

PROPOSED AMENDMENT
SENATE AMENDMENTS TO H.B. 2562
(Reference to House engrossed bill)

1 Page 1, strike lines 2 through 13, insert:

2 "Section 1. Title 38, chapter 5, article 2, Arizona Revised Statutes,
3 is amended by adding section 38-716, to read:

4 38-716. Employers' responsibilities under the system

5 IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS ARTICLE OR ARTICLES 2.1,
6 7 OR 8 OF THIS CHAPTER, AN EMPLOYER OF A MEMBER SHALL:

7 1. ENSURE THE PROPER ENROLLMENT OF MEMBERS IN THE SYSTEM.

8 2. SUBMIT ANY REPORTS, DATA, PAPERWORK OR MATERIALS THAT ARE REQUESTED
9 BY ASRS AND THAT ARE NECESSARY TO MAKE ELIGIBILITY DETERMINATIONS AND FOR THE
10 PROPER ADMINISTRATION OF THE PLAN.

11 3. ATTEND THE ASRS ANNUAL TRAINING CONFERENCE.

12 Sec. 2. Title 38, chapter 5, article 2, Arizona Revised Statutes, is
13 amended by adding section 38-728, to read:

14 38-728. Eligibility determinations; employee enrollment

15 A. FOR AN EMPLOYEE HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS
16 SECTION, IF AN EMPLOYER DISAGREES WITH A DETERMINATION MADE BY THE STATE
17 SOCIAL SECURITY SECTION 218 ADMINISTRATOR AND APPLICATION BY ASRS OF THE
18 EMPLOYEE'S INCLUSION UNDER AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE
19 UNDER THE FEDERAL OLD AGE AND SURVIVORS INSURANCE SYSTEM, THE EMPLOYER SHALL
20 ENROLL THE EMPLOYEE PURSUANT TO SECTION 38-955 IN THE PLAN ESTABLISHED BY
21 ASRS PURSUANT TO SECTION 38-952 DURING THE ASRS ADMINISTRATIVE APPEALS
22 PROCESS. IF THE EMPLOYEE IS DETERMINED:

23 1. TO BE ELIGIBLE FOR ASRS, THE EMPLOYER SHALL ENROLL THE EMPLOYEE IN
24 ASRS AND SECTION 38-738 APPLIES.

2. TO BE NOT ELIGIBLE FOR ASRS AND IS PARTICIPATING PURSUANT TO SECTION 38-955 IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-952, THE EMPLOYEE SHALL CONTINUE PARTICIPATION IN THAT PLAN.

3. TO BE NOT ELIGIBLE FOR ASRS AND THE EMPLOYER HAS OPTED NOT TO PROVIDE COVERAGE UNDER SUBSECTION B OF THIS SECTION, THE RETIRED EMPLOYEE IS ENTITLED TO THE ASSETS IN THE EMPLOYEE'S ANNUITY ACCOUNT AND EARNINGS ON THOSE CONTRIBUTIONS ARE IMMEDIATELY VESTED.

B. FOR AN EMPLOYEE WHO IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, IF AN EMPLOYER DISAGREES WITH A DETERMINATION MADE BY THE STATE SOCIAL SECURITY SECTION 218 ADMINISTRATOR AND APPLICATION BY ASRS OF THE EMPLOYEE'S INCLUSION UNDER AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD AGE AND SURVIVORS INSURANCE SYSTEM AND THE EMPLOYEE IS ENROLLED IN ASRS, THE FOLLOWING SHALL OCCUR:

1. THE EMPLOYEE'S ASRS ACCOUNT SHALL BE SUSPENDED, ADDITIONAL CONTRIBUTIONS SHALL NOT BE COLLECTED OR PERMITTED AND SERVICE CREDIT SHALL NOT BE APPLIED DURING THE ASRS ADMINISTRATIVE APPEALS PROCESS.

2. THE EMPLOYEE SHALL BE ENROLLED PURSUANT TO SECTION 38-955 IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-952.

3. IF THE EMPLOYEE IS DETERMINED ELIGIBLE FOR ASRS, THE EMPLOYEE SHALL BE ENROLLED IN ASRS AND SECTION 38-738 APPLIES.

4. IF THE EMPLOYEE IS DETERMINED INELIGIBLE FOR ASRS, THE EMPLOYEE SHALL CONTINUE PARTICIPATION PURSUANT TO SECTION 38-955 IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO SECTION 38-952."

