

REFERENCE TITLE: ASRS; benefits; normal retirement; refunds

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1290

Introduced by
Senator Gorman

AN ACT

AMENDING SECTIONS 38-711, 38-740 AND 38-765, ARIZONA REVISED STATUTES;
RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,
7 subdivision (b) of this section who satisfies the eligibility criteria
8 prescribed in section 38-727 and who is currently making member contributions
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate
11 amounts expected to be received under two different forms of payment, based
12 on mortality and interest rate assumptions approved from time to time by the
13 board.

14 3. "ASRS" means the Arizona state retirement system established by
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,
20 1984 and who left the member's contributions on deposit or reinstated
21 forfeited credited service pursuant to section 38-742 for a period of
22 employment that commenced before January 1, 1984, **AT THE MEMBER'S ELECTION**
23 **EITHER:**

24 (i) **THE MONTHLY AVERAGE OF COMPENSATION THAT IS CALCULATED PURSUANT TO**
25 **SUBDIVISION (b) OF THIS PARAGRAPH.**

26 (ii) The monthly average of compensation on which contributions were
27 remitted during a period of sixty consecutive months during which the member
28 receives the highest compensation within the last one hundred twenty months
29 of credited service. Any month for which no contributions are reported to
30 ASRS or that falls within a period of nonpaid or partially paid leave of
31 absence or sabbatical leave shall be excluded from the computation. The
32 sixty consecutive months may entirely precede, may be both before and after
33 or may be completely after any excluded months. If the member was employed
34 for less than sixty consecutive months, the average monthly compensation is
35 based on the total consecutive months worked. Payments for accumulated
36 vacation or annual leave, sick leave, compensatory time or other forms of
37 termination pay which, ~~prior to the effective date of the amendment to this~~
38 ~~section~~ **BEFORE AUGUST 12, 2005**, constitute compensation for members whose
39 membership in ASRS commenced before January 1, 1984, do not cease to be
40 included as compensation if paid in the form of nonelective employer
41 contributions under a 26 United States Code section 403(b) plan ~~so long as~~ **IF**
42 all payments of employer and employee contributions are made at the time of
43 termination. Contributions shall be made to ASRS on these amounts pursuant
44 to sections 38-735, 38-736 and 38-737.

1 (b) ~~Effective July 1, 1985~~ FOR A MEMBER WHOSE MEMBERSHIP IN ASRS
2 COMMENCED ON OR AFTER JANUARY 1, 1984 BUT BEFORE JULY 1, 2009, the monthly
3 average of compensation on which contributions were remitted during a period
4 of thirty-six consecutive months during which a member receives the highest
5 compensation within the last one hundred twenty months of credited service.
6 Any month for which no contributions are reported to ASRS or that falls
7 within a period of nonpaid or partially paid leave of absence or sabbatical
8 leave shall be excluded from the computation. The thirty-six consecutive
9 months may entirely precede, may be both before and after or may be
10 completely after any excluded months. If the member was employed for less
11 than thirty-six consecutive months, the average monthly compensation shall be
12 based on the total consecutive months worked. ~~This subdivision applies only
13 to members whose membership in ASRS was effective after December 31, 1983 or
14 who agree in writing as a binding condition of eligibility for being granted
15 the benefit advantages available under this subdivision to have their benefit
16 computed on the basis of the definition of compensation.~~

17 (c) FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JULY
18 1, 2009, THE MONTHLY AVERAGE OF COMPENSATION ON WHICH CONTRIBUTIONS WERE
19 REMITTED DURING A PERIOD OF SIXTY CONSECUTIVE MONTHS DURING WHICH A MEMBER
20 RECEIVES THE HIGHEST COMPENSATION WITHIN THE LAST ONE HUNDRED TWENTY MONTHS
21 OF CREDITED SERVICE. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE REPORTED TO
22 ASRS OR THAT FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID LEAVE OF
23 ABSENCE OR SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION. THE
24 SIXTY CONSECUTIVE MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE AND AFTER
25 OR MAY BE COMPLETELY AFTER ANY EXCLUDED MONTHS. IF THE MEMBER WAS EMPLOYED
26 FOR LESS THAN SIXTY CONSECUTIVE MONTHS, THE AVERAGE MONTHLY COMPENSATION
27 SHALL BE BASED ON THE TOTAL CONSECUTIVE MONTHS WORKED.

