

**TITLE 38, CHAPTER 5, ARTICLE 6**

**AND RELATED STATUTES**

**ARIZONA REVISED STATUTES**

**AS AMENDED 2011**

**CORRECTIONS OFFICER RETIREMENT PLAN**

**STATE OF ARIZONA**

**STATE OF ARIZONA  
CORRECTIONS OFFICER RETIREMENT PLAN**

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**CORRECTIONS OFFICER RETIREMENT PLAN  
TITLE 38, CHAPTER 5, ARTICLE 6  
ARIZONA REVISED STATUTES AS AMENDED 2011**

Sec. 1 & Sec. 21. Section 38-881, Arizona Revised Statutes, as amended by Laws 2008, chapter 144, section 1 and chapter 185, section 1, is amended to read:

**Version 1:**

**38-881.**

**Definitions**

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:
  - (a) Physical contact with inmates, prisoners, parolees or persons on probation.
  - (b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.
  - (c) A job related motor vehicle accident while on official business for the employee's employer. A job related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job related motor vehicle accident do not meet the conditions for accidental disability.
2. "Accumulated member contributions" means for each member the sum of the amount of all the member's contributions deducted from the member's salary and paid to the fund, plus member contributions transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions that are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.
3. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the board.
4. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.
5. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
6. "Annuitant" means a person who is receiving a benefit pursuant to section 38-911.
7. "Average monthly salary" means, for an employee who becomes a member of the plan before January 1, 2012, one-thirty-sixth of the aggregate amount of salary that is paid a member by a participating employer during a period of thirty-six consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service and, for an employee who becomes a member of the plan on or after January 1, 2012, one-sixtieth of the aggregate amount of salary that is paid a member by a participating employer during a period of sixty consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service. Average monthly salary means the aggregate amount of salary that is paid a member divided by the member's months of service if the member has less than thirty-six or sixty months of service. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the salary the employee would have received in the employee's job classification if the employee was not on industrial leave.
8. "Beneficiary" means an individual who is being paid or who has entitlement to the future payment of a pension on account of a reason other than the individual's membership in the retirement plan.
9. "Board" means the board of trustees of the Public Safety Personnel Retirement System.

10. "Claimant" means a member, beneficiary or estate that files an application for benefits with the retirement plan.
11. "Credited service" means credited service transferred to the retirement plan from another retirement system or plan for public employees of this state, plus those compensated periods of service as a member of the retirement plan for which member contributions are on deposit in the fund.
12. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the plan issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.
13. "Designated position" means:
  - (a) For a county:
    - (i) A county detention officer.
    - (ii) A nonuniformed employee of a sheriff's department whose primary duties require direct contact with inmates.
  - (b) For the state department of corrections and the department of juvenile corrections, only the following specifically designated positions:
    - (i) Food service.
    - (ii) Nursing personnel.
    - (iii) Corrections physician assistant.
    - (iv) Therapist.
    - (v) Corrections dental assistant.
    - (vi) Hygienist.
    - (vii) Corrections medical assistant.
    - (viii) Correctional service officer, including assistant deputy warden, deputy warden, warden and superintendent.
    - (ix) State correctional program officer.
    - (x) Parole or community supervision officers.
    - (xi) Investigators.
    - (xii) Teachers.
    - (xiii) Institutional maintenance workers.
    - (xiv) Youth corrections officer.
    - (xv) Youth program officer.
    - (xvi) Behavioral health treatment unit managers.
    - (xvii) The director and assistant directors of the department of juvenile corrections and the superintendent of the state educational system for committed youth.
    - (xviii) The director, deputy directors and assistant directors of the state department of corrections.
    - (xix) Other positions designated by the local board of the state department of corrections or the local board of the department of juvenile corrections pursuant to section 38-891.
  - (c) For a city or town, a city or town detention officer.
  - (d) For an employer of an eligible group as defined in section 38-842, full-time dispatchers.
  - (e) For the judiciary, probation, surveillance and juvenile detention officers and those positions designated by the local board of the judiciary pursuant to section 38-891.
  - (f) For the department of public safety, state detention officers.
14. "Determination" means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.
15. "Determination period" means the ninety-day period in which the plan must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations

- order, calculated from the time the plan mails a notice of receipt to the participant and alternate payee.
16. "Direct rollover" means a payment by the plan to an eligible retirement plan that is specified by the distributee.
  17. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under a plan approved domestic relations order.
  18. "Domestic relations order" means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.
  19. "Eligible child" means an unmarried child of a deceased active or retired member who meets one of the following qualifications:
    - (a) Is under eighteen years of age.
    - (b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.
    - (c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or guardian.
  20. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:
    - (a) An individual retirement account described in section 408(a) of the internal revenue code.
    - (b) An individual retirement annuity described in section 408(b) of the internal revenue code.
    - (c) An annuity plan described in section 403(a) of the internal revenue code.
    - (d) A qualified trust described in section 401(a) of the internal revenue code.
    - (e) An annuity contract described in section 403(b) of the internal revenue code.
    - (f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is 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 and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from this plan.
  21. "Eligible rollover distribution" means a payment to a distributee, but does not include any of the following:
    - (a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's beneficiary or for a specified period of ten years or more.
    - (b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.
    - (c) The portion of any distribution that is not includable in gross income.
  22. "Employee" means a person employed by a participating employer in a designated position.
  23. "Employer" means an agency or department of this state or a political subdivision of this state that has one or more employees in a designated position.
  24. "Fund" means the Corrections Officer Retirement Plan fund.
  25. "Juvenile detention officer" means a juvenile detention officer responsible for the direct custodial supervision of juveniles who are detained in a county juvenile detention center.
  26. "Local board" means the retirement board of the employer that consists of persons appointed or elected to administer the plan as it applies to the employer's members in the plan.
  27. "Member" means any employee who meets all of the following qualifications:
    - (a) Who is a full-time paid person employed by a participating employer in a designated position.
    - (b) Who is receiving salary for personal services rendered to a participating employer or would be receiving salary except for an authorized leave of absence.

- (c) Whose customary employment is at least forty hours each week.
28. "Normal retirement date" means:
- (a) For an employee who becomes a member of the plan before January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty years of service or, in the case of a dispatcher, twenty-five years of service, the employee's sixty-second birthday and completion of ten years of service or the month in which the sum of the employee's age and years of credited service equals eighty.
- (b) For an employee who becomes a member of the plan on or after January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty-five years of service if the employee is at least fifty-two and one-half years of age or the employee's sixty-second birthday and completion of ten years of service.
29. "Notice of receipt" means a written document that is issued by the plan to a participant and alternate payee and that states that the plan has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.
30. "Ordinary disability" means a physical condition that the local board determines will totally and permanently prevent an employee from performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will totally and permanently prevent an employee from engaging in any substantial gainful activity.
31. "Participant" means a member who is subject to a domestic relations order.
32. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.
33. "Participating employer" means an employer that the board has determined to have one or more employees in a designated position or a county, city, town or department of this state that has entered into a joinder agreement pursuant to section 38-902.
34. "Pension" means a series of monthly payments by the retirement plan but does not include an annuity that is payable pursuant to section 38-911.
35. "Personal representative" means the personal representative of a deceased alternate payee.
36. "Plan approved domestic relations order" means a domestic relations order that the plan approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.
37. "Probation or surveillance officer" means an officer appointed pursuant to section 8-203, 12-251 or 12-259 but does not include other personnel, office assistants or support staff.
38. "Retired member" means an individual who terminates employment and who is receiving a pension pursuant to either section 38-885 or 38-886.
39. "Retirement" or "retired" means termination of employment after a member has fulfilled all requirements for a pension or, for an employee who becomes a member of the plan on or after January 1, 2012, attains the age and service requirements for a normal retirement date.
40. "Retirement plan" or "plan" means the Corrections Officer Retirement Plan established by this article.
41. "Salary" means the base salary, shift differential pay, military differential wage pay and holiday pay paid a member for personal services rendered in a designated position to a participating employer on a regular monthly, semimonthly or biweekly payroll basis. Salary includes amounts that are subject to deferred compensation or tax shelter agreements. Salary does not include payment for any remuneration or reimbursement other than as prescribed by this paragraph. For the purposes of this paragraph, "base salary" means the amount of compensation each member is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, fringe benefit pay and similar extra payments.

42. "Segregated funds" means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the plan, or a domestic relations order submitted to the plan that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.
43. "Service" means employment rendered to a participating employer as an employee in a designated position. Any absence that is authorized by an employer, including any periods during which the employee is on an employer sponsored long-term disability program, is considered as service if the employee returns or is deemed by the employer to have returned to a designated position within the period of the authorized absence.
44. "Total and permanent disability" means a physical or mental condition that is not an accidental disability, that the local board finds totally and permanently prevents a member from engaging in any gainful employment and that is the direct and proximate result of the member's performance of the member's duty as an employee of a participating employer.

Added by Laws 1986, Ch. 325, § 1, effective August 13, 1986, retroactively effective to July 1, 1986. Amended by Laws 1989, Ch. 310, § 12, effective January 1, 1990; Laws 1990, Ch. 272, § 1, effective September 27, 1990, retroactively effective July 1, 1990; Laws 1991, Ch. 155, § 3; Laws 1991, Ch. 210, § 13; Laws 1992, Ch. 315, § 1; Laws 1993, Ch. 197, § 26; Laws 1993, Ch. 255, § 82, effective January 1, 1994; Laws 1995, Ch. 178, § 25; Laws 1995, Ch. 205, § 7; Laws 1996, Ch. 282, § 1; Laws 1997, Ch. 197, § 1; Laws 1997, Ch. 239, § 21; Laws 2001, Ch. 309, § 1; Laws 2002, Ch. 335, § 8; Laws 2006, Ch. 264, § 13; Laws 2006, Ch. 308, § 1; Laws 2007, Ch. 87, § 5; Laws 2008, Ch. 144, § 1; Laws 2008, Ch. 185, § 1; Laws 2009, Ch. 35, § 21; Laws 2009, Ch. 83, § 1; Laws 2010, Ch. 200, § 53, eff. April 28, 2010. Amended by Laws 2011, Ch. 357.

**Version 2, Conditionally Effective (Applies if the CORP is 100% funded) REPEALED BY SB1609, LAWS 2011, Ch. 357, effective July 20, 2011.**

Sec. 13. Customary employment; probation, surveillance and juvenile detention officers - **REPEALED SEE SEC. 16.**

Notwithstanding section 38-881, Arizona Revised Statutes, as amended by Laws 2008, chapter 144, section 1 and chapter 185, section 1, and section 1 of this act, and section 38-881, Arizona Revised Statutes, as amended by Laws 2008, chapter 144, section 2 and chapter 185, section 2, and section 2 of this act, for a probation, surveillance and juvenile detention officer who is employed by the judiciary and for an employee in those positions designated by the local board of the judiciary pursuant to section 38-891, Arizona Revised Statutes, and who are employed in a designated position in the Corrections Officer Retirement Plan on the effective date of this section, customary employment is at least twenty hours each week and for more than twenty weeks in a fiscal year.

Sec. 14. Probation, surveillance and juvenile detention officers; calculation of cost to purchase service - **REPEALED SEE SEC. 16.**

For a member of the Corrections Officer Retirement Plan who is subject to section 13 of this act, relating to customary employment, the cost to purchase active military service pursuant to section 38-907, Arizona Revised Statutes, to redeem credited service pursuant to section 38-909, Arizona Revised Statutes, or in calculating the actuarial present value for transfer or redemption pursuant to section 38-922, Arizona Revised Statutes, shall be calculated on an annualized basis using the member's current hourly salary multiplied by forty hours.

Sec. 15. Retroactivity - **REPEALED SEE SEC. 16.**

Section 13 of this act, relating to customary employment, and section 14 of this act, relating to calculation of cost to purchase service, are effective retroactively to from and after June 30, 2009.

Sec. 16. Delayed repeal

Section 13 of this act, relating to customary employment, and section 14 of this act, relating to calculation of cost to purchase service, are repealed from and after June 30, 2011.

**38-882. Corrections officer retirement plan and fund; administration**

- A. The Corrections Officer Retirement Plan and the Corrections Officer Retirement Plan fund are established.
- B. The fund consists of the monies and assets generated by the operation of the retirement plan. The fund shall be used exclusively to pay benefits to and on behalf of members and beneficiaries in accordance with the provisions of this article and to pay the administration, operation and investment expenses of the plan and fund. In no case shall all or any portion of the fund revert or otherwise be paid to an employer.
- C. The board is entitled to administer, manage and operate the plan and fund.
- D. The Corrections Officer Retirement Plan is a jural entity that may sue and be sued.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 2009, Ch. 83, § 3, effective September 30, 2009; Laws 2010, Ch. 200, § 55, eff. April 28, 2010.

**38-883. Board of Trustees; powers and duties**

- A. The board shall:
  - 1. Maintain records of the operation and administration of the plan and fund.
  - 2. Contract on a fee basis for an independent annual audit of the accounting records of the plan and fund and file a copy of the audit report with the auditor general.
  - 3. Employ on a fee basis an independent firm of actuaries to perform annual actuarial valuations for each participating employer of the plan and fund based on an actuarial cost method and actuarial assumptions recommended by the actuary and adopted by the board. The actuarial valuations shall be performed by or under the direct supervision of an actuary who is a member of the American academy of actuaries. 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.
  - 4. Invest and reinvest the monies and assets of the fund in accordance with the investment provisions of the Public Safety Personnel Retirement System. The board may commingle securities and monies of the fund subject to the crediting of receipts and earnings and charging of payments to the account of the appropriate employer.
  - 5. Submit a detailed annual report of the operation and investment performance of the plan and fund to the governor, the legislature, and the members of the plan. The board shall submit the annual report no later than six months after the end of the fiscal year to which it pertains.
- B. The board of trustees may:
  - 1. Employ services it deems necessary, including legal services, for the operation and administration of the plan and fund.
  - 2. Utilize separate or commingled investment vehicles.
  - 3. Delegate authority to the administrator employed pursuant to section 38-848, subsection K, paragraph 6.
  - 4. Appear before local boards and the courts and political subdivisions of this state through counsel or appointed representatives to protect the fund. The board of trustees is not responsible for the actions or omissions of the local boards under this plan but may seek review or a rehearing of actions or omissions of local boards. The board of trustees 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.
  - 5. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the protection of the plan and fund.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 2; Laws 1997, Ch. 210, § 26, effective March 1, 1998; Laws 2005, Ch. 331, § 8; ; Laws 2010, Ch. 200, § 56, eff. April 28, 2010.

**38-883.01. Qualified governmental excess benefit arrangement; definitions**

- A. The board may establish a qualified governmental excess benefit arrangement for the sole purpose of enabling the board to continue to apply the same formula for determining benefits

- payable to all employees covered by the plan whose benefits under the plan are limited by section 415 of the internal revenue code.
- B. The board shall administer the qualified governmental excess benefit arrangement. The board has full discretionary fiduciary authority to determine all questions arising in connection with the arrangement, including its interpretation and any factual questions arising under the arrangement.
  - C. All members and retired members of the plan are eligible to participate in the qualified governmental excess benefit arrangement if their benefits under the plan would exceed the limitation imposed by section 415 of the internal revenue code.
  - D. On or after the effective date of the qualified governmental excess benefit arrangement, the employer shall pay to each eligible member of the plan who retires on or after the effective date and to each retired member who retired before the effective date and that member's beneficiary, if required, a supplemental pension benefit equal to the amount by which the benefit that would have been payable under the plan, without regard to any provisions in the plan incorporating the limitation on benefits imposed by section 415 of the internal revenue code, exceeds the benefit actually payable taking into account the limitation imposed on the plan by section 415 of the internal revenue code. The board shall compute and pay the supplemental pension benefits under the same terms and conditions and to the same person as the benefits payable to or on account of a retired member under the plan.
  - E. The employer shall not fund benefits payable under the qualified governmental excess benefit arrangement. The employer shall pay benefits payable under the qualified governmental excess benefit arrangement out of the general assets of the employer. For administrative purposes, the employer may establish a grantor trust for the benefit of eligible members. The employer shall be treated as grantor of the trust for purposes of section 677 of the internal revenue code. The rights of any person to receive benefits under the qualified government excess benefit arrangement are limited to those of a general creditor of the employer.
  - F. The terms and conditions contained in the plan, other than those relating to the benefit limitation imposed by section 415 of the internal revenue code, apply, unless the terms and conditions are inconsistent with the purpose of the qualified government excess benefit arrangement.
  - G. For purposes of this section:
    - 1. "Internal revenue code" has the same meaning in section 42-1001.
    - 2. "Qualified governmental excess benefit arrangement" means a portion of the plan if:
      - (a) the portion is maintained solely to provide to members of the plan that part of a member's annual benefit that is otherwise payable under the terms of the plan and that exceeds the limitations imposed by section 415 of the internal revenue code.
      - (b) under that portion, a direct or indirect election to defer compensation is not provided at any time to the member.
      - (c) excess benefits are not paid from a trust that is a part of the plan unless the trust is maintained solely for the purpose of providing excess benefits.

Added by Laws 1997, Ch. 239, § 22. Amended by Laws 1998, Ch. 1, § 113, effective January 1, 1999; Laws 2010, Ch. 200, § 57, eff. April 28, 2010.