Renumber to conform

Page 5, strike lines 36 through 45

Strike pages 6 through 12

Page 13, strike lines 1 through 34, insert:

"Sec. 5. Section 38-847, Arizona Revised Statutes, is amended to read:

38-847. Local boards

A. The administration of the system and responsibility for making the provisions of the system effective for each employer are vested in a local board. The department of public safety, the Arizona game and fish

1 department, the department of emergency and military affairs, the university
2 of Arizona, Arizona state university, northern Arizona university, each
3 county sheriff's office, each county attorney's office, each county parks
4 department, each municipal fire department, each eligible fire district, each
5 community college district, each municipal police department, the department
6 of law, the department of liquor licenses and control, the Arizona department
7 of agriculture, the Arizona state parks board, each Indian reservation police
8 agency and each Indian reservation fire fighting agency shall have a local
9 board. A nonprofit corporation operating pursuant to sections 28-8423 and
10 28-8424 shall have one local board for all of its members. Each local board
11 shall be constituted as follows:

12 1. For political subdivisions or Indian tribes, the mayor or chief
13 elected official or a designee of the mayor or chief elected official
14 approved by the respective governing body as chairman, two members elected by
15 secret ballot by members employed by the appropriate employer and two
16 citizens, one of whom shall be the head of the merit system, or the head's
17 designee from among the other members of the merit system, if it exists for
18 the group of members, appointed by the mayor or chief elected official and
19 with the approval of the governing body of the city or the governing body of
20 the employer. The appointed two citizens shall serve on both local boards in
21 a city or Indian tribes where both fire and police department employees are
22 members.

23 2. For state agencies and nonprofit corporations operating pursuant to
24 sections 28-8423 and 28-8424, two members elected by secret ballot by THE
25 members employed by the appropriate employer and three citizens appointed by
26 the governor. Each state agency local board shall elect a chairman.

27 3. For fire districts organized pursuant to section 48-804, the
28 secretary-treasurer as chairman, two members elected by secret ballot by
29 members employed by the fire district and two citizens appointed by the
30 secretary-treasurer, one of whom is a resident of the fire district and one
31 of whom has experience in personnel administration but who is not required to
32 be a resident of the fire district.

1 B. On the taking effect of this system for an employer, the
2 appointments and elections of local board members shall take place with one
3 elective and appointive local board member serving a term ending two years
4 after the effective date of participation for the employer and other local
5 board members serving a term ending four years after the effective date.
6 Thereafter, every second year, and as a vacancy occurs, an office shall be
7 filled for a term of four years in the same manner as previously provided.

8 C. Each local board shall be fully constituted pursuant to subsection
9 A of this section within sixty days after the employer's effective date of
10 participation in the system. If the deadline is not met, on the written
11 request of any member who is covered by the local board or the employer to
12 the board of trustees, the board of trustees may appoint all vacancies of the
13 local board pursuant to subsection A of this section and designate whether
14 each appointive position is for a two-year or four-year term. If the board
15 of trustees cannot find individuals to serve on the local board who meet the
16 requirements of subsection A of this section, the board of trustees may
17 appoint individuals to serve as interim local board members until qualified
18 individuals are appointed or elected. Each local board shall meet at least
19 twice a year. Each member of a local board, within ten days after the
20 member's appointment or election, shall take an oath of office that, so far
21 as it devolves on the member, the member shall diligently and honestly
22 administer the affairs of the local board and that the member shall not
23 knowingly violate or willingly permit to be violated any of the provisions of
24 law applicable to the system.

25 D. Except as limited by subsection E of this section, a local board
26 shall have such powers as may be necessary to discharge the following duties:

27 1. To decide all questions of eligibility ~~and~~ **FOR MEMBERSHIP**, service
28 credits, **BENEFITS** and determine the amount, manner and time of payment of any
29 benefits under the system.

30 2. To prescribe procedures to be followed by claimants in filing
31 applications for benefits.

1 3. To make a determination as to the right of any claimant to a
2 benefit and to afford any claimant or the board of trustees, or both, a right
3 to a rehearing on the original determination. Except as otherwise required
4 by law, unless all parties involved in a matter presented to the local board
5 for determination otherwise agree, the local board shall commence a hearing
6 on the matter within ninety days after the date the matter is presented to
7 the local board for determination. If a local board fails to commence a
8 hearing as provided in this paragraph, on a matter presented to the local
9 board for determination, the relief demanded by the party petitioning the
10 local board is deemed granted and approved by the local board. The granting
11 and approval of this relief is considered final and binding unless a timely
12 request for rehearing or appeal is made as provided in this article, unless
13 the board of trustees determines that granting the relief requested would
14 violate the internal revenue code or threaten to impair the system's status
15 as a qualified plan under the internal revenue code. If the board of
16 trustees determines that granting the requested relief would violate the
17 internal revenue code or threaten to impair the system's status as a
18 qualified plan, the board of trustees may refuse to grant the relief by
19 issuing a written determination to the local board and the party petitioning
20 the local board for relief. The decision by the board of trustees is subject
21 to judicial review pursuant to title 12, chapter 7, article 6.