28 6. "Board" means the ASRS board established in section 38-713.

29 7. "Compensation" means the gross amount paid to a member by an
30 employer as salary or wages, including amounts that are subject to deferred
31 compensation or tax shelter agreements, for services rendered to or for an
32 employer, or that would have been paid to the member except for the member's
33 election or a legal requirement that all or part of the gross amount be used
34 for other purposes, but does not include amounts paid in excess of
35 compensation limits established in section 38-746. Compensation includes
36 amounts paid as salary or wages to a member by a second employer.
37 Compensation, as provided in paragraph 5, subdivision (b) of this section,
38 does not include:

39 (a) Lump sum payments, on termination of employment, for accumulated
40 vacation or annual leave, sick leave, compensatory time or any other form of
41 termination pay whether the payments are made in one payment or by
42 installments over a period of time.

43 (b) Damages, costs, attorney fees, interest or other penalties paid
44 pursuant to a court order or a compromise settlement or agreement to satisfy
45 a grievance or claim even though the amount of the payment is based in whole

1 or in part on previous salary or wage levels, except that, if the court order
2 or compromise settlement or agreement directs salary or wages to be paid for
3 a specific period of time, the payment is compensation for that specific
4 period of time. If the amount directed to be paid is less than the actual
5 salary or wages that would have been paid for the period if service had been
6 performed, the contributions for the period shall be based on the amount of
7 compensation that would have been paid if the service had been performed.

8 (c) Payment, at the member's option, in lieu of fringe benefits that
9 are normally paid for or provided by the employer.

10 (d) Merit awards pursuant to section 38-613 and performance bonuses
11 paid to assistant attorneys general pursuant to section 41-192.

12 8. "Contingent annuitant" means the person named by a member to
13 receive retirement income payable following a member's death after retirement
14 as provided in section 38-760.

15 9. "Credited service" means, subject to section 38-739, the number of
16 years standing to the member's credit on the books of ASRS during which the
17 member made the required contributions.

18 10. "Current annual compensation" means the greater of:

19 (a) Annualized compensation of the full pay period immediately before
20 the date of a request to ASRS to purchase credited service pursuant to
21 section 38-743 or 38-745.

22 (b) Annualized compensation of the partial year if the member has less
23 than twelve months total credited service on the date of a request to
24 purchase credited service pursuant to section 38-743 or 38-745.

25 (c) The sum of the twelve months of compensation immediately before
26 the date of a request to ASRS to purchase credited service pursuant to
27 section 38-743 or 38-745.

28 (d) The sum of the thirty-six months of compensation immediately
29 before the date of a request to ASRS to purchase credited service pursuant to
30 section 38-743 or 38-745 divided by three.

31 (e) If the member has retired one or more times from ASRS, the average
32 monthly compensation that was used for calculating the member's last pension
33 benefit times twelve.

34 11. "Early retirement" means retirement before a member's normal
35 retirement date after five years of total credited service and attainment of
36 age fifty.

37 12. "Effective date" means July 1, 1970, except with respect to
38 employers and members whose contributions to ASRS commence thereafter, the
39 effective date of their membership in ASRS is as specified in the applicable
40 joinder agreement.

41 13. "Employer" means:

42 (a) This state.

43 (b) Participating political subdivisions.

44 (c) Participating political subdivision entities.