**38-884. Membership of retirement plan; termination; credited service**

- A. Each employee of a participating employer is a member of the plan unless the employee is receiving a pension from the plan. A person employed shall undergo a medical examination performed by a doctor or clinic appointed by the local board or, in the case of a state correctional officer who is employed by the state department of corrections, complete a physical examination pursuant to section 41-1822, subsection B. For the purposes of subsection B of this section, the doctor or clinic appointed by the local board may be the employer's regular employee or contractor.
- B. The purpose of the medical examination authorized by this section is to identify a member's physical or mental condition or injury that existed or occurred before the member's date of membership in the plan. Any employee who fails or refuses to submit to the medical examination prescribed in this section is deemed to waive all rights to disability benefits under this article. Medical examinations conducted under this article shall not be conducted or used for purposes of

- hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to receipt or qualification for pension benefits or service credits from the fund. This subsection does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.
- C. If a member who becomes a member of the plan before January 1, 2012 ceases to be an employee for any reason other than death or retirement, within twenty days after filing a completed application with the board, the member is entitled to receive the following amounts, less any benefit payments the member has received and any amount the member may owe to the plan:
1. If the member has less than five years of credited service with the plan, the member may withdraw the member's accumulated contributions from the plan.
  2. If the member has five or more years of credited service with the plan, the member may withdraw the member's accumulated contributions plus an amount equal to the amount determined as follows:
    - (a) 5.0 to 5.9 years of credited service, twenty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
    - (b) 6.0 to 6.9 years of credited service, forty per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
    - (c) 7.0 to 7.9 years of credited service, fifty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
    - (d) 8.0 to 8.9 years of credited service, seventy per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
    - (e) 9.0 to 9.9 years of credited service, eighty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
    - (f) 10.0 or more years of credited service, one hundred per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
- D. If a member who becomes a member of the plan before January 1, 2012 has more than ten years of credited service with the plan, leaves the monies prescribed in subsection C of this section on account with the plan for more than thirty days after termination of employment and after that time period requests a refund of those monies, the member is entitled to receive the amount prescribed in subsection C of this section plus interest at a rate determined by the board for each year computed from and after the member's termination of employment.
- E. The accumulated member contributions of a member who ceases to be an employee for a reason other than death or retirement and who becomes a member of the plan on or after January 1, 2012 shall be paid to the member plus interest at a rate determined by the board as of the date of termination within twenty days after filing with the plan a written application for payment.
- F. If the refund includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the board.
- G. Service shall be credited to a member's individual credited service account in accordance with rules the local board prescribes. In no case shall more than twelve months of credited service be credited on account of all service rendered by a member in any one year. In no case shall service be credited for any period during which the member is not employed in a designated position, except as provided by sections 38-921 and 38-922.
- H. Credited service is forfeited if the amounts prescribed in subsection C, D or E of this section are paid or are transferred in accordance with this section.
- I. If a former member becomes re-employed with the same employer within two years after the former member's termination date, a member may have forfeited credited service attributable to service rendered during a prior period of service as an employee restored on satisfaction of each of the following conditions:

1. The member files with the plan a written application for reinstatement of forfeited credited service within ninety days after again becoming an employee.
  2. The retirement fund is paid the total amount previously withdrawn pursuant to subsection C, D or E of this section plus compound interest from the date of withdrawal to the dates of repayment. Interest shall be computed at the rate of nine per cent for each year compounded each year from the date of withdrawal to the date of repayment. Forfeited credited service shall not be restored until complete payment is received by the fund.
  3. The required payment is completed within one year after returning to employee status.
- J. A present active member of the plan who received a refund of accumulated contributions from the plan pursuant to subsection C, D or E of this section and forfeited credited service pursuant to subsection H of this section may elect to redeem any part of that forfeited credited service by paying into the plan any amounts required pursuant to this subsection. A present active member who elects to redeem any part of forfeited credited service for which the member is deemed eligible by the board shall pay into the plan the amounts previously paid or transferred as a refund of the member's accumulated contributions plus an amount, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary.
- K. A retired member may become employed by an employer in a designated position and continue to receive a pension if the employment occurs at least twelve months after retirement. The retired member shall not contribute to the fund and shall not accrue credited service. If a retired member becomes employed by an employer in a designated position before twelve months after retirement:
1. Payment of the retired member's pension shall be suspended until the retired member again ceases to be an employee. The amount of pension shall not be changed on account of service as an employee subsequent to retirement.
  2. The retired member shall not contribute to the fund and shall not accrue credited service.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 3; Laws 1992, Ch. 340, § 3; Laws 1994, Ch. 356, § 29; Laws 1995, Ch. 205, § 8; Laws 1997, Ch. 133, § 1; Laws 1999, Ch. 41, § 1; Laws 1999, Ch. 327, § 26; Laws 2006, Ch. 241 § 2, effective from June 30, 2008; Laws 2009, Ch. 83, § 4, effective September 30, 2009; Laws 2010, Ch. 200, § 58, eff. April 28, 2010. Amended by Laws 2011, Ch. 357.

**Sec. 12. Previous return to work retirees**

Notwithstanding section 38-884, Arizona Revised Statutes, as amended by this act, a retired member of the Corrections Officer Retirement Plan who returned to work and was entitled to continue to receive a pension from the plan pursuant to Laws 2006, chapter 241, section 1 and who is employed by an employer of the Corrections Officer Retirement Plan on the effective date of this act is entitled to again begin receiving the retired member's pension from the plan. Section 38-884, Arizona Revised Statutes, as amended by this act, applies retroactively from and after December 31, 2008.

**38-884.01 Reinstatement of credited service; effect of prior law**

- A. A member who received a severance refund on termination of employment as provided in section 38-884, who is subsequently reemployed by an employer and who redeposits the amount withdrawn with interest as provided in section 38-884 or a member who redeems prior service pursuant to statute is subject to the benefits and duties in effect at the time of the member's most recent reemployment. This subsection does not apply if a court of competent jurisdiction orders reinstatement of benefits and duties under a prior law.
- B. A member who transfers credited service from one employer to another employer pursuant to section 38-908 retains the benefits and duties in effect at the time of the member's transfer.

Added by Laws 2011, Ch. 357.

**38-885. Normal retirement; conditions and pension**

- A. A member may retire if the member:
  - 1. Files a written application for normal retirement with the plan in the form prescribed by the plan.
  - 2. Ceases to be an employee before the date of retirement.
  - 3. Meets one of the age and service requirements for normal retirement prescribed in subsection B or D.
- B. A member who becomes a member of the plan before January 1, 2012 is eligible for a normal retirement pension if the member satisfies one of the following requirements:
  - 1. Is at least sixty-two years of age and has ten or more years of service.
  - 2. Has twenty or more years of service or in the case of a dispatcher, twenty-five or more years of service.
  - 3. The sum of the member's age and years of credited service equals at least eighty.
- C. A member who meets the requirements for a normal retirement pension pursuant to subsection B and who has twenty years or twenty-five years, as applicable, of credited service is entitled to receive a pension that equals fifty per cent of the member's average monthly salary, except that:
  - 1. If the member retires with more than twenty years of credited service the foregoing amount shall be increased by a monthly amount equal to two per cent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional years, except that if a member retires with twenty-five or more years of credited service the foregoing amount shall be increased by a monthly amount equal to two and one-half per cent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional year.
  - 2. If the member retires pursuant to subsection B but has less than twenty years of credited service, the member is entitled to receive a pension equal to the product of:
    - (a) Two and one-half per cent of the member's average monthly salary.
    - (b) The member's credited service.
- D. A person who becomes a member of the plan on or after January 1, 2012 is eligible for a normal retirement pension if the person satisfies one of the following requirements:
  - 1. Is at least sixty-two years of age and has ten or more years of service.
  - 2. Is at least fifty-two and one-half years of age and has twenty-five or more years of service.
- E. A person who meets the requirements for a normal retirement pension pursuant to subsection D and who has twenty-five years of credited service is entitled to receive a pension that equals sixty-two and one-half per cent of the member's average monthly salary, except that:
  - 1. If the person retires with more than twenty-five years of credited service the foregoing amount shall be increased by a monthly amount equal to two and one-half per cent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty-five years, with pro rata increase for any fractional year.
  - 2. If the person retires pursuant to subsection D but has less than twenty-five years of credited service, the person is entitled to receive a pension equal to the product of:
    - (a) Two and one-half per cent of the member's average monthly salary.
    - (b) The member's credited service.
- F. In no case shall the amount of a member's pension exceed eighty per cent of the member's average monthly salary. Such limitation does not preclude cost-of-living increases granted by the legislature.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 13; Laws 1994, Ch. 207, § 7, retroactively effective to July 1, 1994; Laws 1995, Ch. 205, § 9; Laws 1997, Ch. 197, § 2; Laws 2001, Ch. 309 § 2; Laws 2001, Ch. 380 § 12; Laws 2002, Ch. 241, § 8; Laws 2011, Ch. 357

**38-885.01      Reverse deferred retirement option plan; purpose**

- A. A reverse deferred retirement option plan is established. The purpose of the reverse deferred retirement option plan is to add flexibility to the plan and to provide members who elect to participate in the reverse deferred retirement option plan access to a lump sum benefit in addition to their normal monthly retirement benefit on actual retirement.
- B. Until June 30, 2016, the board shall offer the reverse deferred retirement option plan to members on a voluntary basis as an alternative method of benefit accrual under the plan.
- C. Any member who is eligible for a normal pension pursuant to section 38-885, who is not awarded an accidental, ordinary or total and permanent disability pension and who has at least twenty-four years of credited service, or in the case of a dispatcher, who has at least twenty-five years of credited service, is eligible to participate in the reverse deferred retirement option plan.
- D. A member who elects to participate in the reverse deferred retirement option plan shall voluntarily and irrevocably:
  - 1. Designate a reverse deferred retirement option plan date that is the first day of the calendar month immediately following a member's completion of twenty-four years of credited service or a date not more than sixty consecutive months before the date the member elects to participate in the reverse deferred retirement option plan, whichever is later.
  - 2. Agree to terminate employment on the date the member elects to participate in the reverse deferred option plan.
  - 3. Receive benefits from the plan on termination of employment at the same time and in the same manner as otherwise prescribed in this Article using the factors of credited service and average monthly salary in effect on the reverse deferred retirement option plan date.
- E. On election, a reverse deferred retirement option plan participation account is established within the plan on behalf of each reverse deferred retirement option plan participant. All benefits accrued pursuant to this Article shall be accounted for in the reverse deferred retirement option plan participation account. A reverse deferred retirement option plan participant does not have a claim on the assets of the plan with respect to the member's reverse deferred retirement option plan participation account and assets shall not be set aside for any reverse deferred retirement option plan participant that are separate from all other system assets.
- F. All amounts credited a member's reverse deferred retirement option plan participation account are fully vested.
- G. A member's reverse deferred retirement option plan participation account shall be credited with the following:
  - 1. An amount that is credited as though accrued monthly from the reverse deferred retirement option plan date to the date the member elected to participate in the reverse deferred retirement option plan and that is computed in the same manner as a normal retirement benefit using the factors of credited service and average monthly salary in effect on the reverse deferred retirement option plan date.
  - 2. An amount that is credited as though accrued monthly and that represents interest at a rate equal to the yield on a five year treasury note as of the first day of the month as published by the federal reserve board.
- H. Employee and employer contributions pursuant to section 38-891 that are deposited during the period of the reverse deferred retirement option plan are not eligible to be refunded to the employer or member.
- I. The participant is not entitled to receive any amount prescribed by section 38-905 or 38-906 during the reverse deferred retirement option plan participation period.
- J. The form of payment shall be a lump sum distribution. If allowed by the internal revenue service, the participant may elect to transfer the lump sum distribution to an eligible retirement plan or individual retirement account.
- K. The reverse deferred retirement option plan shall not jeopardize in any way the tax qualified status of the plan under the rules of the internal revenue service. The board may adopt additional provisions to the extent necessary or appropriate for the reverse deferred retirement option plan to comply with applicable federal laws or rules.
- L. This section is repealed from and after June 30, 2016.

Added by Laws 2006, Ch. 241, § 4, repealed from and after June 30, 2011. Amended by Laws 2009, Ch. 83, § 5, effective September 30, 2009. Amended by Laws 2010, Ch. 163, § 1 and Ch. 200, § 59, eff. April 28, 2010.

**38-886. Accidental disability retirement; total and permanent disability retirement; qualification; amount of pension; conditions for continued payment of pension**

- A. A member may retire and receive an accidental disability pension or a total and permanent disability pension if the local board finds that all of the following conditions occur:
  - 1. An application for disability retirement is filed with the retirement plan or the local board by either the member or the member's participating employer after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an accidental or a total and permanent disability pension is a prerequisite to receipt of the pension.
  - 2. The member undergoes all medical examinations and tests ordered by the local board and releases to the local board all medical reports and records requested by the local board.
  - 3. The local board determines that an accidental disability or total and permanent disability condition exists which meets the requirements for accidental disability retirement or total and permanent disability retirement.
- B. The effective date of an accidental disability retirement or a total and permanent disability retirement shall not predate the date of disability or the date the member ceases to be an employee.
- C. The amount of an accidental disability pension or a total and permanent disability pension is equal to fifty percent of the member's average monthly salary or the amount computed using the member's average monthly salary and the member's actual years of credited service, whichever is higher.
- D. During the period, if any, between the effective date of accidental disability retirement or total and permanent disability retirement and the date the disabled retired member attains sixty-two years of age the local board may require a disabled retired member to undergo periodic reevaluation of the continuation of accidental disability or total and permanent disability. If the disabled retired member refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the disabled retired member's rights to the pension. An accidental disability pension or a total and permanent disabled pension is terminated if the local board finds the retired member no longer meets the requirements for accidental disability retirement or total and permanent disability retirement.
- E. A member does not qualify for an accidental disability pension or a total and permanent disability pension if the local board determines that the member's disability results from any of the following:
  - 1. An injury suffered while engaged in a felonious criminal act or enterprise.
  - 2. Service in the armed forces of the United States which entitles the member to a veteran's disability pension.
  - 3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.
- F. Local boards shall base a finding of total and permanent disability and accidental disability on medical evidence obtained by a medical doctor or clinic selected by the local board and shall disregard any other medical evidence or opinions. If the local board retains more than one medical doctor or clinic in connection with any case, the local board shall resolve any material conflicts in the medical evidence that is presented by the local board's medical doctors or clinics.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 4; Laws 1992, Ch. 315, § 3; Laws 1997, Ch. 239, § 23; Laws 2006, Ch. 264, § 15.

**38-886.01. Ordinary disability retirement; qualifications; amount of pension; conditions for continued payment of pension; definition**

- A. A member may retire and receive an ordinary disability pension if the local board finds that all of the following conditions occur:

1. An application for disability retirement is filed with the retirement plan or the local board by either the member or the member's participating employer after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an ordinary disability pension is a prerequisite to receipt of the pension.
  2. The member undergoes all medical examinations and tests ordered by the local board and releases to the local board all medical reports and records requested by the local board.
  3. The local board determines that an ordinary disability condition exists that meets the requirements for an ordinary disability.
  4. The member is not participating in the reverse deferred retirement option plan pursuant to section 38-885.01.
- B. The effective date of an ordinary disability retirement shall not predate the date of disability or the date the member ceases to be an employee.
- C. Except for a full-time dispatcher or a person who becomes a member of the plan on or after January 1, 2012, the amount of an ordinary disability pension is equal to a fraction times the member's normal retirement pension that is computed pursuant to section 38-885, subsection C as if the member had twenty years of credited service. The fraction is the result obtained by dividing the member's actual years of credited service, not to exceed twenty years of credited service, by twenty. For a full-time dispatcher or a person who becomes a member of the plan on or after January 1, 2012, the amount of an ordinary disability pension is equal to a fraction times the member's normal retirement pension that is computed pursuant to section 38-885, subsection C or E as if the member had twenty-five years of credited service. The fraction is the result obtained by dividing the member's actual years of credited service, not to exceed twenty-five years of credited service, by twenty-five.
- D. During the period, if any, between the effective date of ordinary disability retirement and the date the disabled retired member attains sixty-two years of age the local board may require a disabled retired member to undergo periodic reevaluation of the continuation of ordinary disability. If the disabled retired member refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the disabled retired member's rights to the pension. An ordinary disability pension is terminated if the local board finds the retired member no longer meets the requirements for ordinary disability retirement.
- E. A member does not qualify for an ordinary disability pension if the local board determines that the member's disability results from any of the following:
1. An injury suffered while engaged in a felonious criminal act or enterprise.
  2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.
  3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.
- F. Local boards shall base a finding of ordinary disability on medical evidence that is obtained by a medical doctor or clinic selected by the local board and shall disregard any other medical evidence or opinions. If the local board retains more than one medical doctor or clinic in connection with the application, the local board shall resolve any material conflicts presented in the medical evidence that is presented by the medical doctors or clinics.
- G. For the purposes of this section, "ordinary disability" means a physical condition that the local board determines will prevent an employee from totally and permanently performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will prevent an employee from totally and permanently engaging in any substantial gainful activity.

Added by Laws 2006, Ch. 301, § 1; Laws 2007, Ch. 261, § 5 and § 17. Amended by Laws 2008, Ch. 234 §2, which repeals Laws 2007, Ch. 261, § 17; Laws 2011, Ch. 357.

**38-887. Pension to surviving spouse of deceased retired member**

The surviving spouse of a deceased retired member is entitled to receive a surviving spouse's pension if the spouse was married to the member for a period of at least two consecutive years at the time of the

member's death. Payment of a surviving spouse's pension commences as of the last day of the month following the retired member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs. The amount of pension paid a surviving spouse is equal to four-fifths of the amount of the deceased retired member's pension at the time of death. The surviving spouse shall file a written application with the plan in order to receive the survivor benefit.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1999, Ch. 50, § 7; Laws 2002, Ch. 335, § 9; Laws 2009, Ch. 83, § 6, effective September 30, 2009.

**38-888. Pension to the surviving spouse of a member who dies before retirement**

- A. The surviving spouse of a deceased member is entitled to receive a surviving spouse's pension if the spouse was married to the member on the date of the member's death. Payment of a surviving spouse's pension commences as of the last day of the month following the member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs. The amount of a surviving spouse's pension is forty per cent of the deceased member's average monthly salary. The surviving spouse shall file a written application with the plan in order to receive the survivor benefit.
- B. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly benefit compensation. For the purposes of this subsection, "killed in the line of duty" means the decedent's death was the direct and proximate result of physical injuries incurred in the performance of the decedent's public safety duties and does not include suicide.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 5; Laws 1999, Ch. 50, § 8; Laws 2002, Ch. 335, § 10; Laws 2006, Ch. 264, § 16; Laws 2009, Ch. 83, § 7, effective September 30, 2009.

**38-889. Guaranteed minimum aggregate payout**

If all pension payments permanently terminate before an aggregate amount equal to the retired member's or deceased member's accumulated member contributions has been paid, the difference between the amount of accumulated member contributions and the aggregate amount of pension payments made shall be paid to the individual or individuals whom the member may have named on a form provided by and filed with the retirement plan. If no such named individual survives, the difference shall be paid to the legal representative of the last surviving individual who was being paid a pension or the last surviving named individual.

Added by Laws 1986, Ch. 325, § 1.

**38-890. Pensions; commencement and duration**

- A. A normal retirement pension, an accidental disability pension, a total and permanent disability pension or an ordinary disability pension commences on the first day of the calendar month next following the member's date of retirement. A survivor pension commences on the first day of the calendar month next following the month in which the death causing payment of the pension occurs.
- B. Termination of payment of a pension occurs at the end of the calendar month in which the event causing the termination occurred. The payment shall be made for the full month of termination.
- C. A change in the amount of a pension occurs on the first day of the calendar month next following the date of the event causing the change.
- D. The plan shall make payments pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section. Notwithstanding any other provision of the plan, beginning January 1, 1987 payment of benefits to a member shall commence no later than April 1 of the calendar year following the later of:
  - 1. The calendar year in which the member attains seventy and one-half years of age.
  - 2. The date the member terminates employment.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1992, Ch. 315, § 3; Amended by Laws 2006, Ch. 301, § 2; Laws 2009, Ch. 35, § 23, effective September 30, 2009.

