

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

HOUSE BILL 2553

AN ACT

AMENDING SECTIONS 15-121 AND 15-1628, ARIZONA REVISED STATUTES; RELATING TO
SCHOOL EMPLOYEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-121, Arizona Revised Statutes, is amended to
3 read:

4 15-121. Permitting school employees to participate in federal
5 annuity program and deferred compensation plans;
6 prohibition against use of public funds; penalty

7 A. Employees of school districts, accommodation school employees,
8 employees of the community college districts, employees of the universities
9 and all other certificated and noncertificated employees of the schools of
10 this state, including those located at state institutions, may participate in
11 ~~the federal tax sheltered annuity plan as provided in 26 United States Code~~
12 ~~section 403, if the governing body approves~~ PLANS.

13 B. Upon election by an employee to participate in the federal annuity
14 plan, the governing board of a school district, the county school
15 superintendent, the community college district governing board, the Arizona
16 board of regents or other governing body or employer of the employee shall
17 invest an amount to be reduced from the regular annual salary of the
18 employee, as the employee may authorize, in annuities as provided in 26
19 United States Code section 403.

20 C. An employee may also participate in a deferred compensation plan
21 approved by the governing body and may authorize the necessary deductions
22 from his regular salary.

23 D. The amount to be invested shall be determined by the employee not
24 less than fifteen days prior to his first payday in the school year, or at
25 any time during the school year at the option of the governing body. The
26 employing body or county school superintendent shall assume no responsibility
27 other than to make the requested payments during the actual time of the
28 employment of the employee. The employer shall transfer to the fund manager
29 the employee contributions within ten working days after each and every
30 payroll date. Contributions transferred after that date shall include a
31 penalty of six per cent a year for each day the contributions are late, the
32 penalty to be paid by the employer. If the employee changes his employment
33 to another school or district, he may authorize his new employer to continue
34 the payments if the governing body approves. ~~State, county, district or~~
35 ~~other public funds shall not be used in the purchase of any annuity or~~
36 ~~payment of any deferred compensation authorized by this article.~~

37 Sec. 2. Section 15-1628, Arizona Revised Statutes, is amended to read:

38 15-1628. Powers and procedures pertaining to optional
39 retirement programs

40 A. The Arizona board of regents may establish optional retirement
41 programs under which contracts providing retirement and death benefits may be
42 purchased for members of the faculty and administrative officers of the
43 institutions under its jurisdiction. The benefits to be provided for or on
44 behalf of participants in the optional retirement program shall be provided

1 through annuity contracts, fixed or variable in nature, or a combination
2 thereof, or other retirement plans approved by the Arizona board of regents.

3 B. Elections to participate in the optional retirement programs shall
4 be made as follows:

5 1. Eligible employees initially appointed on or after August 9, 1974
6 shall elect to become members of the Arizona state retirement system or to
7 participate in an optional retirement program established by the Arizona
8 board of regents. The election shall be made in writing and filed with the
9 Arizona state retirement system and the disbursing officer of the employing
10 institution and shall be effective as of the effective date of
11 appointment. If an eligible employee fails to make an election as provided
12 in this paragraph, the eligible employee shall be deemed to have elected
13 membership in the Arizona state retirement system.

14 2. Eligible employees initially appointed before August 9, 1974 may
15 elect to participate in the optional retirement programs. The election shall
16 be made in writing and filed with the Arizona state retirement system and the
17 disbursing officer of the employing institution on or before December 14,
18 1974, shall become effective as of January 1, 1975 and shall constitute a
19 waiver of all benefits provided by the Arizona state retirement system,
20 except all such benefits as are expressly provided by law.

21 3. Any employee who becomes eligible may elect an optional retirement
22 program. The election shall be made in writing and filed with the Arizona
23 state retirement system and the disbursing officer of the employing
24 institution within thirty days after notice in writing to the employee of the
25 employee's eligibility, and shall become effective on the first day of the
26 pay period following such election, and shall constitute a waiver of all
27 benefits provided by the Arizona state retirement system, except all such
28 benefits as are expressly provided by law.

29 4. Any eligible employee who is a member of the Arizona state
30 retirement system at the time the employee elects to participate in the
31 optional retirement program shall leave the funds in the employee's
32 retirement account on deposit with the Arizona state retirement system during
33 the continuance of employment. Additional contributions to the employee's
34 retirement account shall not be required and continued service with the
35 Arizona board of regents or an institution under the jurisdiction of the
36 Arizona board of regents while under an optional retirement program shall be
37 deemed to be member service in the Arizona state retirement system for the
38 purpose of determining eligibility for any benefits under such system. The
39 amount of any such benefits under such system shall be computed only on the
40 basis of service otherwise creditable to a member of the system and the
41 employee's compensation during such service. For purposes of subsection D of
42 this section, years of member service in the Arizona state retirement system
43 shall count as years of service under the optional retirement programs.