- 1 14. "Employer contributions" means all amounts paid into ASRS by an
2 employer on behalf of a member.
- 3 15. "Fiscal year" means the period from July 1 of any year to June 30
4 of the following year.
- 5 16. "Inactive member" means a member who previously made contributions
6 to ASRS and who satisfies each of the following:
- 7 (a) Has not retired.
- 8 (b) Is not eligible for active membership in ASRS.
- 9 (c) Is not currently making contributions to ASRS.
- 10 (d) Has not withdrawn contributions from ASRS.
- 11 17. "Interest" means the assumed actuarial investment earnings rate
12 approved by the board.
- 13 18. "Internal revenue code" means the United States internal revenue
14 code of 1986, as amended.
- 15 19. "Investment management" means the persons, companies, banks,
16 insurance company investment funds, mutual fund companies, management or any
17 combinations of those entities that are appointed by ASRS and that have
18 responsibility and authority for investment of the monies of ASRS.
- 19 20. "Late retirement" means retirement after normal retirement.
- 20 21. "Leave of absence" means any unpaid leave authorized by the
21 employer, including leaves authorized for sickness or disability or to pursue
22 education or training.
- 23 22. "Life annuity" means equal monthly installments payable during the
24 member's lifetime after retirement.
- 25 23. "Member":
- 26 (a) Means any employee of an employer on the effective date.
- 27 (b) Means all employees of an employer who are eligible for membership
28 pursuant to section 38-727 and who are engaged to work at least twenty weeks
29 in each fiscal year and at least twenty hours each week.
- 30 (c) Means any person receiving a benefit under ASRS.
- 31 (d) Means any person who is a former active member of ASRS and who has
32 not withdrawn contributions from ASRS pursuant to section 38-740.
- 33 (e) Does not include any employee of an employer who is otherwise
34 eligible pursuant to this article and who begins service in a limited
35 appointment for not more than eighteen months on or after July 1, 1979. If
36 the employment exceeds eighteen months, the employee shall be covered by ASRS
37 as of the beginning of the nineteenth month of employment. In order to be
38 excluded under this subdivision, classifications of employees designated by
39 employers as limited appointments must be approved by the director.
- 40 (f) Does not include any leased employee. For the purposes of section
41 414(n) of the internal revenue code, "leased employee" means an individual
42 who:
- 43 (i) Is not otherwise an employee of an employer.

1 (ii) Pursuant to a leasing agreement between the employer and another
2 person, performs services for the employer on a substantially full-time basis
3 for at least one year.

4 (iii) Performs services under the primary direction or control of the
5 employer.

6 24. "Member contributions" means all amounts paid to ASRS by a member.

7 25. "Normal costs" means the sum of the individual normal costs for all
8 active members for each fiscal year. The normal cost for an individual
9 active member is the cost that is assigned to the fiscal year using the
10 projected unit credit method.

11 26. "Normal retirement age" means the age at which a member reaches the
12 member's normal retirement date.

13 27. "Normal retirement date" means the earliest of the following:

14 (a) A member's sixty-fifth birthday.

15 (b) A member's sixty-second birthday and completion of at least ten
16 years of credited service.

17 (c) FOR A MEMBER WHOSE MEMBERSHIP COMMENCED BEFORE JULY 1, 2009, the
18 first day that the sum of a member's age and years of total credited service
19 equals eighty. FOR A MEMBER WHOSE MEMBERSHIP COMMENCED ON OR AFTER JULY 1,
20 2009, THE FIRST DAY THAT THE SUM OF A MEMBER'S AGE AND YEARS OF TOTAL
21 CREDITED SERVICE EQUALS EIGHTY-FIVE.

22 28. "Political subdivision" means any political subdivision of this
23 state and includes a political subdivision entity.

24 29. "Political subdivision entity" means an entity:

25 (a) That is located in this state.

26 (b) That is created in whole or in part by political subdivisions,
27 including instrumentalities of political subdivisions.

28 (c) Where a majority of the membership of the entity is composed of
29 political subdivisions.

30 (d) Whose primary purpose is the performance of a government related
31 service.

32 30. "Retired member" means a member who is receiving retirement
33 benefits pursuant to this article.

34 31. "Service year" means fiscal year, except that:

35 (a) If the normal work year required of a member is less than the full
36 fiscal year but is for a period of at least nine months, the service year is
37 the normal work year.

38 (b) For a salaried member employed on a contract basis under one
39 contract, or two or more consecutive contracts, for a total period of at
40 least nine months, the service year is the total period of the contract or
41 consecutive contracts.

42 (c) In determining average monthly compensation pursuant to paragraph
43 5 of this section, the service year is considered to be twelve months of
44 compensation.

1 32. "State" means this state, including any department, office, board,
2 commission, agency, institution or other instrumentality of this state.