**38-891. Employer and member contributions**

- A. As determined by actuarial valuations reported to the employers and the local boards by the board, each employer shall make level per cent of salary contributions sufficient under the actuarial valuations to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability over, beginning July 1, 2005, a rolling period of at least twenty and not more than thirty years that is established by the board taking into account the recommendation of the plan's actuary, except that, beginning with fiscal year 2006-2007, except as otherwise provided, the employer contribution rate shall not be less than six percent of salary. For any employer whose actual contribution rate is less than six percent of salary for fiscal year 2006-2007 and each year thereafter, that employer's contribution rate shall be at least five percent and not more than the employer's actual contribution rate. An employer may pay a higher level percent of salary thereby reducing its unfunded past service liability. All contributions made by the employers and all state taxes allocated to the fund shall be irrevocable and shall be used to pay benefits under the plan or to pay expenses of the plan and fund. The minimum employer contribution that is paid and that is in excess of the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability as calculated pursuant to this subsection shall be used to reduce future employer contribution increases and shall not be used to pay for an increase in benefits that are otherwise payable to members. The board shall separately account for these monies in the fund. Forfeitures arising because of severance of employment before a member becomes eligible for a pension or for any other reason shall be applied to reduce the cost to the employer, not to increase the benefits otherwise payable to members. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account contains excess valuation assets other than excess valuation assets that were in the employer's account as of fiscal year 2004-2005 and is more than one hundred percent funded, the board shall account for fifty percent of the excess valuation assets in a stabilization reserve account. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account has a valuation asset deficiency and an unfunded actuarial accrued liability, the board shall use any valuation assets in the stabilization reserve account for that employer, to the extent available, to limit the decline in that employer's funding ratio to not more than two percent.
- B. Each member shall contribute the amount prescribed in subsection H to the retirement plan. Member contributions shall be made by payroll deduction. Continuation of employment by the member constitutes consent and agreement to the deduction of the applicable member contribution. Payment of the member's salary less the deducted contributions constitutes full and complete discharge and satisfaction of all claims and demands of the member relating to salary for services rendered during the period covered by the payment.
- C. Each employer shall transfer to the board the employer and employee contributions provided for in this section within ten working days after each payroll date. Contributions transferred after that date shall include a penalty of ten per cent per annum, compounded annually, for each day the contributions are late. The employer shall pay this penalty. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer liable for the payments or, at the request of the board, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.
- D. During a period when an employee is on industrial leave and the employee elects to continue contributions during the period of industrial leave, the employer and employee shall make contributions based on the salary the employee would have received in the employee's job classification if the employee was in normal employment status.
- E. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a position within that department as a designated position if the position is filled by an employee who has at least five years of credited service under the plan, who is transferred to temporarily fill the position and who makes a written request to the local

- board to specify the position as a designated position within ninety days of being transferred. On the employee leaving the position, the position is no longer a designated position.
- F. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a designated position within the department as a nondesignated position if the position is filled by an employee who has at least five years of credited service under the Arizona State Retirement System and who makes a written request to the local board to specify the position as a nondesignated position within ninety days of accepting the position. On the employee leaving the position, the position reverts to a designated position.
- G. The local board of the judiciary may specify positions within the Administrative Office of the Courts that require direct contact with and primarily provide training or technical expertise to county probation, surveillance or juvenile detention officers as a designated position if the position is filled by an employee who is a member of the plan currently employed in a designated position as a probation, surveillance or juvenile detention officer and who has at least five years of credited service under the plan. An employee who fills such a position shall make a written request to the local board to specify the position as a designated position within ninety days of accepting the position. On the employee leaving the position, the position reverts to a nondesignated position.
- H. The amount contributed by a member pursuant to subsection B is:
1. Through June 30, 2011, 8.41 per cent of the member's salary, except for a full-time dispatcher. The amount contributed by a full-time dispatcher through June 30, 2011 is 7.96 per cent of the member's salary.
  2. For fiscal year 2011-2012 and each fiscal year thereafter, 8.41 per cent of the member's salary or fifty per cent of the sum of the member's contribution rate from the preceding fiscal year and the aggregate computed employer contribution rate that is calculated pursuant to subsection A, whichever is lower, except that the member contribution rate shall not be less than 7.65 per cent of the member's salary and the employer contribution rate shall not be less than the rate prescribed in subsection A.
- I. Notwithstanding subsection H, paragraph 2, the contribution rate for a full-time dispatcher is forty-five basis points less than the member contribution amount calculated pursuant to subsection H, paragraph 2, except that after the close of any fiscal year, if the plan's actuary determines that the aggregate ratio of the funding value of the accrued assets to the accrued liabilities of the fund is at least one hundred per cent, from and after June 30 of the following year the member contribution rate for a full-time dispatcher is equal to the member contribution rate for a member who is not a full-time dispatcher.
- J. For fiscal year 2011-2012 and each fiscal year thereafter, the amount of the member's contribution that exceeds 8.41 per cent of the member's salary for a member other than a full-time dispatcher or 7.96 per cent of the member's salary for a full-time dispatcher shall not be used to reduce the employer's contributions that are calculated pursuant to subsection A.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 14; Laws 1990, Ch. 272, § 6; Laws 1991, Ch. 155, § 4, retroactively effective to July 1, 1991; Laws 1991, Ch. 210, § 14; Laws 1995, Ch. 205, § 10; Laws 1995, Ch. 178, § 26; Laws 1996, Ch. 282, § 2, retroactively effective to January 1, 1995; Laws 1997, Ch. 197, § 3; Laws 1997, Ch. 239, § 24; Laws 2000, Ch. 126, § 6; Laws 2004, Ch. 229, § 1; Laws 2005, Ch. 208, § 4; Laws 2006, Ch. 261, § 3, effective immediately; Laws 2008, Ch. 234, § 1; Laws 2009, Ch. 83, § 8, effective September 30, 2009. Amended by Laws 2010, Ch. 163, §3 and Ch. 200, § 60, eff. April 28, 2010. Amended by Laws 2011, Ch. 298, applies retroactively to September 30, 2009; Laws 2011, Ch. 347 and Ch. 357.

Sec. 47. title 38, Chapter 5, Article 6, Arizona Revised Statutes, is amended by adding Section 38-891.01 to read:

**38-891.01 Retired members; return to work; employer contributions**

- A. An employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work in any capacity in a position ordinarily filled by an employee of the employer in a designated position. This section applies to a retired member who has been retired for more than twelve consecutive months.

- B. The alternate contribution rate shall be equal to that portion of the total required contribution that is applied to the amortization of the unfunded actuarial accrued liability for the fiscal year beginning July 1, based on the system's actuary's calculation of the total required contribution for the preceding fiscal year ended on June 30. The alternate contribution rate shall be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.
- C. The alternate contribution rate shall not be less than six per cent in any fiscal year.
- D. All contributions made by the employer and allocated to the fund established by section 38-882 are irrevocable and shall be used as benefits under this article or to pay the expenses of the plan. Payments made pursuant to this section by employers become delinquent after the due date prescribed in 38-891, subsection C, and thereafter shall be increased by interest from and after that date until payment is received by the plan.
- E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by the board and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, use, efficacy or operation of the return to work program.

Sec. 58. Legislative intent; alternate contribution rate; ASRS employers; EORP, PSPRS and CORP employers

The legislature intends by this act:

1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona State Retirement System. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona State Retirement System.
2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the Elected Officials' Retirement Plan, the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan.

Added by Laws 2011, Ch. 357, effective July 20, 2011.

**38-892. Internal revenue code § 414(h) pickup of member contributions**

Each participating employer shall pick up the contributions required of members on account of compensation paid after the effective date specified in the resolution of the board activating the provisions of this section. The picked up contributions shall be treated as participating employer contributions for the purpose of tax treatment under the United States internal revenue code. The specified effective date shall not be before the date the retirement plan receives notification from the internal revenue service that pursuant to § 414(h) of the internal revenue code the member contributions picked up shall not be included in gross income for income tax purposes until the time that the picked up contributions are distributed by refund or pension payments. The participating employers shall pick up the member contributions from funds established and available in a retirement deduction account, which funds would otherwise have been designated as member contributions and paid to the retirement plan. Member contributions picked up pursuant to this section shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the effective date.

Added by Laws 1986, Ch. 325, § 1; Laws 2010, Ch. 200, § 61, eff. April 28, 2010.

**38-893. Local boards; powers and duties; rules; hearings; administrative review**

- A. The administration of the plan and the responsibility for making the provisions of the plan effective for each employer are vested in a local board. The state department of corrections, the department of juvenile corrections, the Department of Public Safety, each participating county sheriff's department, each participating city or town, each participating employer of full-time dispatches for eligible groups as defined in section 38-842, and the judiciary shall have a local board. Each local board is constituted as follows:

1. For the state departments, two members who are elected by secret ballot by members employed by that department in a designated position and two citizens who are appointed by the governor. The director of each state department shall appoint one member to the local board who is knowledgeable in personnel actions. Each state department local board shall elect a chairman.
  2. For each participating county, the chairman of the board of supervisors, or the chairman's designee who is approved by the board of supervisors, as chairman, two members who are elected by secret ballot by members employed by the participating county in a designated position and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, who are appointed by the chairman of the board of supervisors with the approval of the board of supervisors.
  3. For political subdivisions, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the city council or governing body of the employer.
  4. For the judiciary, two members who are elected by secret ballot by members who are employed as a probation, surveillance or juvenile detention officer, a designee of the chief justice of the Arizona supreme court and two citizens, one of whom shall be the head of a human resource department for the group of members, appointed by the chief justice.
- B. The appointments and elections of local board members shall take place with one elective and one appointive board member, as designated by the appointing authority, serving a term ending two years after the date of appointment or election and the other local board members serving a term ending four years after the date of appointment or election. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as provided in this section.
- C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the plan. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees shall appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two year or four year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Within ten days after the member's appointment or election, each member of a local board shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the plan.
- D. Except as limited by subsection E of this section, a local board shall:
1. Decide all questions of eligibility and service credits and determine the amount, manner and time of payment of any benefit under the plan.
  2. Make a determination as to the right of a claimant to a benefit and afford a claimant or the board, or both, a right to a rehearing on the original determination, unless the board of trustees determines that granting the relief requested would violate the internal revenue code or threaten to impair the plan's status as a qualified plan under the internal revenue code. If the board of trustees determines that granting the requested relief would violate the internal revenue code or threaten to impair the plan's status as a qualified plan, the board of trustees may refuse to grant the relief by issuing a written determination to the local board and the party petitioning the local board for relief. The decision by the board of trustees is subject to judicial review pursuant to Title 12, Chapter 7, Article 6.
  3. Request and receive from the employers and from members information as is necessary for the proper administration of the plan and action on claims for benefits and forward the information to the board of trustees.

4. Distribute, in the manner the local board determines to be appropriate, information explaining the plan that is received from the board of trustees.
  5. Furnish the employer, the board of trustees and the legislature on request, with annual reports with respect to the administration of the plan that are reasonable and appropriate.
  6. Appoint a medical board, which is composed of a designated physician or clinic other than the employer's regular employee or contractor. If required, the local board may employ other physicians to report on special cases. The examining physician or clinic shall report the results of examinations made to the local board, and the secretary of the local board shall preserve the report as a permanent record.
  7. Sue and be sued to effectuate the duties and responsibilities set forth in this article.
  8. Prescribe procedures to be followed by claimants in filing applications for benefits.
  9. Receive and review the actuarial valuation of the plan for its group of members.
  10. Receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.
- E. A local board has no power to add to, subtract from, modify or waive any of the terms of the plan, change or add to any benefits provided by the plan or waive or fail to apply any requirement of eligibility for membership or benefits under the plan. Notwithstanding any limitations periods imposed in this article, including subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or threatens to impair the plan's status as a qualified plan under the internal revenue code the local board's decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.
- F. A local board, from time to time, shall establish and adopt rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.
- G. Except as otherwise provided in this article, an action by a majority vote of the members of a local board that is not inconsistent with the provisions of the plan and the internal revenue code is final, conclusive and binding on all persons affected by it, unless a timely application for a rehearing or appeal is filed as provided in this article. No later than twenty days after taking action, the local board shall submit to the board of trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and documents supporting the local board's action. The board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the plan's status as a qualified plan under the internal revenue code.
- H. A claimant or the board of trustees may apply for a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the plan's status as a qualified plan under the internal revenue code, no limitation period for the board of trustees to seek a rehearing of a local board decision applies. A claimant or the board of trustees shall file an application for rehearing in writing with a member of the local board or its secretary within sixty days after:
1. The claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the plan pursuant to the local board's original action, whichever occurs first.
  2. The board of trustees receives notification of the local board's original action as prescribed by subsection G of this section.
- I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.
- J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.
- K. When making a ruling, determination or calculation, the local board is entitled to rely on information furnished by the employer, the board of trustees, independent legal counsel or the actuary for the plan.

- L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.
- M. The local board shall adopt bylaws as it deems necessary. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with Chapter 3, Article 3.1 of this title and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section.
- N. The employer and not the board or plan shall pay the fees of the medical board and of the local board's legal counsel and all other expenses of the local board necessary for the administration of the plan at rates and in amounts as the local board approves.
- O. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in the manner it deems convenient and proper, all reports from the board of trustees and the actuary.
- P. The local board and the individual members of the local board are indemnified from the assets of the fund for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the plan.

Added by Laws 1990, Ch. 272, § 8. Amended by Laws 1991, Ch. 155, § 5; Laws 1991, Ch. 210, § 15; Laws 1995, Ch. 178, § 27; Laws 2001, Ch. 309, § 3; Laws 2006, Ch. 308, § 3; Laws 2008, Ch. 144, § 3; Laws 2009, Ch. 83, § 9, effective September 30, 2009; Laws 2010, Ch. 200, § 62, eff. April 28, 2010. Amended by Laws 2011, Ch. 347.

**38-894. Financial objective of the retirement plan; participating employer contributions**

- A. The financial objective of the retirement plan is to receive contributions each fiscal year which are sufficient to both:
  - 1. Fund the actuarial cost of benefits likely to be paid on account of credited service earned by members during the fiscal year.
  - 2. Fund the unfunded actuarial cost of benefits likely to be paid on account of credited service earned by members before the fiscal year over a period of not more than forty years. Contribution requirements shall be determined by an annual actuarial valuation using a generally recognized level per cent of payroll actuarial cost method.
- B. The board may require an employer that proposes to become a participating employer after the plan has been in operation for more than one year to make supplemental contributions based on the excess of the actuarial costs associated with the proposed participation over the actuarial costs of the plan indicated by the last annual actuarial valuation of the plan. The amount of supplemental contributions shall be determined by actuarial valuation. The board may pay the cost of the actuarial valuation or may require the employer to pay the cost.
- C. The board shall certify to each participating employer the amount of annual contribution needed to meet the financial objective and the participating employer shall appropriate and cause the contribution to be paid to the retirement plan.
- D. Payment of contributions shall be made in accordance with the schedule adopted by the board. Payments not made in a timely manner are subject to an interest charge at rates established by the board.

Added by Laws 1986, Ch. 325, § 1; Laws 2010, Ch. 200, § 63, eff. April 28, 2010.

**38-895. Maximum annual pension; limitations; definition**

- A. The maximum annual pension for a limitation year shall not exceed the following:
  - 1. For limitation years beginning before 1995, the lesser of ninety thousand dollars, as indexed for inflation, or one hundred per cent of the member's average monthly salary.
  - 2. For limitation years beginning in 1995 and ending before 2002, ninety thousand dollars, as indexed for inflation.
  - 3. For limitation years beginning in and after 2002, one hundred sixty thousand dollars, as indexed for inflation.

- B. The limitations prescribed in subsection A shall be determined under section 415 of the internal revenue code and the regulations that are then in effect under that section.
- C. Notwithstanding this section, the pension payable under this plan may be reduced to the extent necessary, as determined by the plan, to prevent disqualification of the plan under section 415 of the internal revenue code, which imposes additional limitations on the pension payable to members who also may be participating in another tax qualified pension plan or other plan of this state. The plan shall advise affected members of any additional limitation of their pension required by this section.
- D. For the purposes of this section, "limitation year" means the plan's fiscal year.

Added by laws 2009, Ch. 35, § 25, effective September 30, 2009.

**38-895.01. Compensation limitation; adjustments**

- A. The annual compensation of each member taken into account for purposes of the plan shall not exceed the following:
  - 1. Beginning January 1, 1996 through December 31, 2001, one hundred fifty thousand dollars.
  - 2. Beginning January 1, 2002, two hundred thousand dollars.
- B. If compensation under the plan is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.
- C. The board shall adjust the annual compensation limits under this section at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the plan year that begins with or within the calendar year.

Added by Laws 2009, Ch. 35, § 26, effective September 30, 2009; Laws 2010, Ch. 200, § 64, eff. April 28, 2010.

**38-896. Taxation of pensions; exemption for contributions**

The participating employer contributions and the assets of the fund are exempt from state, county and municipal taxes. Member contributions made to the fund after December 31, 1974, and subsequently withdrawn from the fund as other than a pension and benefits and pensions received by a member from the fund after December 31, 1988, are subject to tax pursuant to title 43.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 312, § 10; Laws 1991, Ch. 155, § 6, retroactively effective to January 1, 1991.

**38-897. Assignments prohibited; liability of fund**

- A. The right of an individual to a pension, to a refund of accumulated member contributions, to the pension itself or to any other right accrued or accruing to any individual, and the monies and assets of the retirement plan, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or other process of law except a qualified domestic relations order and are unassignable except as may be otherwise specifically provided.
- B. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right provided in subsection A is void. The fund is not liable in any manner for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to these rights.
- C. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.
- D. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to civil suit by the plan in the superior court in Maricopa county. On entry of an

order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201, subsection A, until all amounts owed are paid to the plan.

- E. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to an active or retired member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1994, Ch. 356, § 30; Laws 2006, Ch. 264, § 17; Laws 2010, Ch. 200, § 65, eff. April 28, 2010.

**38-898. Subrogation; right of setoff**

- A. If an individual becomes entitled to a pension or other benefit payable by the retirement plan as a result of an accident or injury caused by the act of a third party, the fund is subrogated to the rights of the individual against the third party to the extent of fund financed benefits which the retirement plan pays or becomes liable for payment.
- B. The retirement plan is entitled to the right of setoff to recover overpayments made by the retirement plan and to satisfy any claim arising from embezzlement or fraud committed by a member, retired member, former member, beneficiary or other individual having a claim to benefits.

