credited during the period of  
43 reemployment. The employer shall pay the alternate contribution rate  
44 pursuant to section 38-843.05.

1 I. If a member who retired under an accidental or ordinary  
2 disability becomes reemployed as an employee of an eligible group, section  
3 38-844 applies and a determination shall be made by the local board as to  
4 whether subsection E, F, G or H of this section applies.

5 J. The local board shall review all reemployment determinations and  
6 voluntary assignments as described in subsection F of this section. If  
7 the local board or the system is not provided the necessary information  
8 required by the system to make a reemployment determination, the local  
9 board and the system shall suspend pension payments until information is  
10 received and a determination is made regarding whether the reemployment  
11 meets the requirements of subsection E, F, G, H or I of this section.

12 K. A person who defrauds the system or who takes, converts, steals  
13 or embezzles monies owned by or from the system and who fails or refuses  
14 to return the monies to the system on the board's written request is  
15 subject to civil suit by the system in the superior court in Maricopa  
16 county. On entry of an order finding the person has defrauded the system  
17 or taken, converted, stolen or embezzled monies owned by or from the  
18 system, the court shall enter an order against that person and for the  
19 system awarding the system all of its costs and expenses of any kind,  
20 including attorney fees, that were necessary to successfully prosecute the  
21 action. The court shall also grant the system a judicial lien on all of  
22 the nonexempt property of the person against whom judgment is entered  
23 pursuant to this subsection in an amount equal to all amounts awarded to  
24 the system, plus interest at the rate prescribed by section 44-1201, until  
25 all amounts owed are paid to the system.

26 L. Notwithstanding any other provision of this article, the board  
27 may offset against any benefits otherwise payable by the system to an  
28 active or retired member or survivor any court ordered amounts awarded to  
29 the board and system and assessed against the member or survivor.

30 M. Notwithstanding any other provision of this article, a member  
31 who retires having met all of the qualifications for retirement and who  
32 subsequently becomes an elected official, by election or appointment, is  
33 not considered reemployed by the same employer.

34 N. For the purposes of this section, "same position" means a  
35 position in which the member performs substantially similar duties that  
36 were performed and exercises substantially similar authority that was  
37 exercised by the retired member before retirement.

38 Sec. 2. Section 38-884, Arizona Revised Statutes, is amended to  
39 read:

40 38-884. Membership of retirement plan; termination; credited  
41 service; redemption; reemployment

42 A. Each employee of a participating employer is a member of the  
43 plan unless the employee is receiving a pension from the plan. A person  
44 employed shall undergo a medical examination performed by a designated  
45 physician or a physician working in a clinic that is appointed by the

1 local board or, in the case of a state correctional officer who is  
2 employed by the state department of corrections, complete a physical  
3 examination pursuant to section 41-1822, subsection B. For the purposes  
4 of subsection B of this section, the designated physician or a physician  
5 working in a clinic that is appointed by the local board may be the  
6 employer's regular employee or contractor.

7 B. The purpose of the medical examination authorized by this  
8 section is to identify a member's physical or mental condition or injury  
9 that existed or occurred before the member's date of membership in the  
10 plan. Any employee who fails or refuses to submit to the medical  
11 examination prescribed in this section is deemed to waive all rights to  
12 disability benefits under this article. Medical examinations conducted  
13 under this article shall be conducted by a physician and shall not be  
14 conducted or used for purposes of hiring, ~~advancement~~ ADVANCING, ~~discharge~~  
15 DISCHARGING, job training or other terms, conditions and privileges of  
16 employment unrelated to receipt or qualification for pension benefits or  
17 service credits from the fund. This subsection does not affect or impair  
18 the right of an employer to prescribe medical or physical standards for  
19 employees or prospective employees.

20 C. If a member who becomes a member of the plan before January 1,  
21 2012 ceases to be an employee for any reason other than death or  
22 retirement, within twenty days after filing a completed application with  
23 the board, the member is entitled to receive the following amounts, less  
24 any benefit payments the member has received and any amount the member may  
25 owe to the plan:

26 1. If the member has less than five years of credited service with  
27 the plan, the member may withdraw the member's accumulated contributions  
28 from the plan.

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

32 (a) 5.0 to 5.9 years of credited service, twenty-five percent of  
33 all member contributions deducted from the member's salary pursuant to  
34 section 38-891, subsection B.

35 (b) 6.0 to 6.9 years of credited service, forty percent of all  
36 member contributions deducted from the member's salary pursuant to section  
37 38-891, subsection B.

38 (c) 7.0 to 7.9 years of credited service, fifty-five percent of all  
39 member contributions deducted from the member's salary pursuant to section  
40 38-891, subsection B.