22 4. To request and receive from the employers and from members such
23 information as is necessary for the proper administration of the system and
24 action on claims for **ELIGIBILITY FOR MEMBERSHIP AND** benefits, and to forward
25 such information to the board of trustees.

26 5. To distribute, in such manner as the local board determines to be
27 appropriate, information explaining the system received from the board of
28 trustees.

29 6. To furnish the employer, the board of trustees and the legislature,
30 on request, with such annual reports with respect to the administration of
31 the system as are reasonable and appropriate.

1 7. To receive and review the actuarial valuation of the system for its
2 group of members.

3 8. To receive and review reports of the financial condition and of the
4 receipts and disbursements of the fund from the board of trustees.

5 9. To appoint medical boards as provided in section 38-859.

6 10. To sue and be sued to effectuate the duties and responsibilities
7 set forth in this article.

8 E. A local board shall have no power to add to, subtract from, modify
9 or waive any of the terms of the system, change or add to any benefits
10 provided by the system or waive or fail to apply any requirement of
11 eligibility for membership or benefits under the system. Notwithstanding any
12 limitations periods imposed in this article, including subsection D,
13 paragraph 3 and subsections G and H of this section, if the board of trustees
14 determines a local board decision violates the internal revenue code or
15 threatens to impair the system's status as a qualified plan under the
16 internal revenue code, the local board's decision is not final and binding
17 and the board of trustees may refrain from implementing or complying with the
18 local board decision.

19 F. A local board, from time to time, shall establish and adopt such
20 rules as it deems necessary or desirable for its administration. All rules
21 and decisions of a local board shall be uniformly and consistently applied to
22 all members in similar circumstances. If a claim or dispute is presented to
23 a local board for determination but the local board has not yet adopted
24 uniform rules of procedure for adjudication of the claim or dispute, the
25 local board shall adopt and use the model uniform rules of local board
26 procedure that are issued by the board of trustees' fiduciary counsel to
27 adjudicate the claim or dispute.

28 G. Except as otherwise provided in this article, any action by a
29 majority vote of the members of a local board that is not inconsistent with
30 the provisions of the system and the internal revenue code shall be final,
31 conclusive and binding on all persons affected by it unless a timely
32 application for a rehearing or appeal is filed as provided in this article.

1 No later than twenty days after taking action, the local board shall submit
2 to the board of trustees the minutes from the local board meeting that
3 include the name of the member affected by its decision, a description of the
4 action taken and an explanation of the reasons and all documents submitted to
5 the local board for the action taken, including the reports of a medical
6 board. The board of trustees may not implement and comply with any local
7 board action that does not comply with the internal revenue code or that
8 threatens to jeopardize the system's status as a qualified plan under the
9 internal revenue code.

10 H. A claimant or the board of trustees may apply for a rehearing
11 before the local board within the time periods prescribed in this subsection,
12 except that if a decision of a local board violates the internal revenue code
13 or threatens to jeopardize the system's status as a qualified plan under the
14 internal revenue code, no limitation period for the board of trustees to seek
15 a rehearing of a local board decision applies. An application for a
16 rehearing shall be filed in writing with a member of the local board or its
17 secretary within sixty days after:

18 1. The applicant-claimant receives notification of the local board's
19 original action by certified mail, by attending the meeting at which the
20 action is taken or by receiving benefits from the system pursuant to the
21 local board's original action, whichever occurs first.

22 2. The applicant-board of trustees receives notification of the local
23 board's original action as prescribed by subsection G of this section by
24 certified mail.

25 I. A hearing before a local board on a matter remanded from the
26 superior court is not subject to a rehearing before the local board.

27 J. Decisions of local boards are subject to judicial review pursuant
28 to title 12, chapter 7, article 6.

29 K. When making a ruling, determination or calculation, the local board
30 shall be entitled to rely on information furnished by the employer, a medical
31 board, the board of trustees, independent legal counsel or the actuary for
32 the system.

1 L. Each member of a local board is entitled to one vote. A majority
2 is necessary for a decision by the members of a local board at any meeting of
3 the local board.