Added by Laws 1986, Ch. 325, § 1.

**38-899. Correction of errors**

The retirement plan shall correct errors in the records of the retirement plan. The retirement plan shall seek to recover overpayments and shall make up underpayments. Recovery of overpayments may be accomplished by reducing the amount of future payments so that the actuarial present value of actual payments to the recipient is equal to the actuarial present value of the payments to which the recipient was correctly entitled.

Added by Laws 1986, Ch. 325, § 1.

**39-900. Internal revenue code qualification**

The legislature intends that the retirement plan is a qualified pension plan under section 401 of the internal revenue code, as amended, or successor provisions of law, and that the trust is exempt from taxation under section 501 of the internal revenue code as amended. The assets of the fund are held in trust for the exclusive benefit of the members and beneficiaries of the retirement plan. The board may adopt such additional provisions to the retirement plan as are necessary to fulfill this intent.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 2000, Ch. 126, § 7; Laws 2010, Ch. 200, § 66, eff. April 28, 2010.

**38-900.01. Statutory construction**

- A. Because the plan as enacted at a particular time is a unique amalgam of rights and obligations having a critical impact on the actuarial integrity of the plan, the legislature intends that the plan as enacted at a particular time be construed and applied as a coherent whole and without reference to any other provision of the plan in effect at a different time.
- B. The plan was established in order to provide a uniform, consistent and equitable statewide program for those eligible corrections officers as defined by the plan. A member of the plan does not have a vested right to benefits under the plan until the member files an application for benefits and is found eligible for those benefits. An eligible claimant's right to benefits vests on the date of the member's application for those benefits or the member's last day of employment under the plan, whichever occurs first.

Added by Laws 2000, Ch. 126, § 8, retroactively effective to from and after June 30, 1986.

**38-901. Transfers into or out of retirement plan**

- A. A member who changes employment or transfers or is assigned to a position in which the member is no longer eligible to be a member of this plan, because of a change in duties or otherwise, with the same or another employer of this state or a municipality of this state participating in a different retirement system or plan, is entitled to have all credited service transferred to the retirement system or plan applicable to the new position in accordance with article 7 of this chapter.
- B. A member who begins employment with a participating employer in this plan and who has credited service from a different system or plan may transfer the prior service to this plan in accordance with article 7 of this chapter.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 15; Laws 2006, Ch. 264, § 18.

**38-902. Joinder agreement**

- A. County detention officers and non-uniformed employees of a sheriff's department whose primary duties require direct contact with inmates may participate in this plan if the board of supervisors of the county enters into a joinder agreement with the board of trustees to bring such employees into this plan. The joinder agreement shall be in accordance with the provisions of this plan. All such employees shall be designated for membership in the joinder agreement unless written consent to the contrary is obtained from the board.
- B. City or town detention officers may participate in this plan if the governing body of the city or town enters into a joinder agreement with the board to bring its detention officers into this plan. The joinder agreement shall be in accordance with the provisions of the plan. The governing body of the city or town shall designate all detention officers for membership in the plan unless written consent to the contrary is obtained from the board.
- C. Full-time dispatchers may participate in this plan if the governing body or agency of the employer of an eligible group as defined in section 38-842 enters into a joinder agreement with the board to bring its full-time dispatchers into this plan before November 24, 2009 and if the person was employed by the employer as a full-time dispatcher before November 24, 2009. The joinder agreement shall be in accordance with the provisions of this plan and for those dispatchers designated for membership in the plan on the joinder date all credited service from any other Arizona defined benefit state retirement system or plan that represents credited service in a designated position shall be transferred to the Corrections Officer Retirement Plan. The governing body or agency of the employer shall designate all full-time dispatchers for membership in the plan except for a full-time dispatcher who signs an irrevocable agreement before the joinder agreement becomes effective electing not to become a member of the plan. A full-time dispatcher employed by an employer who becomes eligible for membership in the plan pursuant to this section may elect to participate in the plan within the deadlines and pursuant to the terms prescribed for such participation by the board.
- D. Probation, surveillance and juvenile detention officers may participate in this plan if the administrative office of the courts enters into a joinder agreement with the board to bring its probation, surveillance and juvenile detention officers into this plan. The joinder agreement shall be in accordance with the provisions of this plan. The administrative office of the courts shall designate all probation, surveillance and juvenile detention officers for membership in this plan unless written consent to the contrary is obtained from the board.
- E. Detention officers who are employed by the Department of Public Safety may participate in this plan if the director of the Department of Public Safety enters into a joinder agreement with the board to bring the department's detention officers into this plan. The joinder agreement shall be in accordance with the provisions of this plan. The director of the Department of Public Safety shall designate all detention officers for membership in this plan unless written consent to the contrary is obtained from the board.
- F. The new employer shall designate the groups of employees who are eligible to participate in the plan and shall agree to make contributions each year that are sufficient to meet both the normal

cost of a level cost method attributable to inclusion of its employees and the prescribed interest on the past service cost for its employees.

- G. Before the execution of any joinder agreement each employer contemplating participation in the plan shall have an actuarial valuation made, which is payable by the employer, to determine the estimated cost of participation in accordance with section 38-894.
- H. Assets under any existing public employee defined benefit retirement program, except a military retirement program, that are necessary to equal the actuarial present value of projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation attributable to the employer's designated employee group, calculated using the actuarial methods and assumptions adopted by the existing public employee retirement program, shall be transferred from the program to this fund no later than ninety days after the employer's effective date. That portion of the transferred assets that is attributable to employee contributions, including interest credits, shall be properly allocated to each affected employee of the employer and credited to the employee's initial accumulated contributions in accordance with a schedule furnished by the employer to the board.

Added by Laws 1986, Ch. 325, § 1, eff. Aug. 13, 1986, retroactively effective to July 1, 1986. Amended by Laws 1987, Ch. 133, § 1; Laws 1991, Ch. 155, § 7; Laws 1997, Ch. 239, § 25; Laws 2001, Ch. 280, § 7; Laws 2001, Ch. 309, § 4; Laws 2001, Ch. 380, § 13; Laws 2006, Ch. 264, § 19; Laws 2006, Ch. 301, § 3; Laws 2006, Ch. 308, § 4; Laws 2008, Ch. 144, § 4; Laws 2008, Ch. 242, § 1; Laws 2009, 3<sup>rd</sup> S.S., Ch. 6, § 16; Laws 2010, Ch. 200, § 67, eff. April 28, 2010.

**Sec. 5. Joinder agreement, transfer of all credited service to corrections officer retirement plan; election to remain in existing retirement system**

Notwithstanding any other law, if the administrative office of the courts enters into a joinder agreement with the board to bring its probation, surveillance and juvenile detention officers into the Corrections Officer Retirement Plan, all credited service from any other Arizona defined benefit state retirement system or plan shall be transferred to the Corrections Officer Retirement Plan unless the probation, surveillance or juvenile detention officer makes an irrevocable election to remain in the employee's existing state retirement system or plan.

**38-903. Reservation to the legislature**

The right to modify, amend or repeal this article or any provision thereof is reserved to the legislature.

Added by Laws 1986, Ch. 325, § 1.

**38-904. Death benefits: amount**

- A. If an active or inactive member dies and no pension is payable on account of the member's death, an amount equal to two times the member's accumulated contributions to the retirement plan is payable to the person designated by the deceased member in writing and filed with the board. If the designated person or persons do not survive the deceased member, the payment is payable to the estate of the deceased member. For the purposes of this subsection, "inactive member" means a person who previously made contributions to the plan, who has not retired, who is not currently making contributions to the plan and who has not withdrawn contributions from the plan.
- B. If the deceased retired or active member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each eligible child is entitled to a child's pension. A child's pension terminates if the child is adopted. In the case of a disabled child, the child's pension terminates if the child ceases to be under a disability or ceases to be a dependent of the surviving spouse or guardian. The amount of the pension of each eligible child is an equal share of the amount of the surviving spouse's pension. The board shall pay the surviving minor or disabled child's pension to the person who is the legally appointed guardian or custodian of the eligible child.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1995, Ch. 205, § 1; Laws 1997, Ch. 239, § 26; Laws 1999, Ch. 50, § 9; Laws 2009, Ch. 83, § 10, effective September 30, 2009; Laws 2010, Ch. 200, § 68, eff. April 28, 2010.

**38-905. Benefit increases**

- A. Effective July 1 of each year, each retired member or survivor of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined pursuant to this section if either:
  - 1. The retired member or survivor of the retired member was receiving benefits on or before July 31 of the previous two years.
  - 2. The retired member or survivor of the retired member was fifty-five years of age or older on July 1 of the current year and was receiving benefits on or before July 31 of the previous year.
- B. The monthly amount of a permanent increase provided by subsection A is determined as follows:
  - 1. Determine the excess investment earnings on the net assets of the fund.
  - 2. Determine the excess investment earnings account balance.
  - 3. Determine the actuarial present value, as of June 30 of the preceding calendar year, of a five dollar per month increase in the amount of each pension eligible for an increase.
  - 4. Add the amounts determined in paragraphs 1 and 2 of this subsection and divide that sum by the amount determined in paragraph 3 of this subsection.
  - 5. From the quotient obtained in paragraph 4 of this subsection, drop any fraction.
  - 6. Multiply the number obtained in paragraph 5 of this subsection by five dollars.
- C. The excess investment earnings on the net assets of the fund are equal to the total assets of the fund less any amount allocated to the excess investment earnings account multiplied by one-half of the positive difference, if any, between the total return of the plan and nine per cent. The excess investment earnings on the net assets of the fund are zero if the total return of the plan is less than or equal to nine per cent.
- D. As used in this section, total return and net assets of the fund are the amounts published in the annual report of the plan for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase.
- E. All excess investment earnings on the net assets of the fund are available for benefit increases as provided in this section. Any excess investment earnings on the net assets of the fund from any year which are not used for benefit adjustments for that year are available for future benefit increases in the following years. Earnings on the excess investment earnings account balance at the rate of the total return as published in the annual report of the plan shall be added each year to the excess investment earnings account and shall be available for future benefit increases.
- F. The maximum benefit increase under this section is limited to four per cent of the benefit being received on the preceding June 30.

**Sec. 62. EORP; PSPRS; CORP; transfers to the excess investment earning account prohibited; retroactivity**

- A. Notwithstanding section 38-818, Arizona Revised Statutes, from and after May 31, 2011 and each year thereafter, no excess investment earnings shall be transferred to the excess investment earnings on pensions in payment status account.
- B. Notwithstanding section 38-856, Arizona Revised Statutes, from and after May 31, 2011, and each year thereafter, no excess investment earnings on the net assets of the fund shall be transferred to the excess investment earnings account.
- C. Notwithstanding section 38-905, Arizona Revised Statutes, from and after May 31, 2011 and each year thereafter, no excess investment earning on the net assets of the fund shall be transferred to the excess investment earnings account.
- D. This section is effective retroactively to from and after May 31, 2011.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1994, Ch. 356, § 31; Laws 1998, Ch. 190, § 1; Laws 1998, Ch. 264, § 3; Laws 1999, Ch. 50, § 10, retroactively effective to July 1, 1999; Laws 2001, Ch. 203, §1. Amended by Laws 2011, Ch. 357.

**38-905.01. Lump sum payment of benefit increases**

Notwithstanding any provision of this article, the board, at the request of a retired member, a survivor or the retired member's or survivor's guardian or conservator, may pay any increase in retirement benefits pursuant to this article in a lump sum payment based on the actuarial present value of the increase in the retirement benefits if the payment of the increase in retirement benefits would result in ineligibility for, reduction of or elimination of social service programs provided to the retired member or survivor by this state, a political subdivision of this state or the federal government. Lump sum payments made pursuant to this section are eligible for a direct rollover distribution.

Added by Laws 1992, Ch. 43, § 3, effective April 27, 1992. Amended by Laws 2009, Ch. 35, § 27, effective September 30, 2009; Laws 2010, Ch. 200, § 69, eff. April 28, 2010.

**38-905.02. Future benefit increases for retirees and survivors**

- A. Effective July 1, 2013 and each July 1 thereafter, each retired member or survivor of a retired member is entitled to receive a permanent increase in the base benefit equal to the amount determined pursuant to this section if benefit increase monies are available.
- B. The retired member or survivor of a retired member is eligible to receive an increase as follows:
  - 1. If the retired member became a member of the plan before January 1, 2012:
    - (a) The retired member or the survivor of a retired member was receiving benefits on or before July 31 of the two previous years.
    - (b) The retired member or survivor of a retired member was fifty-five years of age or older on July 1 of the current year and was receiving benefits on or before July 31 of the previous year.
  - 2. If the retired member became a member of the plan on or after January 1, 2012:
    - (a) The retired member or survivor of a retired member was fifty-five years of age or older on July 1 of the current year and is receiving benefits.
    - (b) The retired member was under fifty-five years of age on July 1 of the current year, was receiving an accidental disability retirement benefit and was receiving benefits on or before July 31 of the two previous years.
    - (c) A survivor was under fifty-five years of age on July 1 of the current year, is the survivor of a member who was killed in the line of duty and was receiving benefits on or before July 31 of the two previous years.
- C. Subject to subsection D, the maximum benefit increase under this section is limited to the following:
  - 1. If the ratio of the actuarial value of assets to the actuarial accrued liability of the fund is sixty per cent or more but less than sixty-five per cent and the total return is more than ten and one-half per cent for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase, two per cent of the average normal benefit calculated as of the preceding June 30.
  - 2. If the ratio of the actuarial value of assets to the actuarial accrued liability of the fund is sixty-five per cent or more but less than seventy per cent and the total return is more than ten and one-half per cent for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase, two and one-half per cent of the benefit being received on the preceding June 30.
  - 3. If the ratio of the actuarial value of assets to the actuarial accrued liability of the fund is seventy per cent or more but less than seventy-five per cent and the total return is more than ten and one-half per cent for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase, three per cent of the benefit being received on the preceding June 30.
  - 4. If the ratio of the actuarial value of assets to the actuarial accrued liability of the fund is seventy-five per cent or more but less than eighty per cent and the total return is more than ten and one-half per cent for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase, three and one-half per cent of the benefit being received on the preceding June 30.
  - 5. If the ratio of the actuarial value of assets to the actuarial accrued liability of the fund is eighty per cent or more and the total return is more than ten and one-half per cent for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase, four per cent of the benefit being received on the preceding June 30.

- D. A permanent increase in benefits is available only if the fund attains a total return of more than ten and one-half per cent for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase. The amount of monies available to fully fund the present value of the appropriate percentage increase allowed by subsection C in any year is one hundred per cent of the earnings of the fund that exceed ten and one-half per cent of the total return of the fund for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase. If one hundred per cent of the earnings of the fund that exceed ten and one-half per cent of the total return is insufficient to fully fund the present value of the appropriate percentage increase allowed by subsection C, the percentage increase is limited to that percentage the present value of which can be fully funded by the benefit increase monies available.
- E. Any earnings in excess of the amount necessary to fully pay the amount prescribed in subsection C are not available for future benefit increases in the following years and revert back to the appropriate employer accounts.
- F. For the purposes of this section:
  1. Total return is the amount published in the annual report of the plan for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase.
  2. The ratio of the actuarial value of assets to the actuarial accrued liability of the fund is the number determined by the administrator for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase.
- G. This section does not apply if monies are available pursuant to section 38-905 for benefit increases for retired members or survivors of the plan.

Added by Laws 2011, Ch. 357.

**38-905.03. Ad hoc increase in retirement benefits; analysis by the joint legislative budget committee**

From and after December 31, 2015, the legislature may enact permanent one-time increases in retirement benefits for eligible retirees and survivors of the plan after an analysis of the effect of the increase on the plan by the joint legislative budget committee. The joint legislative budget committee shall analyze the effect of the permanent benefit increase considering the funded status of the plan, the length of time since the last benefit increase, the increase in the cost of living since the last increase, the current economic condition of this state, recent investment performance of the plan, the overall view of the economy and market and the total cost of the benefit increase to the plan.

Added by Laws 2011, Ch. 357.

**38-906. Group health and accident coverage for retired members; payment; definition**

- A. UPON NOTIFICATION, the board shall pay from the assets of the fund part of the single coverage premium of any group health and accident insurance for each retired member or survivor of the plan who receives a pension and who has elected to participate in coverage provided by § 38-651.01 or 38-782 or any other health and accident insurance coverage provided or administered by a participating employer in the plan. The board shall pay up to:
  1. One hundred fifty dollars per month for each retired member or survivor of the plan who is not eligible for medicare.
  2. One hundred dollars per month for each retired member or survivor of the plan who is eligible for medicare.
- B. Upon notification, the board shall pay from the assets of the fund part of the family coverage premium of any group health and accident insurance for each retired member or survivor of the plan who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. Payment under this subsection is in the following amounts:
  1. Up to two hundred sixty dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare.
  2. Up to one hundred seventy dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for medicare.
  3. Up to two hundred fifteen dollars if either:

- (a) The retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare.
- C. The board shall not pay more than the amount prescribed in this section for a benefit recipient as a member or survivor of the plan.
- D. A retired member or survivor of the plan may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's former employer if that former employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the plan. This provision does not apply to a retired member or survivor of the system who is reemployed and who participates in health care coverage provided by the member's or survivor's new employer.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1994, Ch. 356, § 32; Laws 1997, Ch. 239, § 27; Laws 2001, Ch. 376, § 4; Laws 2001, Ch. 383, § 4; Laws 2003, Ch. 247, § 4; Laws 2005, Ch. 297, § 4; Laws 2007, Ch. 253, § 6 effective immediately; Laws 2010, Ch. 200, § 70, eff. April 28, 2010. Amended by Laws 2011, Ch. 347.