3 33. "Vested" means that a member is eligible to receive a future
4 retirement benefit.

5 Sec. 2. Section 38-740, Arizona Revised Statutes, is amended to read:
6 38-740. Return of contributions

7 A. ~~Any~~ A member WHOSE MEMBERSHIP COMMENCED BEFORE JULY 1, 2009 AND who
8 leaves employment other than by retirement or death may elect to receive a
9 return of the contributions as follows:

10 1. If the member has less than five years of credited service, the
11 member shall receive the member's contributions.

12 2. If a member has five or more years of credited service, the member
13 shall receive the member's contributions and an amount equal to a percentage
14 of the employer contributions paid on behalf of the member. The percentage
15 of employer contributions paid on behalf of the member shall be as follows:

16 (a) 5.0 to 5.9 years of credited service, twenty-five per cent.

17 (b) 6.0 to 6.9 years of credited service, forty per cent.

18 (c) 7.0 to 7.9 years of credited service, fifty-five per cent.

19 (d) 8.0 to 8.9 years of credited service, seventy per cent.

20 (e) 9.0 to 9.9 years of credited service, eighty-five per cent.

21 (f) 10.0 or more years of credited service, one hundred per cent.

22 ~~3. Interest on the returned contributions as determined by the board.~~

23 B. A MEMBER WHOSE MEMBERSHIP COMMENCED ON OR AFTER JULY 1, 2009, AND
24 WHO LEAVES EMPLOYMENT OTHER THAN BY RETIREMENT OR DEATH MAY ELECT TO RECEIVE
25 A RETURN OF THE MEMBER'S CONTRIBUTIONS. IF A MEMBER HAS FIVE OR MORE YEARS
26 OF CREDITED SERVICE, THE MEMBER SHALL RECEIVE THE MEMBER'S CONTRIBUTIONS AND
27 AN AMOUNT EQUAL TO TWENTY-FIVE PER CENT OF THE EMPLOYER CONTRIBUTIONS PAID ON
28 BEHALF OF THE MEMBER.

29 C. THE AMOUNT RETURNED PURSUANT TO SUBSECTION A OR B ACCUMULATES
30 INTEREST AT A RATE THAT IS DETERMINED BY THE BOARD.

31 ~~B.~~ D. Withdrawal of contributions with interest constitutes a
32 withdrawal from membership in ASRS and results in a forfeiture of all other
33 benefits under ASRS.

34 ~~C.~~ E. Notwithstanding any other provision of this article, a member
35 who has not received a return of contributions pursuant to this section may
36 combine any two or more periods of service for purposes of determining the
37 member's benefits.

38 ~~D.~~ F. If a member receives more than the amount due to a member
39 pursuant to this section, the member shall repay the amount of the
40 overpayment together with interest at the interest rate earned on ASRS
41 investments as reported on a quarterly basis, but not less than the valuation
42 rate established by the board, from the time of overpayment to the settlement
43 of the debt.

1 Sec. 3. Section 38-765, Arizona Revised Statutes, is amended to read:
2 38-765. Errors: benefit recomputation

3 If any change or error in the records results in any member or
4 beneficiary receiving from ASRS more or less than the member or beneficiary
5 would have been entitled to receive if the records had been correct, ~~the~~
6 ~~board~~ ASRS shall correct the error and as far as practicable shall adjust the
7 payments in a manner so that the actuarial equivalent of the benefit to which
8 the member or beneficiary was correctly entitled is paid. ~~The board~~ ASRS
9 shall correct any change or error and shall pay the appropriate monies to a
10 member or beneficiary or shall recover monies from the member or beneficiary
11 if the member or beneficiary is overpaid. ASRS SHALL RECOVER MONIES BY
12 REDUCING ANY BENEFIT THAT IS OTHERWISE PAYABLE BY ASRS OR THE LTD PROGRAM
13 ESTABLISHED BY ARTICLE 2.1 OF THIS CHAPTER TO AN ACTIVE, INACTIVE, DISABLED
14 OR RETIRED MEMBER, SURVIVOR, CONTINGENT ANNUITANT, BENEFICIARY OR ALTERNATE
15 PAYEE.