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REFERENCE TITLE: PSPRS; trustees; employment agreements

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HB 2087

Introduced by
Representative Robson

AN ACT

AMENDING SECTION 38-848, ARIZONA REVISED STATUTES; RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 38-848, Arizona Revised Statutes, is amended to read:

38-848. Board of trustees; powers and duties; independent trust fund; administrator; agents and employees

A. The board of trustees shall consist of seven members and shall have the rights, powers and duties that are set forth in this section. The term of office of members shall be five years to expire on the third Monday in January of the appropriate year. Members are eligible to receive compensation in an amount of fifty dollars a day, but not to exceed one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title. The board consists of the following members appointed by the governor pursuant to section 38-211:

1. Two elected members from a local board to represent the employees.

2. One member to represent this state as an employer of public safety personnel. This member shall have the qualifications prescribed in subsection R of this section.

3. One member to represent the cities as employers of public safety personnel.

4. An elected county or state official or a judge of the superior court, court of appeals or supreme court.

5. Two public members. These members shall have the qualifications prescribed in subsection R of this section.

B. All monies in the fund shall be deposited and held in a public safety personnel retirement system depository. Monies in the fund shall be disbursed from the depository separate and apart from all monies or funds of this state and the agencies, instrumentalities and subdivisions of this state, except that the board may commingle the assets of the fund and the assets of all other plans entrusted to its management in one or more group trusts, subject to the crediting of receipts and earnings and charging of payments to the appropriate employer, system or plan. The monies shall be secured by the depository in which they are deposited and held to the same extent and in the same manner as required by the general depository law of this state. For purposes of making the decision to invest in securities owned by the fund or any plan administered by the board, the fund and assets of the plans are subject to the sole management of the board for the purpose of this article except that, on the board's election to invest in a particular security or make a particular investment, the assets comprising the security or investment may be chosen and managed by third parties approved by the board. The board may invest in portfolios of securities chosen and managed by a third party. The board's decision to invest in securities such as mutual funds, commingled investment funds, exchange traded funds, private equity or venture capital limited partnerships, real estate limited partnerships or limited liability companies and real estate

investment trusts whose assets are chosen and managed by third parties does not constitute an improper delegation of the board's investment authority.

C. All contributions under this system and other retirement plans that the board administers shall be forwarded to the board and shall be held, invested and reinvested by the board as provided in this article. All property and monies of the fund and other retirement plans that the board administers, including income from investments and from all other sources, shall be retained for the exclusive benefit of members, as provided in the system and other retirement plans that the board administers, and shall be used to pay benefits to members or their beneficiaries or to pay expenses of operation and administration of the system and fund and other retirement plans that the board administers.

D. The board shall have the full power in its sole discretion to invest and reinvest, alter and change the monies accumulated under the system and other retirement plans that the board administers as provided in this article. In addition to its power to make investments managed by others, the board may delegate the authority the board deems necessary and prudent to investment management pursuant to section 38-848.03, as well as to the administrator, employed by the board pursuant to subsection K, paragraph 6 of this section, and any assistant administrators to invest the monies of the system and other retirement plans that the board administers if the administrator, investment management and any assistant administrators follow the investment policies that are ~~promulgated~~ ADOPTED by the board. The board may commingle securities and monies of the fund, the elected officials' retirement plan, the corrections officer retirement plan and other plans or monies entrusted to its care, subject to the crediting of receipts and earnings and charging of payments to the account of the appropriate employer, system or plan. In making every investment, the board shall exercise the judgment and care under the circumstances then prevailing ~~which~~ THAT persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income from their funds as well as the probable safety of their capital, provided:

1. That not more than eighty per cent of the combined assets of the system or other plans that the board manages shall be invested at any given time in corporate stocks, based on cost value of such stocks irrespective of capital appreciation.

2. That no more than five per cent of the combined assets of the system or other plans that the board manages shall be invested in corporate stock issued by any one corporation, other than corporate stock issued by corporations chartered by the United States government or corporate stock issued by a bank or insurance company.

3. That not more than five per cent of the voting stock of any one corporation shall be owned by the system and other plans that the board administers, except that this limitation does not apply to membership interests in limited liability companies.

4. That corporate stocks and exchange traded funds eligible for purchase shall be restricted to stocks and exchange traded funds that, except for bank stocks, insurance stocks and membership interests in limited liability companies, are either:

(a) Listed or approved on issuance for listing on an exchange registered under the securities exchange act of 1934, as amended (15 United States Code sections 78a through 78ll).

(b) Designated or approved on notice of issuance for designation on the national market system of a national securities association registered under the securities exchange act of 1934, as amended (15 United States Code sections 78a through 78ll).

(c) Listed or approved on issuance for listing on an exchange registered under the laws of this state or any other state.

