

State of Arizona
House of Representatives
Forty-fourth Legislature
Second Regular Session
2000

HOUSE BILL 2007

AN ACT

AMENDING SECTIONS 38-727, 38-804 AND 38-955, ARIZONA REVISED STATUTES;
RELATING TO THE RETIREMENT OPTION FOR LEGISLATIVE EMPLOYEES AND ELECTED
OFFICIALS.

(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 The following provisions apply to all employees hired on or after the
6 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 who as a result of state
10 service or service for the political subdivision are included in agreements
11 providing for their coverage under the federal old age and survivors
12 insurance system are subject to this article, except that membership is not
13 mandatory:
14 (a) On the part of any employee who is eligible and who elects to
15 participate in the optional retirement programs established by the Arizona
16 board of regents pursuant to the authority conferred by section 15-1628 or by
17 a community college district board pursuant to authority conferred by section
18 15-1451.
19 (b) For a state elected official who is subject to term limits, who is
20 eligible for participation in ASRS because the state elected official elected
21 not to participate in the elected officials' retirement plan as provided in
22 section 38-804, subsection A and who elects not to participate in ASRS as
23 provided in paragraph 7 of this section.
24 (c) For an employee of the legislature who elects as provided
25 in paragraph 8 of this section to participate in a tax deferred annuity and
26 deferred compensation program established pursuant to article 5 of this
27 chapter in lieu of participation in ASRS.
28 (d) For exempt state officers or employees as defined in section
29 38-951 who elect to participate in the defined contribution retirement plan
30 option pursuant to article 8 of this chapter.
31 2. All employees and officers of political subdivisions whose
32 compensation is provided wholly or in part from state monies and who are
33 declared to be state employees and officers by the legislature for retirement
34 purposes are subject, on legislative enactment, to this article and are
35 members of ASRS.
36 3. Any member whose service terminates other than by death or
37 withdrawal from membership is deemed to be a member of ASRS until the
38 member's death benefit is paid.
39 4. Employees and officers shall not become members of ASRS and, if
40 they are members immediately before becoming employed as provided by this
41 section, shall have their membership status suspended while they are employed
42 by state departments paying the salaries of their officers and employees
43 wholly or in part from monies received from sources other than appropriations
44 from the state general fund for the period or periods payment of the employer
45 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 is ineligible for
16 membership in ASRS.

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

35 8. In lieu of participation in ASRS or the defined contribution
36 retirement plan option pursuant to article 8 of this chapter, an employee of
37 the legislature may elect pursuant to this paragraph to participate in a tax
38 deferred annuity and deferred compensation program established pursuant to
39 article 5 of this chapter. An employee of the legislature shall make the
40 election in writing and file the written election with ASRS. If an employee
41 of the legislature elects to participate in a tax deferred annuity and
42 deferred compensation program pursuant to this paragraph: ~~—~~

43 (a) The election is irrevocable and constitutes a waiver of all
44 benefits provided by ASRS, except for any benefits accrued by the employee
45 before election pursuant to this paragraph **IF A TRANSFER IS NOT MADE PURSUANT**

1 TO SUBDIVISION (b) OF THIS PARAGRAPH. ~~If an employee of the legislature~~
2 ~~elects to participate in a tax deferred annuity and deferred compensation~~
3 ~~program pursuant to this paragraph.~~

4 (b) IF REQUESTED BY THE EMPLOYEE IN A WRITTEN REQUEST FILED WITH ASRS,
5 ASRS SHALL TRANSFER TO THE TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION
6 PROGRAM AN AMOUNT EQUAL TO THE EMPLOYEE'S ACTUARIAL ACCRUED LIABILITY
7 COMPUTED BY THE ASRS ACTUARY. THE ACTUARIAL ACCRUED LIABILITY SHALL BE BASED
8 ON THE SAME ACTUARIAL COST METHOD AND ASSUMPTIONS THAT WERE USED FOR
9 COMPUTING THE FUNDING REQUIREMENTS OF ASRS IN THE ANNUAL ACTUARIAL VALUATION
10 PRECEDING THE TRANSFER.