41 (d) 8.0 to 8.9 years of credited service, seventy percent of all  
42 member contributions deducted from the member's salary pursuant to section  
43 38-891, subsection B.

1 (e) 9.0 to 9.9 years of credited service, eighty-five percent of  
2 all member contributions deducted from the member's salary pursuant to  
3 section 38-891, subsection B.

4 (f) 10.0 or more years of credited service, one hundred percent of  
5 all member contributions deducted from the member's salary pursuant to  
6 section 38-891, subsection B.

7 D. If a member who becomes a member of the plan before January 1,  
8 2012 has more than ten years of credited service with the plan, leaves the  
9 monies prescribed in subsection C of this section on account with the plan  
10 for more than thirty days after termination of employment and after that  
11 time period requests a refund of those monies, the member is entitled to  
12 receive the amount prescribed in subsection C of this section plus  
13 interest at a rate determined by the board for each year computed from and  
14 after the member's termination of employment.

15 E. The accumulated member contributions of a member who ceases to  
16 be an employee for a reason other than death or retirement and who becomes  
17 a member of the plan:

18 1. On or after January 1, 2012 and before July 1, 2018 shall be  
19 paid to the member plus interest at a rate determined by the board as of  
20 the date of termination within twenty days after filing with the plan a  
21 written application for payment.

22 2. For a member who has less than ten years of credited service  
23 with the plan, on or after July 1, 2018 shall be paid to the member plus  
24 interest at a rate determined by the board as of the date of termination  
25 within twenty days after filing with the plan a written application for  
26 payment.

27 F. If the refund includes monies that are an eligible rollover  
28 distribution and the member elects to have the distribution paid directly  
29 to an eligible retirement plan or individual retirement account or annuity  
30 and specifies the eligible retirement plan or individual retirement  
31 account or annuity to which the distribution is to be paid, the  
32 distribution shall be made in the form of a direct trustee-to-trustee  
33 transfer to the specified eligible retirement plan. The distribution  
34 shall be made in the form and at the time prescribed by the board.

35 G. For distributions occurring from and after December 31, 2007, a  
36 member or a member's beneficiary, including a nonspouse designated  
37 beneficiary to the extent allowed under subsection H of this section, may  
38 roll over an eligible rollover distribution as defined in section  
39 402(c)(4) of the internal revenue code to a Roth individual retirement  
40 account, if, for distributions occurring before January 1, 2010, the  
41 member or the member's beneficiary satisfies the requirements for making a  
42 Roth individual retirement account contribution under section  
43 408A(c)(3)(B) of the internal revenue code, as in effect on the date of  
44 the rollover. Any amount rolled over to a Roth individual retirement  
45 account is included in the gross income of the member or the member's

1 beneficiary to the extent the amounts would have been included in gross  
2 income if not rolled over as required under section 408A(d)(3)(A) of the  
3 internal revenue code. For the purposes of this subsection, the  
4 administrator is not responsible for ensuring the member or the member's  
5 beneficiary is eligible to make a rollover to a Roth individual retirement  
6 account.

7 H. For distributions made from and after December 31, 2009, a  
8 nonspouse designated beneficiary as defined in section 401(a)(9)(E) of the  
9 internal revenue code may elect to directly roll over an eligible rollover  
10 distribution to an individual retirement account under section 408(a) of  
11 the internal revenue code or an individual retirement annuity under  
12 section 408(b) of the internal revenue code that is established on behalf  
13 of the designated beneficiary and that will be treated as an inherited  
14 individual retirement plan pursuant to section 402(c)(11) of the internal  
15 revenue code. In order to be able to roll over the distribution, the  
16 distribution otherwise must satisfy the definition of an eligible rollover  
17 distribution as defined in section 402(c)(4) of the internal revenue  
18 code. In applying this subsection, a nonspouse rollover is subject to the  
19 direct rollover requirements under section 401(a)(31) of the internal  
20 revenue code, the rollover notice requirements under section 402(f) of the  
21 internal revenue code and the mandatory withholding requirements under  
22 section 3405(c) of the internal revenue code.

23 I. For plan years occurring before January 1, 2007, the period for  
24 providing the rollover notice as required under section 402(f) of the  
25 internal revenue code is not less than thirty days and not more than  
26 ninety days before the date of distribution and, for plan years beginning  
27 from and after December 31, 2006, the period for providing the rollover  
28 notice as required under section 402(f) of the internal revenue code is  
29 not less than thirty days and not more than one hundred eighty days before  
30 the date of distribution.