**38-907. Credit for military service**

- A. A member of the plan who has at least ten years of credited service with the plan may receive credited service for periods of active military service performed before employment with the member's current employer if:
  - 1. The member was honorably separated from the military service.
  - 2. The period of military service for which the member receives credited service does not exceed sixty months.
  - 3. The period of military service for which the member receives credited service is not on account with any other retirement system, except as provided by 10 United States Code section 12736 or except if the member is not yet eligible for a military retirement benefit.
  - 4. The member pays the cost to purchase the prior active military service. The cost is the amount necessary to equal the increase in the actuarial present value of projected benefits resulting from the additional credited service.
  - 5. The amount of benefits purchased pursuant to this subsection is subject to limits established by section 415 of the internal revenue code.
- B. An active member of the plan who volunteers or is ordered to perform military service may receive credited service for not more than sixty months of military service as provided by the uniformed services employment and reemployment rights act (38 United States Code part III, chapter 43). The member's employer shall make employer contributions and the member shall make the member contributions pursuant to subsection C of this section if the member meets the following requirements:
  - 1. Was an active member of the plan on the day before the member began military service.
  - 2. Entered into and served in the armed forces of the United States or is a member of the national guard.
  - 3. Complies with the notice and return to work provisions of 38 United States Code section 4312.
- C. Contributions made pursuant to subsection B of this section shall be for the period of time beginning on the date the member began military service and ending on the later of one of the following dates:
  - 1. The date the member is separated from military service.
  - 2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.
  - 3. The date the member dies as a result of or during military service.
- D. Notwithstanding any other law, on payment of the contributions made pursuant to subsection B of this section, the member shall be credited with service for retirement purposes for the period of military service of not more than sixty months. The member shall submit a copy of the military discharge certificate (DD-256A) and a copy of the military service record (DD-214) or its

equivalent with the Member's application when applying for credited service corresponding to the period of military service.

- E. The employer and the member shall make contributions pursuant to subsection B of this section as follows:
  - 1. Contributions shall be based on the compensation that the member would have received but for the period that the member was ordered into active military service.
  - 2. If the employer cannot reasonably determine the member's rate of compensation for the period that the member was ordered into military service, contributions shall be based on the member's average rate of compensation during the twelve-month period immediately preceding the period of military service.
  - 3. If a member has been employed less than twelve months before being ordered into military service, contributions shall be based on the member's compensation being earned immediately preceding the period of military service.
  - 4. The member has up to three times the length of military service, not to exceed sixty months, to make the member contributions. Once the member has made the member contributions or on receipt of the member's death certificate, the employer shall make the employer contributions in a lump sum. Death benefits shall be calculated as prescribed by law.
  - 5. If the member's employer pays military differential wage pay to members serving in the military, Contributions shall be paid to the plan pursuant to section 38-891 for any military differential wage pay paid to the member while performing military service.
- F. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.
- G. If a member performs military service due to a presidential call-up, not to exceed forty-eight months, the employer shall make the employer and member contributions computed pursuant to subsection E of this section on the member's return and in compliance with subsection B of this section.
- H. In addition to, but not in duplication of, the provisions of subsection B of this section, beginning December 12, 1994 contributions, benefits and credited service provided pursuant to this section shall be provided pursuant to section 414(u) of the internal revenue code, and this section shall be interpreted in a manner consistent with that internal revenue code section.

Added by Laws 2009, Ch. 35, § 29, effective September 30, 2009. Amended by Laws 2011, Ch. 357.

**38-908. Transfer of credited service**

- A. A member who terminates employment with an employer and accepts a position with the same or another employer participating in the plan shall have the member's credited service transferred to the member's record with the new employer provided the member leaves the member's accumulated contributions on deposit with the fund. The period not employed shall not be considered as service or credited service.
- B. The new employer's account shall be credited with the member's accumulated contributions plus the additional amount, if any, necessary to equal the increase in the actuarial present value to the extent funded on a market value basis as of the most recent actuarial valuation of projected benefits resulting from the transfer calculated by the system's actuary using the actuarial methods and assumptions adopted by the board.

Added by Laws 1994, Ch. 356, § 33. Amended by Laws 1995, Ch. 205, § 12; Laws 1997, Ch. 239, § 28; Laws 2006, Ch. 264, § 20; Laws 2010, Ch. 200, § 71, eff. April 28, 2010.

**38-909. Redemption of prior service; calculation**

- A. Each present active member of the plan who has at least ten years of credited service with the plan who had previous service in this state as an employee with an employer now covered by the plan or who had previous service with an agency of the united states government, a state of the united states or a political subdivision of a state of the united states as a full-time paid corrections officer or full-time paid certified peace officer may elect to redeem up to sixty months of any part

- of the prior service by paying into the plan any amounts required under subsection B if the prior service is not on account with any other retirement system.
- B. Any present active member who elects to redeem any part of the prior service for which the employee is deemed eligible by the board under this section shall pay into the plan the amounts previously withdrawn by the member, if any, as a refund of the member's accumulated contributions plus accumulated interest as determined by the board and the additional amount, if any, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary.
  - C. The discount rate used by the actuary for the redemption calculation pursuant to subsection B is an amount equal to the lesser of the assumed rate of return that is prescribed by the board or an amount equal to the yield on a ten year treasury note as of March 1 that is published by the federal reserve board plus two per cent. This discount rate is effective beginning in the next fiscal year and shall be recalculated each year.
  - D. A member electing to redeem service pursuant to this section may pay for service being redeemed in the form of a lump sum payment to the plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B) (iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

Added by Laws 2004, Ch. 64, § 1. Amended by Laws 2009, Ch. 35, § 30, effective September 30, 2009; Laws 2010, Ch. 200, § 72, eff. April 28, 2010. Amended by Laws 2011, Ch. 357.

**38-910. Domestic relations orders; procedures; payments**

- A. Notwithstanding any other law, in a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the plan that would otherwise be payable to that participant shall instead be paid by the plan to an alternate payee.
- B. A domestic relations order is not effective against the plan unless the domestic relations order is approved by the plan and qualifies as a plan approved domestic relations order. To qualify as a plan approved domestic relations order, a domestic relations order shall comply with any policies or procedures adopted pursuant to subsection K and shall also meet all of the following requirements:
  - 1. The domestic relations order shall state the name and the last known mailing address of the participant and the name and last known mailing address of the alternate payee that is covered by the domestic relations order.
  - 2. The domestic relations order shall clearly state the amount or percentage of the participant's benefits that is payable by the plan to the alternate payee or the precise manner in which the amount or percentage is to be determined.
  - 3. The domestic relations order shall state the number of payments or periods to which the domestic relations order applies, if applicable.
  - 4. The domestic relations order shall state that the domestic relations order applies to the plan.
  - 5. The domestic relations order shall not require the plan to provide any type or form of benefit or any option not otherwise provided by this article.
  - 6. The domestic relations order shall not require the plan to provide increased benefits determined on the basis of actuarial value.
  - 7. The domestic relations order shall not require the payment of benefits to an alternate payee if the benefits are required to be paid to another alternate payee under a separate plan approved domestic relations order.
- C. On receipt by the plan of a certified copy of a domestic relations order and a written request for a determination that the domestic relations order is a plan approved domestic relations order, the plan shall promptly issue a written notice of receipt stating that the domestic relations order and request were received to the participant and alternate payee at the addresses on file, if any.

- D. The plan has a determination period to issue a written determination indicating whether a domestic relations order qualifies as a plan approved domestic relations order. If the participant is receiving benefits during the determination period, and if the plan can determine the amount of the benefits that currently would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall hold the segregated funds and shall pay the remaining portion of the benefits to the participant. If the plan determines the domestic relations order is a plan approved domestic relations order, the plan shall pay the participant and alternate payee pursuant to the plan approved domestic relations order in the month following the month in which the determination was issued, or in the month following the month in which a benefit is payable under the plan approved domestic relations order, whichever is later. If the plan determines the domestic relations order fails to qualify as a plan approved domestic relations order, the plan shall specify in its determination how the domestic relations order is deficient and how it may be amended to qualify as a plan approved domestic relations order. If the participant is currently receiving benefits, and if the plan can determine the amount of segregated funds that would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall hold the segregated funds during the cure period to allow the parties to submit a certified copy of an amended domestic relations order and a written request for a determination that the amended domestic relations order is a plan approved domestic relations order. During the cure period, the plan shall pay the participant's portion to the participant. At the end of the cure period, if the issue of whether an amended domestic relations order qualifies as a plan approved domestic relations order remains undetermined or if an amended domestic relations order is determined not to be a plan approved domestic relations order, the plan shall pay the segregated funds and the participant's portion to the participant. The participant shall hold the segregated funds in trust for the alternate payee as provided in subsection J. If an amended domestic relations order that is submitted after the expiration of the cure period is determined to be a plan approved domestic relations order, the plan shall make payments to an alternate payee under the plan approved domestic relations order only prospectively. A determination by the plan that a domestic relations order is not a plan approved domestic relations order does not prohibit a participant or alternate payee from submitting an amended domestic relations order to the plan.
- E. Each participant and alternate payee is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any participant or alternate payee. The plan has no duty to provide a notice of receipt or determination or pay benefits by means other than mailing the notice or payments to the participant or alternate payee at the last known address that is on file with the plan. If the address of an alternate payee is unknown to the plan, but benefits are payable to the alternate payee pursuant to a plan approved domestic relations order, the plan shall either:
1. Hold the alternate payee's portion until such a time as the alternate payee provides the plan with a current address. Once the plan is notified of the alternate payee's current address, the plan shall prospectively pay the alternate payee's portion to the alternate payee.
  2. Pay the alternate payee's portion to the participant, who shall hold the alternate payee's portion in trust as provided in subsection J, until such a time as the alternate payee is located. At that time the participant shall pay the alternate payee's portion directly to the alternate payee.
- F. If the address of a participant is unknown to the plan, but benefits are payable to the participant pursuant to a plan approved domestic relations order, the plan shall hold the participant's portion until the participant provides the plan with a current address.
- G. If the alternate payee identified in a plan approved domestic relations order predeceases the participant and the plan approved domestic relations order does not otherwise provide for the disposition of the alternate payee's interest the plan shall pay the alternate payee's portion to the personal representative of the deceased alternate payee pursuant to this subsection. The personal representative is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any personal representative. The plan is not responsible for making benefit payments to a personal representative until the personal representative has both:

1. Persuaded the plan that the personal representative is authorized to receive payments designated for the deceased alternate payee.
  2. Provided the plan with an address to which the payments should be sent.
- H. If, within thirty days after the date the plan verifies an alternate payee's death, a personal representative does not make demand on the plan for the alternate payee's portion, the plan shall either:
1. Hold the alternate payee's portion until the time a personal representative makes a proper demand for payment of the alternate payee's portion.
  2. Remit the alternate payee's portion to the participant, who shall hold the amounts in trust for the estate of the alternate payee until the personal representative is identified. At that time the participant shall pay the alternate payee's portion paid by the plan to the participant to the personal representative.
- Thereafter, the plan shall prospectively pay the alternate payee's portion to the personal representative.
- I. Amounts held or paid pursuant to this section shall not accrue interest unless otherwise prescribed by this article.
- J. The plan is not liable to the participant, the alternate payee, any personal representative of the estate of an alternate payee or any other person for any amount paid, withheld or disbursed by the plan pursuant to this section. If one or more payments are made by the plan to a person not otherwise entitled to receive the payments, the recipient of the payment is designated a constructive trustee for the payment received and, together with the marital community, if any, is the sole party against whom an action may be brought to recover the payment.
- K. The plan may adopt policies and procedures that govern the implementation of this section.

Added by Laws 2007, Ch. 87, § 7. Amended by Laws 2010, Ch. 231, § 4.

**38-911. Deferred annuity; eligibility; amount**

- A. If any member who has at least ten years of credited service terminates employment for reasons other than retirement or disability, the person may elect to receive a deferred annuity, except that if the person withdraws the person's accumulated contributions from the plan, all rights to a deferred annuity are forfeited. A deferred annuity is a lifetime monthly payment that is actuarially equivalent to the annuitant's accumulated contributions in the plan plus an equal amount paid by the employer and commences on application on or after the sixty-second birthday of the annuitant. The deferred annuity is not a retirement benefit and annuitants are not entitled to receive any amount prescribed by section 38-887, 38-888, 38-904, 38-905, 38-905.02 or 38-906.
- B. This section does not apply to a member who becomes a member of the plan on or after January 1, 2012. Such a person who attains a normal retirement date is eligible for retirement and a retirement benefit even if the member terminates employment with an employer before the age requirement for normal retirement if the member attains the service requirement for normal retirement.

Added by Laws 2009, Ch. 83, § 11, effective September 30, 2009. Amended by Laws 2011, Ch. 357.

**38-912. Civil liability; restitution or payment of fine; violation; classification; offset of benefits**

- A. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to civil suit by the plan in the superior court in Maricopa county. On entry of an order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201, subsection A, until all amounts owed are paid to the plan.
- B. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member is subject to restitution and fines imposed by a court of competent jurisdiction. The court

may order the restitution or fines to be paid from any payments otherwise payable to the member from the plan.

- C. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the plan with an intent to defraud the plan is guilty of a class 5 felony. If any change or error in the records results in any member or beneficiary receiving from the plan more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct the error, and as far as practicable shall adjust the payments in a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime pursuant to this subsection, section 13-713 applies.
- D. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to a member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

Added by Laws 2009, Ch. 83, § 11, effective September 30, 2009; Laws 2010, Ch. 200, § 73, eff. April 28, 2010. Amended by Laws 2011, Ch. 357.

**38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state**

- A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the Elected Officials' Retirement Plan provided for in article 3 of this chapter, the Public Safety Personnel Retirement System provided for in article 4 of this chapter or the Corrections Officer Retirement Plan provided for in article 6 of this chapter may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:
  - 1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
  - 2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
  - 3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.
- B. For the purposes of this section:
  - 1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.
  - 2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:
    - (a) Has not retired.
    - (b) Is not eligible for active membership in the state retirement system or plan.
    - (c) Is not currently making contributions to the state retirement system or plan.
    - (d) Has not withdrawn contributions from the state retirement system or plan.

Added by Laws 1989, Ch.310, § 16; Laws 1995, Ch. 32, § 19; Amended by Laws 2001, Ch. 123 §1; Laws 2010, Ch. 200, § 74, eff. April 28, 2010.

**38-922. Transfer or redemption of service credits**

- A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.
- B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:
  - 1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that

- system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.
2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.
- C. In the event a member decides to transfer:
1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:
    - (a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.
    - (b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.
  2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.
- D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.
- E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.
- F. A member electing to transfer to or redeem service with the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan or the Corrections Officer Retirement Plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B) (iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

Added as § 38-952 by Laws 1989, Ch. 310, § 16. Renumbered as § 38-922; Amended by Laws 1991, Ch. 270, § 10; Laws 2009, Ch. 35, § 31, effective September 30, 2009. Amended by Law 2011, Ch. 277.

**38-923. Transfer of service credits between municipal retirement systems and special retirement plans; definitions**

- A. An active or inactive member of a retirement system or plan of a municipality of this state or the Public Safety Personnel Retirement System who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement

system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
  2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
  3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.
- B. An active or inactive member of a retirement system or plan of a municipality of this state or the Corrections Officer Retirement Plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to Section 38-924 if all of the following conditions are met:
1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
  2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
  3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.
- C. For the purposes of this section:
1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.
  2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:
    - (a) has not retired.
    - (b) is not eligible for active membership in the retirement system or plan.
    - (c) is not currently making contributions to the retirement system or plan.
    - (d) has not withdrawn contributions from the retirement system or plan.
  3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

Added Laws 2006, Ch. 264, § 22; Laws 2010, Ch. 200, § 75, eff. April 28, 2010.

**38-924. Transfer of service credits**

- A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.
- B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:
1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.
  2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.
- C. If a member decides to transfer:
1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. if the amount calculated in subsection B, paragraph 2 of this section is greater than the amount

determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.

2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.
- D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

Added by Laws 2006, Ch. 264, § 22.

**13-713. Forfeiture of public retirement system benefits; definition**

- A. Notwithstanding any other law, if a member of a state retirement system or plan is convicted of or pleads no contest to an offense that is a class 1, 2, 3, 4 or 5 felony and that was committed in the course of the member's employment as a public official or for a public employer, the court shall order the person's membership terminated and the person shall forfeit all rights and benefits earned under the state retirement system or plan. A member who forfeits all rights and benefits earned pursuant to this section is entitled to receive, in a lump sum amount, the member's contribution to the state retirement system or plan plus interest as determined by the board of that state retirement system or plan, less any benefits received by the member.
- B. An order forfeiting a member's benefits on conviction of an offense listed in subsection A shall not be stayed on the filing of any appeal of the conviction. While an appeal of the conviction is being adjudicated and until a final judgment is issued, for a member who is not receiving benefits, the member and the member's employer are required to continue making contributions to the retirement system or plan and for a member who is receiving benefits, the retirement system or plan shall suspend payments to the member and hold the assets in trust. If the conviction is reversed on final judgment, no rights or benefits shall be forfeited and the member's membership shall be reinstated.
- C. Notwithstanding subsection A, the court may award to a spouse, dependent or former spouse of a member who is subject to subsection A some or all of the amount that was forfeited under subsection A. The award under this subsection shall not require the board of the state retirement system or plan to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided by the laws governing the state retirement system or plan from which the award is being made. In determining whether to make an award under this subsection, the judge shall consider the totality of circumstances, including:
  1. The role, if any, of the person's spouse, dependent or former spouse in connection with the illegal conduct for which the person was convicted.
  2. The degree of knowledge, if any, possessed by the person's spouse, dependent or former spouse in connection with the illegal conduct for which the person was convicted.
  3. The community property nature of the benefits involved.
  4. The extent to which the person's spouse, dependent or former spouse was relying on the forfeited benefits.
- D. Notwithstanding subsection H, the court shall order that a person who is subject to forfeiture under this section is ineligible for future membership in any state retirement system or plan.

- E. The court shall provide a copy of the order of forfeiture to the state retirement system or plan to which it applies.
- F. This section does not apply to a member whose most recent retirement occurs before the effective date of this section, unless the member has resumed making contributions to the state retirement system or plan.
- G. Notwithstanding subsection A, a court shall not order the forfeiture of rights and benefits earned under the state retirement system or plan that accrued before the effective date of this section or for a felony committed before the effective date of this section.
- H. This section applies only to the state retirement system or plan in which the person was a contributing member at the time the offense was committed.
- I. For the purposes of this section, "state retirement system or plan" means the Arizona State Retirement System established by Title 38, Chapter 5, Article 2, the Elected Officials' Retirement Plan established by Title 38, Chapter 5, Article 3, the Public Safety Personnel Retirement System established by Title 38, Chapter 5, Article 4 and the Corrections Officer Retirement Plan established by Title 38, Chapter 5, Article 6.

Added by Laws 2011, Ch. 357.