11 (c) The employee's employer shall pay an amount equal to five per cent
12 of the employee's base salary directly to the program in lieu of employer
13 contributions to ASRS.

14 Sec. 2. Section 38-804, Arizona Revised Statutes, is amended to read:

15 38-804. Membership; termination; reinstatement of credited
16 service

17 A. All elected officials are members of the plan, except that a state
18 elected official who is subject to term limits may elect not to participate
19 in the plan. The state elected official who is subject to term limits shall
20 make the election in writing and file the election with the fund manager
21 within thirty days after the state elected official assumes office. The
22 election is effective on the first day of the state elected official's
23 eligibility for that term of office. The election not to participate is
24 specific for that term of office. If a state elected official who is subject
25 to term limits fails to make an election as provided in this subsection, the
26 state elected official is deemed to have elected to participate in the
27 plan. The election not to participate in the plan is irrevocable and
28 constitutes a waiver of all benefits provided by the plan for the state
29 elected official's entire term, except for any benefits accrued by the state
30 elected official in the plan for periods of participation prior to being
31 elected to an office subject to term limits or any benefits expressly
32 provided by law. The state elected official who elects not to participate in
33 the plan shall participate in the Arizona state retirement system unless the
34 state elected official makes an irrevocable election not to participate in
35 the Arizona state retirement system as provided in section 38-727. If the
36 state elected official elects not to participate in the plan, the Arizona
37 state retirement system or the defined contribution retirement plan option
38 pursuant to article 8 of this chapter, the state elected official may
39 participate in a tax deferred annuity and deferred compensation program
40 established pursuant to article 5 of this chapter. If the state elected
41 official chooses to participate in such a TAX DEFERRED ANNUITY AND DEFERRED
42 COMPENSATION program: ~~—~~

43 1. IF REQUESTED BY THE STATE ELECTED OFFICIAL IN A WRITTEN REQUEST
44 FILED WITH THE FUND MANAGER, THE FUND MANAGER SHALL TRANSFER TO THE TAX
45 DEFERRED ANNUITY AND DEFERRED COMPENSATION PROGRAM AN AMOUNT EQUAL TO THE

1 STATE ELECTED OFFICIAL'S ACTUARIAL ACCRUED LIABILITY COMPUTED BY THE PLAN'S
2 ACTUARY. THE ACTUARIAL ACCRUED LIABILITY SHALL BE BASED ON THE SAME
3 ACTUARIAL COST METHOD AND ASSUMPTIONS THAT WERE USED FOR COMPUTING THE
4 FUNDING REQUIREMENTS OF THE PLAN IN THE ANNUAL ACTUARIAL VALUATION PRECEDING
5 THE TRANSFER.

6 2. The state elected official's employer shall pay an amount equal to
7 five per cent of the state elected official's base salary directly to the
8 program in lieu of employer contributions to a public retirement system.

9 B. If a member ceases to hold office for any reason other than death
10 or retirement, within twenty days after filing a completed application with
11 the fund manager, the member is entitled to receive the following amounts,
12 less any benefit payments the member has received and any amount the member
13 may owe to the plan:

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

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

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

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

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

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

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

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

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

1 D. If the amount prescribed in subsection B or C of this section
2 includes monies that are an eligible rollover distribution and the member
3 elects to have the distribution paid directly to an eligible retirement plan
4 or individual retirement account or annuity and specifies the eligible
5 retirement plan or individual retirement account or annuity to which the
6 distribution is to be paid, the distribution shall be made in the form of a
7 direct trustee-to-trustee transfer to the specified eligible retirement
8 plan. The distribution shall be made in the form and at the time prescribed
9 by the fund manager. A member who receives the amount prescribed in
10 subsection B or C of this section from the plan or who elects a transfer
11 pursuant to this subsection forfeits the member's credited service, and all
12 rights to benefits under the plan and membership in the plan terminate.