31 J. Service shall be credited to a member's individual credited  
32 service account in accordance with rules the local board prescribes. In  
33 no case shall more than twelve months of credited service be credited on  
34 account of all service rendered by a member in any one year. In no case  
35 shall service be credited for any period during which the member is not  
36 employed in a designated position, except as provided by sections 38-921  
37 and 38-922.

38 K. Credited service is forfeited if the amounts prescribed in  
39 subsection C, D or E of this section are paid or are transferred in  
40 accordance with this section.

41 L. If a former member becomes reemployed with the same employer  
42 within two years after the former member's termination date, a member may  
43 have forfeited credited service attributable to service rendered during a  
44 prior period of service as an employee restored on satisfaction of each of  
45 the following conditions:



1           1. The member files with the plan a written application for  
2 reinstatement of forfeited credited service within ninety days after again  
3 becoming an employee.

4           2. The retirement fund is paid the total amount previously  
5 withdrawn pursuant to subsection C, D or E of this section plus compound  
6 interest from the date of withdrawal to the dates of repayment. Interest  
7 shall be computed at the rate of nine percent for each year compounded  
8 each year from the date of withdrawal to the date of repayment. Forfeited  
9 credited service shall not be restored until complete payment is received  
10 by the fund.

11           3. The required payment is completed within one year after  
12 returning to employee status.

13           M. If a member who receives a severance refund on termination of  
14 employment pursuant to subsection C, D or E of this section is  
15 subsequently reemployed by an employer, the member's prior service credits  
16 are cancelled, and the board shall credit service only from the date the  
17 member's most recent reemployment period commenced. ~~However,~~ A present  
18 active member of the plan who received a refund of accumulated  
19 contributions from the plan pursuant to subsection C, D or E of this  
20 section, forfeited credited service pursuant to subsection K of this  
21 section and becomes reemployed with the same employer two years or more  
22 after the member's termination date or becomes reemployed with another  
23 employer may elect to redeem any part of that forfeited credited service  
24 by paying into the plan any amounts required pursuant to this subsection.  
25 A present active member who elects to redeem any part of forfeited  
26 credited service for which the member is deemed eligible by the board  
27 shall pay into the plan the amounts previously paid or transferred as a  
28 refund of the member's accumulated contributions plus an amount, computed  
29 by the plan's actuary that is necessary to equal the increase in the  
30 actuarial present value of projected benefits resulting from the  
31 redemption calculated using the actuarial methods and assumptions  
32 prescribed by the plan's actuary. On satisfaction of this obligation, the  
33 board shall reinstate the member's prior service credits.

34           N. A retired member may become employed by the employer from which  
35 the employee retired in a designated position and continue to receive a  
36 pension if the employment occurs at least ~~twelve~~ SIX months after  
37 retirement. The retired member shall not contribute to the fund and shall  
38 not accrue credited service. If a retired member becomes employed by the  
39 employer from which the employee retired in a designated position before  
40 ~~twelve~~ SIX months after retirement, the following apply:

41           1. Payment of the retired member's pension shall be suspended until  
42 the retired member again ceases to be an employee. The amount of pension  
43 shall not be changed on account of service as an employee subsequent to  
44 retirement.

1           2. The retired member shall not contribute to the fund and shall  
2 not accrue credited service.

3           3. Any pension payments received by a retired member, who retired  
4 on or after July 1, 2009, during a period of reemployment are considered  
5 overpayments pursuant to section 38-899. If the board determines in the  
6 board's sole discretion, for a member who retired on or after July 1,  
7 2009, that the retired member's reemployment during the ~~twelve-month~~  
8 ~~SIX-MONTH~~ period and the failure of the employer or the local board to  
9 suspend the member's pension were not intentional to circumvent the  
10 requirements of this subsection, the pension payments received by the  
11 retired member during reemployment are subject to repayment up to only the  
12 amount received between the date of the member's reemployment and the  
13 expiration of the ~~twelve-month~~ ~~SIX-MONTH~~ period.

14           4. If a retired member who retired on or after July 1, 2009 and who  
15 is reemployed terminates employment, the retired member may be  
16 subsequently reemployed with the employer from which the member retired in  
17 a designated position and resume receiving pension payments after a period  
18 of ~~twelve~~ ~~SIX~~ months, less the period of time the retired member was not  
19 reemployed by the employer from which the member retired in a designated  
20 position after retirement, if at least sixty days of the ~~twelve~~ ~~SIX~~ months  
21 are consecutive.

22           0. Notwithstanding any other provision of this article, a member  
23 who retires having met all of the qualifications for retirement and who  
24 subsequently becomes an elected official, by election or appointment, is  
25 not considered reemployed by the same employer.