**23-392. Overtime compensation for certain law enforcement or probation officer activities; option; definitions**

- A. Any person engaged in law enforcement activities shall be compensated for each hour worked in excess of forty hours in one work week at the option of such employer at the following rates:
  - 1. One and one-half times the regular rate at which such person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.
  - 2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.
- B. Any person engaged in probation officer activities shall be compensated for each hour worked in excess of eighty hours in a two week work period at the option of such employer at the following rates:
  - 1. One and one-half times the regular rate at which such person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.
  - 2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.
- C. Paid leave may be considered hours worked for the purpose of calculating overtime.
- D. The director of the department of public safety may establish alternate work periods, in accordance with federal law, for the purpose of determining overtime compensation for those employees of the air rescue section of the department of public safety.
- E. Notwithstanding subsection C of this section, an alternate work period established by the director of the department of public safety for the purpose of determining overtime compensation shall not exceed twenty-eight days or one hundred sixty hours.
- F. For the purposes of this section:
  - 1. "Person engaged in law enforcement activities":
    - (a) Means:
      - (i) A law enforcement officer as defined by section 38-1001.
      - (ii) A peace officer as defined by section 41-1701.
      - (iii) Any security personnel responsible for controlling or maintaining custody of inmates in correctional institutions maintained by this state or a county, city or town.
    - (b) Does not include any such person employed in a bona fide executive or administrative capacity as defined by the employer.
  - 2. "Person engaged in probation officer activities":

- (a) Means a probation officer or surveillance officer who is appointed pursuant to section 8-203, 12-251, or 12-259.
- (b) Does not include any such person employed in a bona fide executive or administrative capacity as defined by the employer.

Amended by Laws 2006, Ch. 151, § 1, effectively immediately.

## **ARTICLE 7. SUDAN INVESTMENTS AND BUSINESS OPERATIONS**

### **35-391. Definitions**

In this Article, unless the context otherwise requires:

1. "Active business operations" means all business operations that are not inactive business operations.
2. "Business operations" means engaging in commerce in any form in Sudan, including acquiring, developing, maintaining, owning, selling, possessing, leasing or operating equipment, facilities, personnel, products, services, personal property, real property or any other apparatus of business or commerce.
3. "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries or parent companies or affiliates of such entities or business associations, that exists for profit-making purposes.
4. "Complicit" means taking actions during any preceding twenty-month period that have supported or promoted the genocidal campaign in Darfur, including preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up or alter the record on human rights abuses in Darfur or other similar actions.
5. "Direct holdings" means all publicly traded equity securities held directly by the public fund in which the public fund owns all shares or interests.
6. "Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the Coalition National Unity government agreed on in the comprehensive peace agreement for Sudan, but does not include the regional government of southern Sudan.
7. "Inactive business operations" means the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for that purpose.
8. "Indirect holdings" means all publicly traded equity securities held in an account or fund, including a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors who are not subject to this Article.
9. "Marginalized populations of Sudan" includes the portion of the population in the Darfur region that has been genocidally victimized, the portion of the population of southern Sudan victimized by Sudan's north-south civil war, the Beja, Rashidiya and other similarly underserved groups of eastern Sudan, the Nubian and other similarly underserved groups in Sudan's Abyei, southern Blue Nile and Nuba mountain regions and the Amri, Hamadab, Manasir and other similarly underserved groups of northern Sudan.
10. "Military equipment" means weapons, arms, military supplies and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.
11. "Mineral extraction activities" includes exploring, extracting, processing, transporting or wholesale selling or trading of elemental minerals or associated metal alloys or ores, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium and zinc, and facilitating those activities, including by providing supplies or

- services in support of those activities.
12. "Oil-related activities" includes owning rights to oil blocks, exporting, extracting, producing, refining, processing, exploring for, transporting, selling or trading of oil, constructing, maintaining or operating a pipeline, refinery or other oil field infrastructure and facilitating those activities, including by providing supplies or services in support of those activities, except that the retail sale of gasoline and related consumer products is not an oil-related activity.
  13. "Power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar government of Sudan entity and whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project or facilitating those activities, including by providing supplies or services in support of those activities.
  14. "Public fund" means the Arizona State Retirement System established by Title 38, Chapter 5, Article 2, the Elected Officials' Retirement Plan established by Title 38, Chapter 5, Article 3, the Public Safety Personnel Retirement System established by Title 38, Chapter 5, Article 4, the Corrections Officer Retirement Plan established by Title 38, Chapter 5, Article 6 and the state treasurer investments authorized by Section 35-314.02.
  15. "Scrutinized" means any business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, government of Sudan-commissioned consortiums or projects or companies involved in government of Sudan-commissioned consortiums or projects and any of the following applies:
    - (a) A material portion of the company's revenues or assets are attributed to Sudan and involve oil-related activities or mineral extraction activities, less than seventy-five per cent of the company's revenues or assets attributed to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government and the company has failed to take substantial action. The public fund has sole discretion to determine what is a material portion of revenues or assets.
    - (b) A material portion of the company's revenues or assets are attributed to Sudan and involve power production activities, less than seventy-five per cent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan and the company has failed to take substantial action. The public fund has sole discretion to determine what is a material portion of revenues or assets.
    - (c) The company is complicit in the Darfur genocide.
    - (d) The company supplies military equipment in Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict such as through post-sale tracking of that equipment by the company, certification from a reputable and objective third party that the equipment is not being used by a party participating in armed conflict in Sudan or sale of that equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization. a social development company that is not complicit in the Darfur genocide shall not be considered to be a scrutinized company.
  16. "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing or general consumer goods that are unrelated to oil-related activities, mineral extraction activities or power production

activities.

17. "Substantial action" means adopting, publicizing and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations, and undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan or a nonprofit entity and evaluated and certified by an independent third party to be substantial in relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

Added by Laws 2008, Ch. 1, § 1.

**35-391.01. Identification of companies**

- A. Within one hundred eighty days after the effective date of this Article, the public fund shall make reasonable efforts to identify all scrutinized companies in which the public fund has direct holdings. Such efforts shall include the following:
  1. Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations and government entities.
  2. Contacting asset managers contracted by the public fund that invest in companies with business operations in Sudan.
  3. Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.
- B. Before the first meeting of the public fund following the one hundred eighty-day period, the public fund shall assemble all identified scrutinized companies into a scrutinized companies list.
- C. The public fund shall update the scrutinized companies list on an annual basis based on information from those entities listed in subsection A.

Added as § 35-392 by Laws 2008, Ch. 1, § 1. Renumbered as § 35-391.01.

**35-391.02. Required actions**

- A. The public fund shall adhere to the following procedures for companies on the scrutinized companies list on an annual basis:
  1. The public fund shall make reasonable efforts to determine the companies on the scrutinized companies list in which the public fund owns direct holdings.
  2. For each company identified pursuant to paragraph 1 with only inactive business operations, the public fund shall send a written notice informing the company of this Article and encouraging it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The public fund shall continue such correspondence on an annual basis.
  3. For each company newly identified pursuant to paragraph 1 with active business operations, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within one hundred eighty days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the public fund.
  4. If, within one hundred eighty days following the public fund's first engagement with a company pursuant to paragraph 3, that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this Section shall cease to apply to it unless it resumes scrutinized business operations. If, within one hundred eighty days after the public fund's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company is subject to paragraph 2.

5. If, after one hundred eighty days following the public fund's first engagement with a company pursuant to paragraph 3, the company continues to have scrutinized active business operations, and only while that company continues to have scrutinized active business operations, the public fund shall sell, redeem, divest or withdraw all publicly traded securities of the company according to the following schedule:
    - (a) At least fifty per cent of assets shall be removed from the public fund's assets under management within twelve months after the company's most recent appearance on the scrutinized companies list.
    - (b) One hundred per cent of assets shall be removed from the public fund's assets under management within eighteen months after the company's most recent appearance on the scrutinized companies list.
    - (c) If a company that ceased scrutinized active business operations following engagement pursuant to paragraph 3 resumes such operations, subdivision (a) shall immediately apply, and the public fund shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.
  6. The public fund shall not acquire securities of companies on the scrutinized companies list that have active business operations, except as provided in paragraphs 7 and 8.
  7. A company that the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall not be subject to divestment or investment prohibition pursuant to paragraphs 5 and 6.
  8. Notwithstanding any other law, paragraphs 5 and 6 do not apply to indirect holdings in actively or passively managed investment funds or direct holdings in passively managed investment funds. The public fund shall annually submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively or passively managed fund devoid of such companies. If the manager creates a similar fund, the use of which would not require increased fees on the part of the public fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards.
- B. For the purposes of this section, private equity funds shall be deemed to be actively managed investment funds.

Added as § 35-393 by Laws 2008, Ch. 1, § 1. Renumbered as § 35-391.02.

**35-391.03. Reporting**

- A. The public fund shall submit a publicly available report to the United States Attorney General, the Senate financial institutions, insurance and retirement committee and the House of Representatives public institutions and retirement committee, or their successor committees, and the central procurement officer of this state that includes the scrutinized companies list within thirty days after the list is first created.
- B. On or before January 31 of each year, the public fund shall submit a publicly available report to the United States Attorney General, the Senate financial institutions, insurance and retirement committee and the House of Representatives public institutions and retirement committee, or their successor committees, and the central procurement officer of this state that includes all of the following:
  1. A summary of correspondence with companies engaged by the public fund pursuant to Section 35-391.02, subsection A, paragraphs 2 and 3.
  2. All investments sold, redeemed, divested or withdrawn in compliance with Section 35-391.02, paragraph 5.
  3. All prohibited investments under Section 35-391.02, subsection A, paragraph 6.
  4. Any progress made under Section 35-391.02, subsection A, paragraph 8.
  5. All investment costs associated with compliance with Section 35-391.02.

Added as § 35-394 by Laws 2008, Ch. 1, § 1. Renumbered as § 35-391.03.

**35-391.04. Other legal obligations; immunity**

- A. With respect to actions taken in compliance with this Article, including all good faith determinations regarding companies as required by this Article, a public fund, its board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund are exempt from any conflicting statutory or common law obligations, including any such obligations with respect to choice of asset managers, investment funds or investments for the public fund's securities portfolios.
- B. With respect to all actions taken in good faith compliance with this article, a public fund, its board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund are immune from any liability.
- C. A public fund, its board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund are indemnified from the state general fund and held harmless by this state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including costs and attorney fees, and against all liability, losses and damages of any nature that the public fund, board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund may at any time sustain by reason of any decision to restrict, reduce or eliminate investments made in good faith compliance with this article.

Added as § 35-395 by Laws 2008, Ch. 1, § 1. Renumbered as § 35-391.04.

**35-391.05. Reinvestment in certain companies with scrutinized active business operations**

Notwithstanding any other law, the public fund may cease divesting from certain scrutinized companies pursuant to Section 35-391.02, subsection A, paragraph 5 or reinvest in certain scrutinized companies from which it divested pursuant to Section 35-391.02, subsection A, paragraph 5 if a preponderance of the evidence shows that the value of the assets of the affected account of the public fund becomes equal to or less than ninety-nine and three-quarters per cent of the hypothetical value of the assets of the affected account of the public fund assuming no divestment for any company had occurred under Section 35-391.02, subsection A, paragraph 5. For any cessation of divestment, reinvestment or subsequent ongoing investment authorized by this section, the public fund shall provide a written report to the Senate financial institutions, insurance and retirement committee and the House of Representatives public institutions and retirement committee, or their successor committees, in advance of initial reinvestment, updated annually thereafter as applicable, setting forth the reasons and justification, supported by a preponderance of the evidence, for its decisions to cease divestment, reinvest or remain invested in companies with scrutinized active business operations. This Section has no application to reinvestment in companies on the ground that they have ceased to have scrutinized active business operations.

Added as § 35-396 by Laws 2008, Ch. 1, § 1. Renumbered as § 35-391.05.

**35-391.06. Prohibition on government contracts**

- A. This state and political subdivisions of this state shall ensure that each contract entered into by this state or a political subdivision of this state for the procurement of goods or services includes a clause that requires the contractor to certify to the contracting officer that the contractor does not have scrutinized business operations in Sudan.
- B. If this state or a political subdivision of this state determines that the contractor has submitted a false certification under subsection A of this section, the state or political subdivision may impose remedies as provided by law. On the determination of a false certification under subsection A of this Section, this state or a political subdivision of this state may terminate a covered contract.
- C. This state or a political subdivision of this state shall notify the central procurement officer of this state of any contractor that has submitted a false certification under subsection A of this Section.
- D. Based on information reported in Section 35-391.03 subsection A, the central procurement officer of this state shall compile and make available, on an annual basis, a list of parties excluded from

- Arizona procurement.
- E. Based on information reported in Section 35-391.03, subsection A, the central procurement officer of this state may suspend a contractor from eligibility for state or political subdivision contracts on the notification from the state or political subdivision of a false certification under subsection A of this section. The suspension period shall not exceed three years.
  - F. This section does not limit the use of other remedies available to this state or a political subdivision of this state or any other official of this state on the basis of a false certification under subsection A of this Section.
  - G. The governor may waive the requirement of subsection A of this section on a case-by-case basis if the governor determines and certifies in writing to the central procurement officer of this state that it is in the state's best interest to do so.
  - H. Within one year after the effective date of this section, the central procurement officer of this state shall provide a written report to the Senate financial institutions, insurance and retirement committee and the House of Representatives public institutions and retirement committee, or their successor committees, and the governor on the actions taken under this Section.

Added as § 35-397 by Laws 2008, Ch. 1, § 1. Renumbered as § 35-391.06.

Sec. 2. Delayed repeal; condition; notice

- A. Title 35, Chapter 2, Article 7, Arizona Revised Statutes, as added by this Act, is repealed on the earliest date that any of the following occurs:
  - 1. The United States Congress or the President of the United States declares that the Darfur genocide has been halted.
  - 2. The United States revokes all sanctions imposed against the government of Sudan.
  - 3. The United States Congress or the President of the United States declares that the government of Sudan has honored its commitments to abide by the United Nations Security Council Resolution 1769 (2007), cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance and allow for the safe and voluntary return of refugees and internally displaced persons.
  - 4. The United States Congress or the President of the United States, through legislation or executive order, declares that divestment of the type provided for in this act interferes with conduct of United States foreign policy.
  - 5. July 1, 2013.
- B. The director of the Arizona State Retirement System shall notify in writing the director of the Arizona legislative council of this date.

Sec. 3. Legislative findings and declarations

The legislature finds and declares that:

- 1. On July 23, 2004, the United States Congress declared that "atrocities unfolding in Darfur, Sudan are genocide".
- 2. On September 9, 2004, Secretary of State Colin I. Powell told the United States Senate foreign relations committee that "genocide has occurred and may still be occurring in Darfur" and "the government of Sudan and Janjaweed bear responsibility".
- 3. On September 21, 2004, addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State's findings and stated, "at this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide".
- 4. On September 26, 2006, the United States House of Representatives stated that "an estimated 300,000 to 400,000 people have been killed by the government of Sudan and its Janjaweed allies since the [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad".
- 5. The Darfur crisis represents the first time the United States government has labeled ongoing atrocities a genocide, imposing sanctions against the government of Sudan since 1997.

6. Since 1993, the United States Secretary of State has determined that the government of Sudan has repeatedly provided support for acts of international terrorism thereby restricting United States assistance, defense exports and sales and financial and other transactions with the government of Sudan.
7. According to the former chairperson of the United States Securities and Exchange Commission, "the fact that a foreign company is doing material business with a country, government, or entity on [the United States Treasury Department's office of foreign assets control's] sanctions list is, in the Sec staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in a company".
8. A 2006 United States House of Representatives report states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment".
9. On December 31, 2007, President George W. Bush signed the Sudan Accountability and Divestment Act of 2007, effectively authorizing state and local governments to divest from companies that support the Sudanese government at the expense of marginalized populations in Sudan.
10. The current Sudan divestment movement encompasses nearly one hundred universities, cities, states and private pension plans, with companies facing widespread divestment presenting further material risk to remaining investors.
11. It is the desire of the legislature, with respect to investment resources in its control and to the extent reasonable, with due consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries not to support businesses, governments or countries that support the practice of genocide.
12. The divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously, and a congressional and presidential declaration of genocide satisfies this high threshold.

Amended by Laws 2008, Ch. 1, §§ 1, 2, & 3.

## **ARTICLE 8. TERRORISM COUNTRY DIVESTMENTS**

### **35-392. State treasurer and retirement system divestments; policy notices**

- A. The state board of investment, the Arizona State Retirement System and the board of trustees of the Public Safety Personnel Retirement System shall each adopt a policy, and submit a copy of the policy to the president of the Senate and the speaker of the House of Representatives, regarding the countries identified as those countries currently designated by the United States Department of State as state sponsors of terrorism. The policy shall include:
  1. The procedure to identify United States companies that are in violation of section 6(j) of the Export Administration Act.
  2. The process for communicating with the companies and appropriate federal officials, including this state's congressional delegation, in regard to its findings pursuant to this section.
  3. The process for divestment from the companies that are identified pursuant to paragraph 1.
- B. The state treasurer, the Arizona State Retirement System and the board of trustees of the Public Safety Personnel Retirement System shall divest from those companies, based on public information, identified pursuant to subsection A, paragraph 1.
- C. The state treasurer, the Arizona State Retirement System and the board of trustees shall notify the governor, the president of the Senate, the speaker of the House of Representatives, the director of the Department of Administration and each other of any divestments and the reasons for the divestments.
- D. Within fourteen days after receipt of the notice pursuant to subsection C, the director of the Department of Administration shall send notice to the company indicating that this state and its political subdivisions are prohibited from purchasing any product or service from the company

- until the company is no longer identified pursuant to subsection A, paragraph 1.
- E. The prohibition in subsection D does not apply to any existing contract but does apply to any renewal of a contract.
  - F. This Section applies to all affiliated companies and subsidiaries of the company.

Added as § 35-391 by Laws 2008, Ch. 201, § 2. Renumbered as § 35-392.

Sec. 3. State board of investment and retirement systems; divestment policy; submission  
 On or before January 31, 2009, the state board of investment, the Arizona State Retirement System and the board of trustees of the Public Safety Personnel Retirement System shall submit a copy of the policy adopted pursuant to section 35-391, Arizona Revised Statutes, as added by this act, to the president of the senate and the speaker of the house of representatives.

Amended by Laws 2008, Ch. 201, §§ 2 and 3.

