House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 246

HOUSE BILL 2049

AN ACT

AMENDING SECTION 38-711, 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, the monthly average of
23 compensation on which contributions were remitted during a period of sixty
24 consecutive months during which the member receives the highest compensation
25 within the last one hundred twenty months of credited service. Any month for
26 which no contributions are reported to ASRS or that falls within a period of
27 nonpaid or partially paid leave of absence or sabbatical leave shall be
28 excluded from the computation. The sixty consecutive months may entirely
29 precede, may be both before and after or may be completely after any excluded
30 months. If the member was employed for less than sixty consecutive months,
31 the average monthly compensation is based on the total consecutive months
32 worked.
33 (b) Effective July 1, 1985, the monthly average of compensation on
34 which contributions were remitted during a period of thirty-six consecutive
35 months during which a member receives the highest compensation within the
36 last one hundred twenty months of credited service. Any month for which no
37 contributions are reported to ASRS or that falls within a period of nonpaid
38 or partially paid leave of absence or sabbatical leave shall be excluded from
39 the computation. The thirty-six consecutive months may entirely precede, may
40 be both before and after or may be completely after any excluded months. If
41 the member was employed for less than thirty-six consecutive months, the
42 average monthly compensation shall be based on the total consecutive months
43 worked. This subdivision applies only to members whose membership in ASRS
44 was effective after December 31, 1983 or who agree in writing as a binding
45 condition of eligibility for being granted the benefit advantages available

1 under this subdivision to have their benefit computed on the basis of the
2 definition of compensation.
3 6. "Board" means the ASRS board established in section 38-713.
4 7. "Compensation" means the gross amount paid to a member by an
5 employer as salary or wages, including amounts that are subject to deferred
6 compensation or tax shelter agreements, for services rendered to or for an
7 employer, or that would have been paid to the member except for the member's
8 election or a legal requirement that all or part of the gross amount be used
9 for other purposes, but does not include amounts paid in excess of
10 compensation limits established in section 38-746. Compensation includes
11 amounts paid as salary or wages to a member by a second employer.
12 Compensation, as provided in paragraph 5, subdivision (b) of this section,
13 does not include:
14 (a) Lump sum payments, on termination of employment, for accumulated
15 vacation or annual leave, sick leave, compensatory time or any other form of
16 termination pay whether the payments are made in one payment or by
17 installments over a period of time.
18 (b) Damages, costs, attorney fees, interest or other penalties paid
19 pursuant to a court order or a compromise settlement or agreement to satisfy
20 a grievance or claim even though the amount of the payment is based in whole
21 or in part on previous salary or wage levels, except that, if the court order
22 or compromise settlement or agreement directs salary or wages to be paid for
23 a specific period of time, the payment is compensation for that specific
24 period of time. If the amount directed to be paid is less than the actual
25 salary or wages that would have been paid for the period if service had been
26 performed, the contributions for the period shall be based on the amount of
27 compensation that would have been paid if the service had been performed.
28 (c) Payment, at the member's option, in lieu of fringe benefits that
29 are normally paid for or provided by the employer.
30 (d) Merit awards pursuant to section 38-613 and performance bonuses
31 paid to assistant attorneys general pursuant to section 41-192.
32 8. "Contingent annuitant" means the person named by a member to
33 receive retirement income payable following a member's death after retirement
34 as provided in section 38-760.
35 9. "Credited service" means, subject to section 38-739, the number of
36 years standing to the member's credit on the books of ASRS during which the
37 member made the required contributions.
38 10. "Current annual compensation" means the greater of:
39 (a) Annualized compensation of the full pay period immediately before
40 the date of a request to ASRS to purchase credited service pursuant to
41 section 38-743 or 38-745.
42 (b) Annualized compensation of the partial year if the member has less
43 than twelve months total credited service on the date of a request to
44 purchase credited service pursuant to section 38-743 or 38-745.

