House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 96

HOUSE BILL 2160

AN ACT

AMENDING SECTION 38-747, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 38-747, Arizona Revised Statutes, is amended to read:

38-747. Purchase of credited service; payment; limitations; definitions

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.

2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS

pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's employment with an ASRS employer all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor

participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of

1 choosing to receive the contributed amounts directly. A member who makes an
2 irrevocable election pursuant to this subsection to have the member's
3 employer make payments for less than all of the amounts payable for the
4 member's additional contributions allowed by section 38-771.01, subsection F,
5 paragraph 4 may irrevocably elect to have the member's employer make payments
6 for all or any portion of the remaining amounts payable for the member's
7 additional contributions. A member who makes one or more irrevocable
8 elections pursuant to this subsection may also make other contributions to
9 ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to
10 subsection H of this section to the extent of any remaining amounts payable
11 for which the member has not made an election pursuant to this subsection.
12 An additional election or contribution with respect to a portion of the
13 amounts payable for the member's additional contributions pursuant to section
14 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an
15 irrevocable election already made pursuant to this subsection for any other
16 portion of the amounts payable for the member's additional contributions
17 allowed by section 38-771.01, subsection F, paragraph 4.
18 4. If on termination of the member's employment all amounts have not
19 been paid to ASRS pursuant to the member's irrevocable election pursuant to
20 this subsection, the member may pay ASRS, within thirty days after the
21 member's termination of employment and subject to other limitations
22 prescribed in this section, all or any portion of the unpaid amounts as
23 provided in subsection H of this section. These payments do not alter, amend
24 or revoke any irrevocable election already made pursuant to this subsection
25 with respect to any amount to be paid by the member's employer while the
26 member is employed by the member's employer.
27 5. Amounts paid by an employer pursuant to this subsection shall be
28 treated as employer contributions for the purpose of determining tax
29 treatment under the internal revenue code. The effective date of employer
30 payments pursuant to this subsection shall not be before the date ASRS
31 receives notification from the United States internal revenue service that
32 pursuant to section 414(h)(2) of the internal revenue code the amounts paid
33 by an employer pursuant to this subsection will not be included in the
34 member's gross income for income tax purposes until those amounts are
35 distributed by refund or retirement benefit payments.
36 6. Unless otherwise provided, member contributions paid by an employer
37 pursuant to this subsection are treated for all other purposes under ASRS in
38 the same manner and to the same extent as member contributions that are not
39 paid by an employer pursuant to this subsection.
40 7. If a member transfers employment from one participating employer
41 with which the member has made an irrevocable election pursuant to this
42 subsection to another participating employer, the member and the successor
43 participating employer shall complete the terms of the irrevocable election
44 that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) Forty thousand dollars or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) One hundred ~~per cent~~ PERCENT of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes

of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection B or D of this section, the board

may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution ~~or a contribution by a member of an eligible rollover distribution~~ from one or more:

(a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

(b) Annuity contracts described in section 403(b) of the internal revenue code.

(c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

~~3. Subject to the limitations prescribed in section 408(d)(3)(A)(ii) of the internal revenue code, accepting from a member a rollover contribution of that portion of a distribution from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code that is eligible to be rolled over and would otherwise be includable as gross income.~~

3. ACCEPTING FROM A MEMBER A DIRECT TRANSFER FROM AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN SECTION 408(a) OR 408(b) OF THE INTERNAL REVENUE CODE OF AN AMOUNT THAT WOULD OTHERWISE BE ELIGIBLE TO BE ROLLED OVER TO ASRS UNDER THE PROVISIONS OF SECTION 408(d)(3)(A)(ii) OF THE INTERNAL REVENUE CODE IF THE AMOUNT HAD BEEN RECEIVED BY THE MEMBER AND WOULD HAVE OTHERWISE BEEN INCLUDIBLE IN THE MEMBER'S GROSS INCOME BUT FOR THE DIRECT TRANSFER.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or

deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

L. Notwithstanding any provision of this article to the contrary, if the annual additions credited on behalf of an ASRS member during any limitation year exceed the limits of section 415(c) of the internal revenue code and subsection E of this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance issued by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

M. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

N. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

O. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection P of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

P. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the

separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

Q. Subsection O of this section shall be construed and interpreted in accordance with section 415 of the internal revenue code and the final treasury regulations issued under that section.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

2. "Corrective contributions" means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.

3. "Defined contribution plan" has the same meaning prescribed in section 38-769.

4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.

5. "Interest and gains" means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.

6. "Limitation year" has the same meaning prescribed in section 38-769.

7. "Participating employer" means an employer that participates in ASRS.

8. "Subject benefits" means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions that were made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions that were made by the member after June 30, 1981 and that were not picked up as provided in section 414(h)(2) of the internal revenue code.

APPROVED BY THE GOVERNOR APRIL 5, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2016.

Passed the House February 16, 2016

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Speaker of the House

☐ Pro Tempore

Jim Drake

Chief Clerk of the House

Passed the Senate March 28, 2016

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

30 day of March, 2016

at 11 o'clock A. M.

Valerie Hanna

Secretary to the Governor

Approved this 5th day of

April

at 2:58 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 6 day of April, 2016

at 8:22 o'clock A M.

Michele Reagan

Secretary of State

H.B. 2160