## ARTICLE 9. IRAN INVESTMENTS

### **35-393. Definitions**

In this Article, unless the context otherwise requires:

1. "Active business operations" means all business operations that are not inactive business operations.
2. "Business operations" means investing, with actual knowledge on or after August 5, 1996, in Iran's petroleum sector which directly and significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran. The retail sale of gasoline and related consumer products is not considered to directly or significantly contribute to the enhancement of Iran's ability to develop petroleum resources.
3. "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries or parent companies or affiliates of such entities or business associations, that exists for the purpose of making a profit.
4. "Direct holdings" means all publicly traded equity securities of a company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.
5. "Government of Iran" means the government of Iran and its instrumentalities and companies owned or controlled by the government of Iran.
6. "Inactive business operations" means the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such a purpose.
7. "Indirect holdings" means all investments held in an account or fund, including a mutual fund, a real estate fund, a private equity fund or a commingled fund, managed by one or more persons who are not employed by the public fund, in which the public fund owns shares or interests together with other investors who are not subject to this article.
8. "Iran" means the Islamic Republic of Iran.
9. "List" means the scrutinized companies with activities in the Iran petroleum energy sector list that is prescribed by this article.
10. "Petroleum resources" means petroleum or natural gas.
11. "Public fund" means the Arizona State Retirement System established by Title 38, Chapter 5, Article 2, the Elected Officials' Retirement Plan established by Title 38, Chapter 5, Article 3, the Public Safety Personnel Retirement System established by Title 38, Chapter 5, Article 4, the Corrections Officer Retirement Plan established by Title 38, Chapter 5, Article 6 or the state treasurer investments authorized by Section 35-314.02.
12. "Scrutinized" means any active business operations, if those business operations are subject to sanctions under Public Law 104-172, the Iran Sanctions Act of 1996, and involve investments of a material portion of the company's revenues or assets and the company has failed to take substantial action specific to Iran. The public fund has sole

- discretion to determine what is a material portion of revenues or assets.
13. "Substantial action specific to Iran" means adopting, publicizing and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations.

Added as § 35-391 by Laws 2008, Ch. 235, § 1, effective May 23, 2008. Renumbered as § 35-393.

**35-393.01. Identification of scrutinized companies**

- A. Within one hundred eighty days after the effective date of this article, the public fund shall make reasonable efforts to identify all scrutinized companies in which the public fund has direct holdings. Such efforts shall include reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies with business operations in Iran, including information provided by nonprofit organizations, research firms, international organizations and government entities.
- B. Before the first meeting of the public fund's governing body following the one hundred eighty day period prescribed in subsection A, the public fund shall assemble all identified scrutinized companies into a scrutinized companies with activities in the Iran petroleum energy sector list.
- C. The public fund shall update the list on an annual basis based on information from those entities listed in subsection A.

Added as § 35-392 by Laws 2008, Ch. 235, § 1, effective May 23, 2008. Renumbered as § 35-393.01.

**35-393.02. Required actions**

- A. The public fund shall adhere to the following procedures for companies on the scrutinized companies with activities in the Iran petroleum energy sector list on an annual basis:
1. The public fund shall make reasonable efforts to determine the companies on the list in which the public fund owns direct holdings.
  2. For each company identified pursuant to paragraph 1 with only inactive business operations, the public fund shall send a written notice informing the company of this article and encouraging it to continue to refrain from initiating active business operations in Iran until it is able to avoid scrutinized business operations. The public fund shall continue such correspondence on an annual basis.
  3. For each company newly identified pursuant to paragraph 1 with active business operations, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice shall offer the company the opportunity to clarify its Iran-related activities and shall encourage the company, within one hundred eighty days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the public fund.
  4. If, within one hundred eighty days following the public fund's first engagement with a company pursuant to paragraph 3, that company ceases scrutinized business operations, the company shall be removed from the list and this section shall cease to apply to it unless it resumes scrutinized business operations. If, within one hundred eighty days after the public fund's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to paragraph 2.
  5. If, after one hundred eighty days following the public fund's first engagement with a company pursuant to paragraph 3, the company continues to have scrutinized active business operations, and only while such company continues to have scrutinized active business operations, the public fund shall sell, redeem, divest or withdraw all publicly traded securities of the company according to the following schedule:
    - (a) at least fifty per cent of assets shall be removed from the public fund's assets under management within twelve months after the company's most recent appearance on the list.
    - (b) one hundred per cent of assets shall be removed from the public fund's assets under management within eighteen months after the company's most recent

- appearance on the list.
- (c) if a company that ceased scrutinized active business operations following engagement pursuant to paragraph 3 resumes such operations, subdivision (a) shall immediately apply, and the public fund shall send a written notice to the company. The company shall also be immediately reintroduced onto the list.
- 6. The public fund shall not acquire securities of companies on the scrutinized companies with activities in the Iran petroleum energy sector list that have active business operations, except as provided in paragraphs 7 and 8.
  - 7. A company for whom the United States president exercises his waiver authority or the united states government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran shall not be subject to divestment or investment prohibition pursuant to paragraphs 5 and 6.
  - 8. Notwithstanding any other law, paragraphs 5 and 6 do not apply to indirect holdings in actively or passively managed investment funds or direct holdings in passively managed investment funds. The public fund shall annually submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively or passively managed fund devoid of such companies. If the manager creates a similar fund, the use of which would not require increased fees on the part of the public fund, the public fund shall replace all applicable investments with investments in the similar fund in a reasonable time frame consistent with prudent investing standards.
- B. For the purposes of this section, private funds shall be deemed to be indirect holdings in actively managed investment funds.

Added as § 35-393 by Laws 2008, Ch. 235, § 1, effective May 23, 2008. Renumbered as § 35-393.02.

**35-393.03. Reporting**

- A. The public fund shall submit a publicly available report to the United States Attorney General, the Senate and the House of Representatives committees that are responsible for retirement issues, the governor and the central procurement officer of this state that includes the scrutinized companies with activities in the Iran petroleum energy sector list within thirty days after the list is first created.
- B. On or before January 31 of each year, the public fund shall submit a publicly available report to the United States Attorney General, the Senate and the House of Representatives committees that are responsible for retirement issues, the governor and the central procurement officer of this state that includes all of the following:
  - 1. A summary of correspondence with companies engaged by the public fund pursuant to Section 35-393.02, subsection A, paragraphs 2 and 3.
  - 2. All investments sold, redeemed, divested or withdrawn pursuant to Section 35-393.02, subsection A, paragraph 5.
  - 3. All prohibited investments pursuant to Section 35-393.02, subsection A, paragraph 6.
  - 4. Any progress made pursuant to Section 35-393.02, subsection A, paragraph 8.
  - 5. All investment costs associated with compliance with Section 35-393.02.

Added as § 35-394 by Laws 2008, Ch. 235, § 1, effective May 23, 2008. Renumbered as § 35-393.03.

**35-393.04. Other legal obligations; immunity**

- A. With respect to actions taken in compliance with this Article, including all good faith determinations regarding companies as required by this Article, a public fund, its board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund are exempt from any conflicting statutory or common law obligations, including any such obligations with respect to choice of asset managers, investment funds or investments for the public fund's securities portfolios.
- B. With respect to all actions taken in good faith compliance with this Article, a public fund, its board of directors and individual board members, agents, attorneys, trustees, officers, employees,

custodians, fiduciaries, research firms and investment managers under contract with the public fund are immune from any liability.

- C. A public fund, its board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund are indemnified from the state general fund and held harmless by this state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including costs and attorney fees, and against all liability, losses and damages of any nature that the public fund, board of directors and individual board members, agents, attorneys, trustees, officers, employees, custodians, fiduciaries, research firms and investment managers under contract with the public fund may at any time sustain by reason of any decision to restrict, reduce or eliminate investments made in good faith compliance with this article.

Added as § 35-395 by Laws 2008, Ch. 235, § 1, effective May 23, 2008. Renumbered as § 35-393.04.

**35-393.05. Reinvestment in certain companies with scrutinized active business operations**

Notwithstanding any other law, the public fund may cease divesting from certain scrutinized companies pursuant to Section 35-393.02 or reinvest in certain scrutinized companies from which it divested pursuant to Section 35-393.02 if a preponderance of the evidence shows that the value of the assets of the affected account of the public fund becomes equal to or less than ninety-nine and one-half per cent of the hypothetical value of the assets of the affected account of the public fund assuming no divestment for any company had occurred under Section 35-393.02. For any cessation of divestment, reinvestment or subsequent ongoing investment authorized by this section, the public fund shall provide a written report to the governor, the senate and the house of representatives committees that are responsible for retirement issues, in advance of initial reinvestment, updated annually thereafter as applicable, setting forth the reasons and justification, supported by a preponderance of the evidence, for its decisions to cease divestment, reinvest or remain invested in companies with scrutinized active business operations. This section has no application to reinvestment in companies on the ground that they have ceased to have scrutinized active business operations.

Added as § 35-396 by Laws 2008, Ch. 235, § 1, effective May 23, 2008. Renumbered as § 35-393.05.

**35-393.06. Prohibition on government contracts**

- A. Within thirty days after receipt of a report required by Section 35-393.03, the central procurement officer of this state shall send a notice to the scrutinized company indicating that this state and its political subdivisions are prohibited from purchasing any product or service from a scrutinized company until the company is no longer on the scrutinized companies with activities in the Iran petroleum energy sector list. This prohibition does not apply to any existing contract but does apply to any new contract or renewal of a contract.
- B. This state and political subdivisions of this state shall ensure that each contract entered into by the state or political subdivision of this state for the procurement of goods or services includes a clause that requires the contractor to certify to the contracting officer that the contractor does not have scrutinized business operations in Iran.
- C. If this state or political subdivision of this state determines that the contractor has submitted a false certification under subsection B of this Section, the state or political subdivision may impose remedies as provided by law. On the determination of a false certification under subsection B of this Section, this state or political subdivision of this state may terminate a covered contract.
- D. This state or political subdivision of this state shall notify the central procurement officer of this state of any contractor that has submitted a false certification under subsection B of this Section.
- E. Based on information reported in Section 35-393.03, the central procurement officer of this state shall compile and make available, on an annual basis, a list of parties with activities in the Iran petroleum energy sector excluded from Arizona procurement.
- F. Based on information reported in Section 35-393.03, the central procurement officer of this state may suspend a contractor from eligibility for state or political subdivision contracts upon the notification from the state or political subdivision of a false certification under subsection B of this section. The suspension period shall not exceed three years.

- G. This Section does not limit the use of other remedies available to this state or a political subdivision of this state or any other official of this state the basis of a false certification under subsection B of this section.
- H. The governor may waive the requirements of subsection A or B of this Section on a case-by-case basis if the governor determines and certifies in writing to the central procurement officer of this state that it is in the state's best interest to do so.
- I. Within one year after the effective date of this Section, the central procurement officer of this state shall provide a written report to the Governor, the Senate and the House of Representatives committees that are responsible for retirement issues on the actions taken under this section.
- J. This Section applies to all affiliated companies and subsidiaries of the company.

Added as § 35-397 by Laws 2008, Ch. 235, § 1, effective May 23, 2008. Renumbered as § 35-393.06.

**Sec. 3. Delayed repeal; condition; notice**

- A. Title 35, chapter 2, article 7, Arizona Revised Statutes, as added by this act, is repealed as of the earliest date that any of the following occurs:
  - 1. The United States Congress or President of the United States affirmatively and unambiguously states, by means including legislation, executive order or written certification from the President to Congress, that the government of Iran has ceased to pursue the capabilities to develop nuclear weapons and support international terrorism.
  - 2. The United States revokes all sanctions imposed against the government of Iran.
  - 3. The United States Congress or President of the United States affirmatively and unambiguously states, by means including legislation, executive order or written certification from the President to Congress, that divestment of the type provided for in this act interferes with the conduct of United States foreign policy.
  - 4. Public Law 104-172, the Iran Sanctions Act of 1996, and its amendments are repealed.
  - 5. July 1, 2013.
- B. The director of the Arizona State Retirement System shall notify in writing the director of the Arizona legislative council of this date.

**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.

Amended by Laws 2008, Ch. 235, § 3.

**38-446. Acts based on written opinions; immunity**

Notwithstanding any provision of law to the contrary, no public officer or employee is personally liable for acts done in his official capacity in good faith reliance on written opinions of the attorney general issued pursuant to section 41-193, or written opinions of a county attorney of the county, or written opinions of the city or town attorney of the city or town or written opinions of any authorized private attorney for any independent public retirement trust fund or system for which the officer or employee serves or is employed.

Amended by Laws 2006, Ch. 264, § 1.

**38-651.01. Group health and accident coverage for retired public employees and elected officials and their dependents**

- A. The department of administration shall, by rule, adopt standards to establish group health and accident coverage for former employees who worked for the state of Arizona and who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona, or disabled, and receiving either income from a retirement program of this state or long-term disability income benefits pursuant to section 38-651.03 or chapter 5, article 2.1 of this title and their dependents and to establish eligibility for retired or disabled state employees to participate in the coverage. The department of administration may adopt rules which provide that if a retired or disabled insured dies before an

insured surviving dependent, the insured surviving dependent is entitled to extended coverage at group rates if the insured surviving dependent elects to continue in the coverage within six months of the retired or disabled insured's death and the insured surviving dependent agrees to pay the cost of the premium for group health and accident insurance. Upon notification of the retired or disabled insured's death, the department of administration shall immediately notify an insured surviving dependent of the provisions of this section. The department of administration may enter into agreements with disabled former state employees and their dependents who elect to obtain the coverage provided by this section. The agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage. The department of administration may adopt rules which provide that upon the death of a state employee who at the time of death was eligible for normal retirement pursuant to section 38-781.07 under the Arizona state retirement plan, the insured surviving spouse and eligible dependent children are entitled to continue coverage under group rates provided that the deceased insured state employee, spouse and dependent children were insured at the time of the employee's death. The insured surviving spouse shall be charged an amount sufficient to pay the full premium for the coverage.

- B. The department of administration may, by rule, adopt standards to establish group health and accident coverage for former elected officials of this state or its political subdivisions and their dependents and to establish eligibility for former elected officials to participate in the coverage. Qualifications for eligibility shall include that the former elected official has at least five years of credited service in the Elected Officials' Retirement Plan pursuant to chapter 5 of this title, had been covered under a group health or group health and accident plan while serving as an elected official and had been serving as an elected official on or after January 1, 1983. The department of administration may adopt rules which provide that upon the death of an elected official or insured former elected official, the insured surviving spouse is entitled to coverage at group rates provided that the deceased insured former elected official met or would have met the qualifications for eligibility pursuant to this subsection or that the deceased elected official would have met the qualifications for eligibility had the deceased not been in office at the time of death. Except as provided in subsection J of this section, the insured former elected official or the insured surviving spouse shall be charged amounts which are sufficient to pay for the premium and state administrative expense of providing the coverage. Notwithstanding subsection J of this section, the standards shall provide that all or any portion of the former state employees or former elected officials or their dependents shall be grouped with officers and employees of the state and its departments and agencies or their dependents as necessary to obtain health and accident coverage at favorable rates.
- C. The state retirement system board may enter into agreements with retired and disabled state employee members of the system and plan who elect to obtain the coverage provided pursuant to subsection A of this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing the coverage.
- D. Retired state employee or disabled state employee members of the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan or the optional retirement programs authorized pursuant to section 15-1628 who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona and their dependents and who are receiving benefits from the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan or the optional retirement programs authorized pursuant to section 15-1628 may participate in group health and accident coverage provided pursuant to this section. The department of administration shall adopt rules which are necessary for the implementation of this subsection.
- E. The board of trustees of the Public Safety Personnel Retirement System may enter into agreements with retired state employee members and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who

- elect to obtain such coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing the coverage.
- F. The board of trustees of the Public Safety Personnel Retirement System may enter into agreements with retired judges and retired elected officials and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing the coverage.
  - G. The board of trustees of the Public Safety Personnel Retirement System may contract with an insurance carrier and adopt standards to establish a group health and accident insurance coverage program for retired members of the Public Safety Personnel Retirement System, their dependents and their spouses. Any members or spouses who elect to obtain the group health and accident coverage provided under this subsection shall agree to a deduction from their monthly retirement benefits of an amount sufficient to pay for the premium not covered under retirement benefits and administrative expense of providing the coverage.
  - H. A county board of supervisors may enter into agreements to establish group health and accident coverage for retired or disabled county employees and their dependents who elect to obtain the coverage provided pursuant to section 11-263, subsection B. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing for the coverage.
  - I. Nonmedicare eligible retirees who live in this state, who enroll in a qualifying plan under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option to enroll with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:
    1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
    2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the retiree.
    3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the retiree living outside the area of the qualifying health maintenance organization.
  - J. Public funds shall not be expended to pay all or any part of the premium of the insurance pursuant to this section except for monies authorized to be paid for any insured from the retirement plan which the insured is receiving benefits.

Added by Laws 1976, Ch. 117, § 1. Amended by Laws 1977, Ch. 163, § 2, effective June 6, 1977; Laws 1979, Ch. 96, § 1; Laws 1980, Ch. 153, § 2; Laws 1981, Ch. 271, § 2, effective April 27, 1981; Laws 1983, Ch. 98, § 106; Laws 1983, Ch. 300, § 1; Laws 1984, Ch. 246, § 2; Laws 1986, Ch. 234, § 1, effective April 29, 1986; Laws 1987, Ch. 282, § 1, effective August 17, 1987; Laws 1988, Ch. 331, § 1; Laws 1989, Ch. 310, § 1; Laws 1990, Chapter 235, § 1; Laws 1994, Ch. 25, § 1; Laws 1994, Ch. 356, § 3; Laws 1995, Ch. 134, § 1, effective April 17, 1995; Laws 1997, Ch. 291, § 3, effective July 1, 1998; Laws 1999, Ch. 300, § 12.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents**

- A. The board shall establish group health and accident coverage for eligible retired and disabled members and their dependents. Eligible retired and disabled members are those members who are receiving retirement benefits from ASRS or long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter and who elect not to obtain health and accident insurance

through their former employer. If an insured retired or disabled member dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary of an insured surviving dependent of the provisions of this section.

- B. Retired members of the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.
- C. The board may enter into agreements with retired and disabled members of ASRS who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provision for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.
- D. The board of trustees of the Public Safety Personnel Retirement System may enter into agreements with retired members of the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction of the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.
- E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.
- F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:
  - 1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
  - 2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
  - 3. If a member who participates in the coverage dies during the twelve month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.
- G. Retired or disabled members who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a

qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
  2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
  3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.
- H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this Section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

Added by Laws 1995, Ch. 32, § 14, effective March 30, 1995. Amended by Laws 1995, Ch. 134, § 13; Laws 1997, Ch. 291, § 4, effective July 1, 1998; Laws 1998, Ch. 236, § 3; Laws 1999, Ch. 300, § 15; Laws 2001, Ch. 136, § 18.