1 (c) The sum of the twelve months of compensation immediately before
2 the date of a request to ASRS to purchase credited service pursuant to
3 section 38-743 or 38-745.
4 (d) The sum of the thirty-six months of compensation immediately
5 before the date of a request to ASRS to purchase credited service pursuant
6 to section 38-743 or 38-745 divided by three.
7 (e) If the member has retired one or more times from ASRS, the average
8 monthly compensation that was used for calculating the member's last pension
9 benefit times twelve.
10 11. "Early retirement" means retirement before a member's normal
11 retirement date after five years of total credited service and attainment of
12 age fifty.
13 12. "Effective date" means July 1, 1970, except with respect to
14 employers and members whose contributions to ASRS commence thereafter, the
15 effective date of their membership in ASRS is as specified in the applicable
16 joinder agreement.
17 13. "Employer" means:
18 (a) This state.
19 (b) Participating political subdivisions.
20 (c) PARTICIPATING POLITICAL SUBDIVISION ENTITIES.
21 14. "Employer contributions" means all amounts paid into ASRS by an
22 employer on behalf of a member.
23 15. "Fiscal year" means the period from July 1 of any year to June 30
24 of the following year.
25 16. "Inactive member" means a member who previously made contributions
26 to ASRS and who satisfies each of the following:
27 (a) Has not retired.
28 (b) Is not eligible for active membership in ASRS.
29 (c) Is not currently making contributions to ASRS.
30 (d) Has not withdrawn contributions from ASRS.
31 17. "Interest" means the assumed actuarial investment earnings rate
32 approved by the board.
33 18. "Internal revenue code" means the United States internal revenue
34 code of 1986, as amended.
35 19. "Investment management" means the persons, companies, banks,
36 insurance company investment funds, mutual fund companies, management or any
37 combinations of those entities that are appointed by ASRS and that have
38 responsibility and authority for investment of the monies of ASRS.
39 20. "Late retirement" means retirement after normal retirement.
40 21. "Leave of absence" means any unpaid leave authorized by the
41 employer, including leaves authorized for sickness or disability or to pursue
42 education or training.
43 22. "Life annuity" means equal monthly installments payable during the
44 member's lifetime after retirement.
45 23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

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

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

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

25. "Normal costs" means ~~costs of ASRS as computed under the projected unit credit method of actuarial computation that would have arisen if the benefits in effect at the time of the computation had always been in effect from the time of earliest eligibility of the current members.~~ THE SUM OF THE INDIVIDUAL NORMAL COSTS FOR ALL ACTIVE MEMBERS FOR EACH FISCAL YEAR. THE NORMAL COST FOR AN INDIVIDUAL ACTIVE MEMBER IS THE COST THAT IS ASSIGNED TO THE FISCAL YEAR USING THE PROJECTED UNIT CREDIT METHOD.

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

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

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

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

(c) The first day that the sum of a member's age and years of total credited service equals eighty.

28. "Political subdivision" means any political subdivision of this state AND INCLUDES A POLITICAL SUBDIVISION ENTITY.

29. "POLITICAL SUBDIVISION ENTITY" MEANS AN ENTITY:

(a) THAT IS LOCATED IN THIS STATE.

(b) THAT IS CREATED IN WHOLE OR IN PART BY POLITICAL SUBDIVISIONS, INCLUDING INSTRUMENTALITIES OF POLITICAL SUBDIVISIONS.

(c) WHERE A MAJORITY OF THE MEMBERSHIP OF THE ENTITY IS COMPOSED OF POLITICAL SUBDIVISIONS.

(d) WHOSE PRIMARY PURPOSE IS THE PERFORMANCE OF A GOVERNMENT RELATED SERVICE.

~~29.~~ 30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

~~30.~~ 31. "Service year" means fiscal year, except that:

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

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

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

~~31.~~ 32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

~~32.~~ 33. "Vested" means that a member is eligible to receive a future retirement benefit.

Sec. 2. Current participating political subdivision entities; retroactive effective date

The effective date of any current participating political subdivision entity that meets the definition of political subdivision entity as added by this act is retroactively effective to the political subdivision entity's effective date as specified in the applicable joinder agreement.

Sec. 3. Active members; purchase of public service credits

A. An active member of ASRS may purchase credited service pursuant to section 38-743, Arizona Revised Statutes, for employment that occurred before or after the effective date of this act from a political subdivision entity that is eligible for participation in ASRS pursuant to this act even if the eligible political subdivision entity is not participating in ASRS.

B. Any employee of a political subdivision entity that becomes a member of ASRS after December 31, 2003 but before January 1, 2005 may purchase credited service pursuant to this section and section 38-743, Arizona Revised Statutes, under the statute that was in effect before January 1, 2004 if the employee applies for the credited service purchase on or before December 31, 2004.

Sec. 4. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

NOT ENACTED

APPROVED BY THE GOVERNOR MAY 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2004.

Passed the House January 22, 2004,

by the following vote: 56 Ayes,

1 Nays, 3 Not Voting

With Emergency

Jake Flake

Speaker of the House

Norman L. Moore

Chief Clerk of the House

Passed the Senate May 12, 2004,

by the following vote: 18 Ayes,

8 Nays, 4 Not Voting

Without Emergency

Ken Bennett

President of the Senate

Charmin Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13th day of May, 2004

at 2:38 o'clock P. M.

Jennifer Ybarra

Secretary to the Governor

Approved this 19 day of

May, 2004,

at 1:00 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19 day of May, 2004,

at 2:52 o'clock P M.

Janice K. Brewer

Secretary of State

H.B. 2049