1 C. The Arizona board of regents shall contribute public funds
2 appropriated or any other funds available for such purpose on behalf of each
3 participant in the optional retirement programs in an amount equal to seven
4 per cent of the participant's compensation. Each participant shall also
5 contribute an amount equal to seven per cent of the participant's
6 compensation. The appropriation to each university for purposes of enabling
7 the Arizona board of regents to make the contribution provided in this
8 subsection shall not exceed the employer contribution required under the
9 Arizona state retirement system as prescribed by title 38, chapter 5,
10 article 2. Funds utilized by the board of regents or by a university to pay
11 that portion of the contribution that represents the difference between the
12 employer contribution as prescribed by title 38, chapter 5, article 2 and the
13 contribution rate provided in this subsection for an optional retirement
14 program do not constitute a use of appropriated monies for supplemental
15 retirement.

16 D. In the case of an electing employee initially appointed on or after
17 August 9, 1974, contributions pursuant to subsection C of this section shall
18 not be made by the Arizona board of regents until the employee's completion
19 of five years of service. Employee contributions required during this
20 initial five year period and during continued service with an institution
21 under the jurisdiction of the Arizona board of regents shall be promptly
22 remitted to the optional retirement programs approved by the Arizona board of
23 regents. At the end of an electing employee's completion of five years of
24 service, a single contribution in an amount determined pursuant to subsection
25 C of this section, with interest, shall be made by the chief financial
26 officer of the employing institution to the approved company or companies on
27 behalf of such employee. In the case of an electing employee who does not
28 continue in service with an institution under the jurisdiction of the Arizona
29 board of regents for at least five years, the amount of employer
30 contributions, with interest, shall be refunded to this state.

31 E. If an employee's service is terminated by death prior to the
32 completion of five years of service, a death benefit equal to the sums
33 appropriated for such employee, plus interest, shall be paid to the
34 beneficiary designated by the participant under the participant's optional
35 retirement program.

36 F. The provisions of subsection D of this section shall not apply to
37 any electing employee who, at the time of initial appointment, owns a
38 contract determined by the Arizona board of regents to be acceptable for use
39 in the optional retirement program.

40 G. The Arizona board of regents may provide for the administration of
41 such optional retirement programs and perform or authorize the performance of
42 such functions as may be necessary for such purposes. The Arizona board of
43 regents shall approve the company or companies from which benefits may be
44 purchased under the optional retirement programs. Such optional retirement

1 programs shall not ~~allow a participant to withdraw any employer contributions~~
2 ~~except as a retirement income benefit payable for life, nor shall there be~~
3 ~~any provision for cash surrender or~~ PERMIT loans. In giving its approval,
4 the board shall consider:

5 1. The nature and extent of the rights and benefits to be provided for
6 participants and their beneficiaries.

7 2. The relation of such rights and benefits to the amount of
8 contributions to be made.

9 3. The suitability of such rights and benefits to the needs of the
10 participants and the interests of the institutions under its jurisdiction in
11 the recruitment and retention of faculty and administrative officers.

12 4. The ability of the approved company or companies to provide such
13 suitable rights and benefits.

14 H. Any eligible employee initially appointed after August 9, 1974,
15 electing to participate in the optional retirement programs, shall be
16 ineligible for membership in the Arizona state retirement system as long as
17 the employee remains continuously employed in any position by the Arizona
18 board of regents or by an institution under its jurisdiction, except as
19 expressly provided by law.

20 I. The benefits, annuities and employee and employer contributions
21 provided for in this section, and all interest, earnings and other credits
22 pertaining to such benefits, annuities and contributions, shall not be
23 subject to execution or attachment and shall be nonassignable. The employee
24 and employer contributions provided for in this section and all interest,
25 earnings and other credits pertaining to such contributions are exempt from
26 state, county and municipal taxes. The benefits and annuities received by an
27 employee under this section after December 31, 1988 are subject to tax
28 pursuant to title 43.

29 J. Subject to amendment of the federal-state agreement provided for in
30 section 38-702, every eligible employee electing to participate in the
31 optional retirement programs shall have old age, survivors and disability
32 insurance coverage provided by the federal social security act in accordance
33 with the provisions of title 38, chapter 5, article 1.