(d) Listed or approved on issuance for listing on an exchange of a foreign country with which the United States is maintaining diplomatic relations at the time of purchase, except that no more than twenty per cent of the combined assets of the system and other plans that the board manages shall be invested in foreign securities, based on the cost value of the stocks irrespective of capital appreciation.

(e) An exchange traded fund that is recommended by the chief investment officer of the system, that is registered under the investment company act of 1940 (15 United States Code sections 80a-1 through 80a-64) and that is both traded on a public exchange and based on a publicly recognized index.

E. Notwithstanding any other law, the board shall not be required to invest in any type of investment that is dictated or required by any entity of the federal government and that is intended to fund economic development projects, public works or social programs, but may consider such economically targeted investments pursuant to its fiduciary responsibility. The board, on behalf of the system and all other plans or trusts the ~~fund manager~~ BOARD administers, may invest in, lend monies to or guarantee the repayment of monies by a limited liability company, limited partnership, joint venture, partnership, limited liability partnership or trust in which the system and plans or trusts have a financial interest, whether the entity is closely held or publicly traded and that, in turn, may be engaged in any lawful activity, including venture capital, private equity, the ownership, development, management, improvement or operation of real property and any improvements or businesses on real property or the lending of monies.

F. Conference call meetings of the board that are held for investment purposes only are not subject to chapter 3, article 3.1 of this title, except that the board shall maintain minutes of these conference call meetings and

make them available for public inspection within twenty-four hours after the meeting. The board shall review the minutes of each conference call meeting and shall ratify all legal actions taken during each conference call meeting at the next scheduled meeting of the board.

G. The board shall not be held liable for the exercise of more than ordinary care and prudence in the selection of investments and performance of its duties under the system and shall not be limited to so-called "legal investments for trustees", but all monies of the system and other plans that the board administers shall be invested subject to all of the conditions, limitations and restrictions imposed by law.

H. Except as provided in subsection D of this section, the board may:

1. Invest and reinvest the principal and income of all assets that the board manages without distinction between principal and income.

2. Sell, exchange, convey, transfer or otherwise dispose of any investments made on behalf of the system or other plans the board administers in the name of the system or plans by private contract or at public auction.

3. Also:

(a) Vote on any stocks, bonds or other securities.

(b) Give general or special proxies or powers of attorney with or without power of substitution.

(c) Exercise any conversion privileges, subscription rights or other options and make any payments incidental to the exercise of the conversion privileges, subscription rights or other options.

(d) Consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities, delegate discretionary powers and pay any assessments or charges in connection therewith.

(e) Generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other investments held in or owned by the system or other plans whose assets the board administers.

4. Make, execute, acknowledge and deliver any other instruments that may be necessary or appropriate to carry out the powers granted in this section.

5. Register any investment held by the system or other plans whose assets the board administers in the name of the system or plan or in the name of a nominee or trust.

6. At the expense of the system or other plans that the board administers, enter into an agreement with any bank or banks for the safekeeping and handling of securities and other investments coming into the possession of the board. The agreement shall be entered into under terms and conditions that secure the proper safeguarding, inventory, withdrawal and handling of the securities and other investments. No access to and no deposit or withdrawal of the securities from any place of deposit selected by the board shall be permitted or made except as the terms of the agreement may provide.

7. Appear before local boards and the courts of this state and political subdivisions of this state through counsel or appointed representative to protect the fund or the assets of other plans that the board administers. The board is not responsible for the actions or omissions of the local boards under this system but may seek review or rehearing of actions or omissions of local boards. The board does not have a duty to review actions of the local boards but may do so in its discretion in order to protect the fund. No limitations period precludes the ~~fund manager~~ BOARD or administrator from contesting, or requires the ~~fund manager~~ BOARD or administrator to implement or comply with, a local board decision that violates the internal revenue code or that threatens to impair the tax qualified status of the system or any plan administered by the ~~fund manager~~ BOARD or administrator.

8. Empower the fund administrator to take actions on behalf of the board that are necessary for the protection and administration of the fund or the assets of other plans that the board administers pursuant to the guidelines of the board.

9. Do all acts, whether or not expressly authorized, that may be deemed necessary or proper for the protection of the investments held in the fund or owned by other plans or trusts that the board administers.

10. Settle threatened or actual litigation against any system or plan that the ~~fund manager~~ BOARD administers.

I. Investment expenses and operation and administrative expenses of the board shall be accounted for separately and allocated against investment income.

J. The board, as soon as possible within a period of six months following the close of any fiscal year, shall transmit to the governor and the legislature a comprehensive annual financial report on the operation of the system and other plans that the board administers containing, among other things:

1. A balance sheet.

2. A statement of income and expenditures for the year.

3. A report on an actuarial valuation of its assets and liabilities.

4. A list of investments owned.

5. The total rate of return, yield on cost, and per cent of cost to market value of the fund and the assets of other plans that the board administers.

6. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of the system and other plans that the board administers and the results of their operations. A synopsis of the annual report shall be published for the information of members of the system, the elected officials' retirement plan or the corrections officer retirement plan.

K. The board shall:

1. Maintain the accounts of the system and other plans that the board administers and issue statements to each employer annually and to each member who may request it.

2. Report the results of the actuarial valuations to the local boards and employers.

3. Contract on a fee basis with an independent investment counsel to advise the board in the investment management of the fund and assets of other plans that the board administers and with an independent auditing firm to audit the board's accounting.

4. Permit the auditor general to make an annual audit and the results shall be transmitted to the governor and the legislature.

5. Contract on a fee basis with an actuary who shall make actuarial valuations of the system and other plans that the board administers, be the technical adviser of the board on matters regarding the operation of the funds created by the provisions of the system, the elected officials' retirement plan, the corrections officer retirement plan and the fire fighter and peace officer cancer insurance policy program and perform other duties required in connection therewith. The actuary must be a member of a nationally recognized association or society of actuaries.

6. Employ, as administrator, a person, state department or other body to serve at the pleasure of the board.

7. Establish procedures and guidelines for contracts with actuaries, auditors, investment counsel and legal counsel and for safeguarding of securities.

L. The administrator, under the direction of the board, shall:

1. Administer this article.

2. Invest the funds of the system and other plans that the board administers as the board deems necessary and prudent as provided in subsections D and H of this section and subject to the investment policies and fund objectives ~~promulgated~~ ADOPTED by the board.

3. Establish and maintain an adequate system of accounts and records for the system and other plans that the board administers, which shall be integrated with the accounts, records and procedures of the employers so that the system and other plans that the board administers operates most effectively and at minimum expense and that duplication of records and accounts is avoided.

4. In accordance with the board's governance policy and personnel rules and procedures and the budget adopted by the board, hire such employees and services the administrator deems necessary and prescribe their duties, including the hiring of one or more assistant administrators to manage the system's operations, investments and legal affairs.

5. Be responsible for income, the collection of the income and the accuracy of all expenditures.

6. Recommend to the board annual contracts for the system's actuary, auditor, investment counsel, legal counsel and safeguarding of securities.

7. Perform additional duties and powers prescribed by the board and delegated to the administrator.

M. The system is an independent trust fund and the board, the administrator, the assistant administrators and all persons employed by them are not under the jurisdiction of the department of administration or any other agency, department or instrumentality of this state or subject to section 38-611 or title 41, chapter 4 or 6. The salaries of the administrator, assistant administrators and other employees of the board are the sole determination of the board. AT THE DISCRETION OF THE BOARD, THE BOARD MAY ENTER INTO EMPLOYMENT CONTRACTS WITH THE ADMINISTRATOR AND ASSISTANT ADMINISTRATORS. Contracts for goods and services approved by the board are not subject to title 41, chapter 23. As an independent trust fund whose assets are separate and apart from all other funds of this state, the system and the board are not subject to the restrictions prescribed in section 35-154 or article IX, sections 5 and 8, Constitution of Arizona.

N. The attorney general or an attorney approved by the attorney general and paid by the fund shall be the attorney for the board and shall represent the board in any legal proceeding or forum that the board deems appropriate. The board, administrator, assistant administrators and employees of the board are not personally liable for any acts done in their official capacity in good faith reliance on the written opinions of the board's attorney.

O. At least once in each five-year period after the effective date, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the system and other plans that the board administers and shall make a special valuation of the assets and liabilities of the monies of the system and plans. Taking into account the results of the investigation and special valuation, the board shall adopt for the system and other plans that the board administers those mortality, service and other tables deemed necessary.

P. On the basis of the tables the board adopts, the actuary shall make a valuation of the assets and liabilities of the funds of the system and other plans that the board administers not less frequently than every year. By November 1 of each year the board shall provide a preliminary report and by December 15 of each year provide a final report to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

Q. Neither the board nor any member or employee of the board shall directly or indirectly, for himself or as an agent, in any manner use the monies or deposits of the fund except to make current and necessary payments, nor shall the board or any member or employee become an endorser or surety or in any manner an obligor for monies loaned by or borrowed from the fund or the assets of any other plans that the board administers.

R. The members of the board who are appointed pursuant to subsection A, paragraphs 2 and 5 of this section shall have at least ten years' substantial experience as any one or a combination of the following:

1. A portfolio manager acting in a fiduciary capacity.

2. A securities analyst.

3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.

4. A chartered financial analyst in good standing as determined by the association for investment management and research.

5. A professor at the university level teaching economics or investment related subjects.

6. An economist.

7. Any other professional engaged in the field of public or private finances.

S. Financial or commercial information that is provided to the board, employees of the board and attorneys of the board in connection with investments in which the board has invested or investments the board has considered for investment is confidential, proprietary and not a public record if the information is information that would customarily not be released to the public by the person or entity from whom the information was obtained.