13 E. If an elected official who has terminated the member's membership
14 in the plan pursuant to subsection B of this section is subsequently elected
15 or otherwise becomes eligible for membership in the plan pursuant to
16 subsection A of this section, credited service only accrues from the date of
17 the member's most recent eligibility as an elected official.

18 F. Notwithstanding subsection E of this section, if an elected
19 official files a written election form with the fund manager within ninety
20 days after the day of the member's reemployment as an elected official and
21 repays the amount previously withdrawn pursuant to subsection B or C of this
22 section within one year after the date of the member's reemployment as an
23 elected official, with interest on that amount at the rate of nine per cent
24 for each year, compounded each year from the date of withdrawal to the date
25 of repayment, credited service shall be restored. Credited service shall not
26 be restored until complete repayment is made to the fund.

27 G. If a retired member subsequently becomes an elected official,
28 contributions shall not be made by the retired member or the retired member's
29 employer and credited service shall not accrue while the retired member is
30 holding office, except that if a retired member subsequently becomes an
31 elected official of the same office from which the member retired, the member
32 shall not receive a pension, contributions shall not be made by the member
33 or the member's employer and credited service shall not accrue while the
34 member is holding office. If the elected official ceases to hold the same
35 office, the elected official is entitled to receive the same pension the
36 elected official was receiving when the elected official's pension was
37 discontinued pursuant to this subsection. Nothing in this subsection
38 prohibits a retired judge called by the supreme court to active duties of a
39 judge pursuant to section 38-813 from receiving retirement benefits.

40 Sec. 3. Section 38-955, Arizona Revised Statutes, is amended to read:

41 38-955. Contributions

42 A. An elected official or exempt state officer or employee who
43 participates in the defined contribution retirement plan option shall
44 contribute an amount equal to two and sixty-six hundredths per cent of the
45 elected official's or exempt state officer's or employee's gross salary.

1 B. Employers shall contribute to each participating elected official's
2 or exempt state officer's or employee's account an amount equal to two and
3 sixty-six hundredths per cent of the elected official's or exempt state
4 officer's or employee's gross salary.

5 C. FROM AND AFTER JUNE 30, 2001, AN ELECTED OFFICIAL OR EXEMPT STATE
6 OFFICER OR EMPLOYEE WHO PARTICIPATES IN THE DEFINED CONTRIBUTION RETIREMENT
7 PLAN OPTION MAY CONTRIBUTE AN ADDITIONAL AMOUNT TO THE OPTION PROVIDED THAT
8 THE AMOUNT WHEN COMBINED WITH THE AMOUNTS CONTRIBUTED PURSUANT TO SUBSECTIONS
9 A AND B OF THIS SECTION DO NOT EXCEED THE LIMITS PRESCRIBED IN SECTION 415(c)
10 OF THE INTERNAL REVENUE CODE, AS AMENDED.

11 ~~C.~~ D. Although designated as employee contributions, all employee
12 contributions made to the defined contribution retirement plan shall be
13 picked up and paid by the employer in lieu of contributions by the elected
14 official or exempt state officer or employee. The contributions picked up by
15 an employer may be made through a reduction in the elected official's or
16 exempt state officer's or employee's salary or an offset against future
17 salary increases, or a combination of both. The elected officials and exempt
18 state officers and employees participating in the defined contribution
19 retirement plan option do not have the option of choosing to receive the
20 contributed amounts directly instead of the employer paying the amounts to
21 the defined contribution retirement plan. It is intended that all employee
22 contributions that are picked up by the employer as provided in this
23 subsection shall be treated as employer contributions under section 414(h) of
24 the internal revenue code, shall be excluded from elected officials' and
25 exempt state officers' and employees' gross income for federal and state
26 income tax purposes and are includable in the gross income of the elected
27 officials and exempt state officers and employees or their beneficiaries only
28 in the taxable year in which they are distributed. The specified effective
29 date shall not be before the date the defined contribution retirement plan
30 receives notification from the internal revenue service that pursuant to
31 section 414(h) of the internal revenue code the employee contributions picked
32 up shall not be included in gross income for income tax purposes until the
33 time that the picked up contributions are distributed by refund or pension
34 payments.