4 M. The local board shall adopt such bylaws as it deems desirable. The
5 local board shall elect a secretary who may, but need not, be a member of the
6 local board. The secretary of the local board shall keep a record and
7 prepare minutes of all meetings in compliance with chapter 3, article 3.1 of
8 this title and forward the minutes and all necessary communications to the
9 board of trustees as prescribed by subsection G of this section.

10 N. The fees of the medical board and of the local board's independent
11 legal counsel and all other expenses of the local board necessary for the
12 administration of the system shall be paid by the employer and not the board
13 of trustees or system at such rates and in such amounts as the local board
14 shall approve. Legal counsel that is employed by the local board is
15 independent of the employer and any employee organization or member and owes
16 its duty of loyalty only to the local board in connection with its
17 representation of the local board.

18 O. The local board shall issue directions to the board of trustees
19 concerning all benefits that are to be paid from the employer's account
20 pursuant to the provisions of the fund. The local board shall keep on file,
21 in such manner as it may deem convenient or proper, all reports from the
22 board of trustees and the actuary.

23 P. The local board and the individual members of the local board shall
24 be indemnified from the assets of the employer for any judgment against the
25 local board or its members, including attorney fees and costs, arising from
26 any act, or failure to act, made in good faith pursuant to the provisions of
27 the system, including expenses reasonably incurred in the defense of any
28 claim relating to the act or failure to act.

1 Sec. 6. Title 38, chapter 5, article 4, Arizona Revised Statutes, is
2 amended by adding section 38-847.01, to read:

3 38-847.01. Membership in retirement plan; eligibility

4 A. EACH EMPLOYEE OF AN ELIGIBLE GROUP SHALL PARTICIPATE IN THE PLAN ON
5 PROPER DETERMINATION OF ELIGIBILITY FOR MEMBERSHIP BY THE LOCAL BOARD
6 PURSUANT TO SECTION 38-847, SUBSECTION D.

7 B. THE EMPLOYER SHALL PROVIDE TO THE LOCAL BOARD ALL NECESSARY
8 INFORMATION TO RENDER A DECISION ON THE EMPLOYEE'S ELIGIBILITY FOR
9 MEMBERSHIP. THE INFORMATION SHALL INCLUDE:

10 1. THE DATE THE EMPLOYEE WAS HIRED OR APPOINTED TO THE POSITION.

11 2. THE EMPLOYEE'S POSITION TITLE.

12 3. A DESCRIPTION OF THE ESSENTIAL FUNCTIONS FOR THE POSITIONS.

13 C. AN EMPLOYEE RECEIVING A PENSION FROM THE PLAN IS NOT SUBJECT TO
14 THIS SECTION, BUT IS SUBJECT TO SECTION 38-849."

15 Renumber to conform

16 Page 14, line 21, after the period insert "EXCEPT AS PROVIDED IN SUBSECTION B OF
17 THIS SECTION,"

18 Line 22, strike "WHO" insert "SHALL BE ENROLLED IN THE PLAN ESTABLISHED BY ASRS
19 PURSUANT TO SECTION 38-952 IF ALL OF FOLLOWING APPLY:

20 1. THE PERSON IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

21 2. THE EMPLOYEE"

22 Line 25, strike "AND WHO" insert "."

23 3. THE EMPLOYEE"

24 Line 27, strike ", BUT WHO" insert "."

25 4. THE EMPLOYEE"

26 Lines 29 and 30, strike "SHALL BE ENROLLED IN THE PLAN ESTABLISHED BY ASRS
27 PURSUANT TO SECTION 38-952"

28 Between lines 30 and 31, insert:

29 "B. A RETIRED MEMBER OF A STATEWIDE RETIREMENT SYSTEM OR PLAN PURSUANT
30 TO ARTICLES 3, 4, OR 6 OF THIS CHAPTER WHO MEETS THE REQUIREMENTS OF
31 SUBSECTION A OF THIS SECTION MAY BE ENROLLED IN THE PLAN ESTABLISHED BY ASRS
32 PURSUANT TO SECTION 38-952 AT THE EMPLOYER'S OPTION."

1 Reletter to conform

2 Strike page 15, insert:

3 "Sec. 10. Appropriation; ASRS; exemption

4 A. The following sums are appropriated from the Arizona state
5 retirement system administration account fund in fiscal year 2013-2014 to the
6 Arizona state retirement system:

7 1. 1 FTE position and \$72,400 for personal services.

8 2. \$105,000 for professional services.

9 B. The appropriation made in subsection A, paragraph 2 of this section
10 is exempt from the provisions of section 35-190, Arizona Revised Statutes,
11 relating to lapsing of appropriations."

12 Amend title to conform

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C: mjh