**38-803. Powers and duties of the board**

- A. The board, in the administration, management and operation of the plan and fund, shall:
1. Account for the operation, administration and investment expenses and allocate them against investment income.
  2. Contract on a fee basis with an actuary to make an actuarial valuation of the plan based on the valuation method and valuation assumptions recommended by the actuary and approved by the board. The actuary shall be a member of the American academy of actuaries.
  3. Contract on a fee basis with an independent auditing firm to make an annual audit of the accounting records of the fund and file a copy of the audit with the auditor general.
  4. Invest the monies in the fund as provided in article 4 of this chapter.
  5. Within a period of six months after the close of each fiscal year, submit a detailed report of the operation and the investment performance of the plan to the governor, the legislature and the members of the plan.
  6. By November 1 of each year 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.
- B. The board, in the administration, management and operation of the plan and fund, may:
1. Employ services as it deems necessary.
  2. Either keep invested monies separate or commingle invested monies as it deems appropriate.
  3. Delegate authority as it deems necessary and prudent to the administrator employed pursuant to section 38-848, subsection K, paragraph 6.
  4. Do all acts, whether expressly authorized, which may be deemed necessary or proper for the protection of the fund.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1997, Ch. 210, § 24, effective March 1, 1998; Laws 2005, Ch. 331, § 6. Amended by Laws 2008, Ch. 125, § 1, effective April 29, 2008.

**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 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 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 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 board or administrator from contesting, or requires the 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 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 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 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. 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.

Added by Laws 1968, Ch. 85, § 1. Amended by Laws 1970, Ch. 211, § 10; Laws 1971, Ch. 174, § 4; Laws 1972, Ch. 163, § 41; Laws 1974, Ch. 170, § 3; Laws 1979, Ch. 80, § 1; Laws 1980, Ch. 146, § 7; Laws 1981, Ch. 162, § 2, effective April 17, 1981; Laws 1982 Ch. 141, § 2, effective April 16, 1982; Laws 1983, Ch. 150, § 2, effective April 19, 1983; Laws 1983, Ch. 300, Sec. 14; Laws 1984, Ch. 6, § 36, effective March 9, 1984; Laws 1985, Ch. 250, § 1; Laws 1986, Ch. 415, § 17; Laws 1987, Ch. 75, § 3; Laws 1987, Ch. 180, § 1, effective April 27, 1987, retroactively effective to July 1, 1968; Laws 1995, Ch. 223, § 2; Laws 1997, Ch. 210, § 25, effective March 1, 1998; Laws 1997, Ch. 239, § 14; Laws 1998, Ch. 113, § 30; Laws 1999, Ch. 262, § 21; Laws 2005, Ch. 319, § 1; Laws 2005, Ch. 331, § 7; Laws 2006, Ch. 264, § 8; Laws 2008, Ch. 125, § 2, effective April 29, 2008. Amended by Laws 2010, Ch. 200, § 42, eff. April 28, 2010 and Ch. 118, § 8.

Laws 2010, Ch. 200, §§ 80 and 81 provide: Notwithstanding section 38-848, A.R.S., as amended by this act, all persons serving as members of the board of trustees on the effective date of this act may continue to serve until the expiration date of their normal terms. The term of the new public member who is appointed by the governor pursuant to this act expires on the third Monday in January, 2013. The term of the new member who is an elected member from a local board and who is appointed by the governor to this act expires on the third Monday in January, 2016. The governor shall make all subsequent appointments as prescribed by statute. The board of trustees established by section 38-848, A.R.S., shall not use former members of the board as special advisors to assist the board in fulfilling its statutorily prescribed duties.

**38-848.03. Appointed investment management**

- A. The board of trustees may appoint investment management. Investment management shall have:
  - 1. The highest professional and fiduciary recommendations.
  - 2. Not less than three years' experience at handling institutional investments of at least two hundred fifty million dollars. This paragraph is satisfied if investment management, the individual retained by investment management or individual employees in a firm of investment managers meet this requirement.
  - 3. had responsibility for investment decision making as an insurance company investment fund, an investment division of a bank, a mutual fund, an investment organization or institution, a pension fund or an investment adviser who is designated as a chartered financial analyst by the chartered financial analyst institute.
- B. A bank serving as investment management does not have a conflict of interest because it is also a depository in which any monies administered by the board are deposited.
- C. The board of trustees shall appoint investment management for a term of one year and may appoint the investment management to succeeding terms. The board may remove investment management for not complying with this article or for failure to comply with or adhere to the board's investment goals, objectives or policies.
- D. Investment management appointed by the board:
  - 1. May purchase and sell in the name of the system and other plans that the board administers any of the securities and investments held by the system or plans.
  - 2. Subject to any restrictions imposed by the board, are responsible for making all investment decisions relating to the investments the board has assigned investment management to manage.
- E. Investment management shall not directly or indirectly:
  - 1. Except for the fees agreed to be paid by the board to investment management or as otherwise agreed by the board, have any interest in the investments being managed by investment management for the board.
  - 2. Borrow monies, funds or deposits of the system or other plans that the board administers or use these monies in any manner except as directed under this article.
  - 3. Be an endorser, surety or obligor on investments made under this article.
- F. Subject to the limitations in this article, the board may authorize the administrator, any assistant administrators and other in-house investment professionals employed by the board to make investments for the system and other plans that the board administers that do not exceed fifty per cent of the assets of the system and other plans measured at cost.
- G. To exercise the responsibilities prescribed in this section, the board may enter into contracts that may be interpreted and enforced under the laws of a jurisdiction other than this state and that are not subject to Section 35-214 or 38-511 or Title 41, Chapter 23.

**Article 8. Supplemental Defined Contribution Plans**

**38-951. Definitions**

In this article, unless the context otherwise requires:

- 1. "Board" means the Arizona State Retirement System board established by section 38-713.
- 2. "Eligible group" means any of the following:
  - (a) The Arizona State Retirement System established by article 2 of this chapter.
  - (b) The Elected Officials' Retirement Plan established by article 3 of this chapter.

- (c) The Public Safety Personnel Retirement System established by article 4 of this chapter.
  - (d) The Corrections Officer Retirement Plan established by article 6 of this chapter.
  - (e) An optional retirement program established pursuant to section 15-1451 or 15-1628.
- 3. "Employer" means an agency or department of this state or an agency or department of a political subdivision of this state that has employees in an eligible group.
  - 4. "Board of Trustees" means the board established by section 38-848.
  - 5. "Plan" means a supplemental defined contribution plan authorized by this article.

Added by Laws 2001, Ch. 280 § 9 and Ch. 390, § 15.

**38-952. Supplemental defined contribution plans establishment administration**

- A. The board, employer or board of trustees of an eligible group may establish, administer, manage and operate a supplemental defined contribution plan. The board may establish a single supplemental defined contribution plan for all contributing members of the retirement system and plans it administers.
- B. If a board, employer or board of trustees establishes a supplemental defined contribution plan:
  - 1. The board may delegate authority to implement the plan to its director appointed pursuant to section 38-715.
  - 2. The employer may delegate authority to implement the plan to its internal benefits administrator or designee.
  - 3. The board may delegate authority to implement the plan to the administrator employed pursuant to section 38-848, subsection K, paragraph 6.
  - 4. The board or board of trustees may:
    - (a) Employ services it deems necessary, including legal services, for the operation and administration of the plan.
    - (b) Administer the plan through contracts with multiple vendors.
    - (c) Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plan.
    - (d) For the purposes of this Article, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.
- C. A supplemental defined contribution plan shall be designed to be a qualified governmental plan under section 401(a) of the internal revenue code. The legislature intends that a supplemental defined contribution plan is a qualified plan under section 401 of the internal revenue code, as amended, or successor provisions of law, and that a plan is exempt from taxation under section 501 of the internal revenue code. The board, employer or board of trustees may adopt any additional provisions to a plan that are necessary to fulfill this intent.
- D. Although designated as employee contributions, all employee contributions made to a plan shall be picked up and paid by the employer in lieu of contributions by the employee. The contributions picked up by an employer may be made through a reduction in the employee's compensation or an offset against future compensation increases, or a combination of both. An employee participating in a plan does not have the option of choosing to receive the contributed amounts directly instead of the employer paying the amounts to the plan. It is intended that all employee contributions that are picked up by the employer as provided in this subsection shall be treated as employer contributions under section 414(h) of the internal revenue code, shall be excluded from employees' gross income for federal and state income tax purposes and are includable in the gross income of the employees or their beneficiaries only in the taxable year in which they are distributed. The specified effective date of the pickup pursuant to this subsection shall not be before the date the plan receives notification from the internal revenue service that all employee contributions that are picked up by the employer as provided in this subsection shall be treated as employer contributions pursuant to section 414(h) of the internal revenue code. Until notification is received, any employee contributions made under section 38-953 are made with after-tax contributions.

Added by Laws 2001, Ch. 280, § 9 and Ch. 380, § 15. Amended by Laws 2003, Ch. 250, § 1

**38-953. Supplemental option**

- A. A supplemental defined contribution plan is in addition to and does not replace an employee's existing state defined benefit retirement plan.
- B. Except as provided in subsection C, any contributing member of an eligible group that establishes a supplemental defined contribution plan as authorized by this article may participate in the supplemental defined contribution plan. Participation in any plan established by an eligible group authorizes the member's employer to make reductions or deductions in the member's compensation. The employer shall submit any reports required by the plan. Any compensation deferred under the plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits earned by any employee participating in the plan.
- C. If the Arizona State Retirement System establishes a supplemental defined contribution plan and an employer member of the Arizona State Retirement System elects to participate in the supplemental defined contribution plan, any employee member of the employer who meets the eligibility requirements that are prescribed by the board for participation in the supplemental defined contribution plan and that are selected by the member's employer may participate in the supplemental defined contribution plan.
- D. An employee shall make an election to participate in a supplemental defined contribution plan within two years after the employee first meets the eligibility requirements to participate in the plan. An election to participate in a plan is irrevocable and continues for the remainder of the employee's employment with the employer.
- E. If an employee elects to participate in a plan pursuant to this section, the employee shall contribute a prescribed amount of the employee's gross compensation which shall be a percentage of the employee's gross compensation, a fixed dollar amount, an amount prescribed in the plan or some other definitive amount that may not be modified or revoked by the employee. As the plan prescribes, an employer may annually increase or decrease the employee contributions in increments of one per cent up to the maximum allowed by law or the employee may make a one-time irrevocable election of the employee's contribution amount. An employee is not required to contribute under this subsection in order to qualify for an employer match under subsection F or G. The employer match may accrue from any program established by the employer.
- F. An employer may elect to match the contributions made by the employee to the supplemental defined contribution plan at a rate determined by the employer. The employer shall pay this amount to the supplemental defined contribution plan in which the employee participates.
- G. An employer may elect to match the contributions made by the employee to any other program established by the employer under the internal revenue code, including any plan established under internal revenue code section 401(a), 403(b) or 457, at a rate determined by the employer. The employee shall determine whether the employer pays the matching contribution to the 401(a), 403(b), or 457 plan in which the employee participates, to the supplemental defined contribution plan in which the employee participates or to any other plan established by the employer.
- H. The rate of the employer match under subsection F or G shall be determined at the beginning of that employer's budget cycle and shall terminate at the end of that budget cycle. If an employer elects to match under subsection F or G, the employer shall make the contributions.

Added by Laws 2001, Ch. 280, § 9 Ch. 380, § 15. Amended by Laws 2003, Ch. 250, § 2; Laws 2007, Ch. 98, § 1.

**38-954. Vesting**

- A. Employee contributions and earnings on employee contributions are immediately vested.
- B. Employer matching contributions, if any, and the earnings on employer matching contributions are vested and the employee is entitled to receive employer matching contributions and earnings on those contributions as follows:
  - 1. If the employee has less than one year of credited service in an eligible group, zero per cent.

2. If the employee has at least one year but less than two years of credited service in an eligible group, twenty per cent.
  3. If the employee has at least two years but less than three years of credited service in an eligible group, forty per cent.
  4. If the employee has at least three years but less than four years of credited service in an eligible group, sixty per cent.
  5. If the employee has at least four years but less than five years of credited service in an eligible group, eighty per cent.
  6. If the employee has at least five years of credited service in an eligible group, one hundred per cent.
- C. All nonvested employer contributions and earnings on those contributions may be used, to pay for the administrative costs of the plan.

Added by Laws 2001, Ch. 280, § 9 and Ch. 380, § 15.

Sec. 10. Termination of the tax deferred annuity and deferred compensation pilot program

This act terminates the pilot program option for legislative employees and state elected officials to elect to participate in a tax deferred annuity and deferred compensation program pursuant to title 38, chapter 5, article 5, Arizona Revised Statutes, in lieu of participation in the Arizona State Retirement System pursuant to title 38, chapter 5, article 2. Arizona Revised Statutes. All legislative employees and state elected officials who elected on or before the effective date of this act to participate in a deferred tax annuity and deferred compensation program in lieu of participation in the Arizona State Retirement System shall continue to participate in that option pursuant to the irrevocable election made by the employee or state elected official and the employer shall continue to pay an amount equal to five per cent of the employee's or state elected official's base salary directly to the program in lieu of employer contributions to a public retirement system.

Laws 2001, Ch. 280, § 11 and Ch. 380, § 17 provides:

Sec. 11. Termination of the defined contribution retirement plan option pilot program

This act terminates the pilot program option for certain exempt state officers or employees and state elected officials who are subject to term limits to elect to participate in a defined contribution retirement plan option in lieu of participation in their respective state defined benefit retirement plans. All exempt state officers or employees and state elected officials who are subject to term limits and who elected on or before the effective date of this act to participate in the defined contribution retirement plan option established by laws 1999, chapter 329, section 6 shall continue to participate in that option pursuant to the irrevocable election made by the exempt state officer or employee or state elected official who is subject to term limits and the employer shall continue to contribute to each participating state elected official's or exempt state officer's or employee's account an amount equal to two and sixty-six hundredths per cent of the state elected official's or exempt state officer's or employee's gross salary.

Sec. 55. Legislative findings

- A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement systems, the public retirement systems must be funded with contributions and investment earnings based on actuarial methods and assumptions that meet generally accepted actuarial standards. Article XXIX, Constitution of Arizona. The legislature finds that the current structures of the Elected Officials' Retirement Plan, the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan do not achieve this goal. Since rights to benefits have not vested because application and eligibility for benefits have not occurred, the legislature intends to modify and amend these various retirement programs in order to protect the best interests of the members and beneficiaries.
- B. The legislature further finds:
1. Members of the:
    - (a) Elected Officials' Retirement Plan who entered the plan on or after July 18, 2000 agreed to the benefit and vesting terms prescribed in section 38-810.02,

subsection B, Arizona Revised Statutes, as a material condition of their contract with this state.

- (b) Public Safety Personnel Retirement System who entered the system on or after July 27, 1983 agreed to the benefit and vesting terms prescribed in section 38-844.01, Arizona Revised Statutes, as a material condition of their contract with this state.
  - (c) Corrections Officer Retirement Plan who entered the plan on or after July 1, 1986 agreed to the legislative reservation terms prescribed in section 38-903, Arizona Revised Statutes, and members who entered the plan on or after July 18, 2000 agreed to the benefit and vesting terms prescribed in section 38-900.01, subsection B, Arizona Revised Statutes, as a material condition of their contract with this state.
2. That the current structures of the Elected Officials' Retirement Plan, the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan do not lead to the goal of attaining one hundred per cent funded status and jeopardizes the future payment of benefits to current and future retirees of these three retirement programs.
  3. That the current structure of the Public Safety Personnel Retirement System and the Elected Officials' Retirement Plan that requires a fixed employee contribution rate requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to an increased shared cost structure, public safety and corrections employees will bear increased responsibility for the fiscal health of the funds and, as the funds improve their funded status and approach fully funded or overfunded status, the employees will realize decreased contribution costs that would be lower than currently required.
  4. That the current method of funding benefit increases to retirees of the Elected Officials Retirement Plan, the Public Safety Personnel Retirement System and the Corrections Officers Retirement Plan is flawed and makes it highly unlikely that these funds will achieve their actuarially assumed earning rates during positive and negative investment environments and invariably leads to greater investment risk on the part of the funds' trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement programs is less than sixty per cent. Changing the manner of funding these benefit increases is intended to improve the funded status of the Elected Officials' Retirement Plan, the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan and is in the best interests of the members and beneficiaries of these retirement programs in that it will preserve future benefits for plan participants.
  5. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement programs in future years.
  6. To protect the future benefits of retired, active and future employees it is necessary to make the changes outlined in this act to preserve the funded status of these three retirement programs and return the programs to fiscal solvency.

Sec. 56. Defined contribution and retirement study committee; delayed repeal

- A. The defined contribution and retirement study committee is established consisting of:
  1. The five members of the state board of investment established by section 35-311, Arizona Revised Statutes. The chairperson of the state board of investment is the chairperson of the study committee.
  2. Three members of the senate who are appointed by the president of the senate, not more than two of whom are members of the same political party.
  3. Three members of the house of representatives who are appointed by the speaker of the house of representatives, not more than two of whom are members of the same political party.

4. One member of the board of trustees of the Public Safety Personnel Retirement System who is appointed by the board of trustees of the Public Safety Personnel Retirement System.
  5. One member of the Arizona State Retirement System board who is appointed by the Arizona State Retirement System board.
- B. The committee shall study:
1. The feasibility and cost of transferring existing members of a public retirement system or plan to a new defined contribution plan as well as providing for a defined contribution plan for newly hired public employees. The committee shall examine public and private defined contribution plans in other states, including their plan designs, and the federal tax issues that affect a defined contribution retirement plan.
  2. All the existing supplemental retirement plans in the Public Safety Personnel Retirement System and the Arizona State Retirement System, the advantages and disadvantages of these supplemental retirement plans and the feasibility of merging these supplemental retirement plans to achieve maximum effectiveness and minimization of costs to members and employers.
  3. The definitions of compensation, average yearly salary and salary as used by the Arizona State Retirement System, the Elected Officials' Retirement Plan, the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan to ascertain the actuarial effect of these definitions on the respective retirement systems and plans, particularly the ability and actuality of "spiking" compensation.
  4. In regards to the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan, the advantages and disadvantages of the local board system, the advantages and disadvantages of the agent multiple-employer public retirement system model and the feasibility of establishing a single employer public retirement system model.
  5. In regards to the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan, the procedures, determinations and granting of accidental and ordinary disability retirements to members, the effect of the local boards in providing adequate cost controls for these disability retirements, the establishment of another medical disability tier that provides for those members who cannot perform a reasonable range of duties within the member's job classification or department but who are not totally disabled and the elimination of the local boards in making such determinations and replacing the determinations of granting medical disabilities with a single determination board in the administrative offices of the Public Safety Personnel Retirement System.
- C. The committee may use the services of consultants, actuaries and attorneys in performing the committee's duties. Contracts for services approved by the committee are exempt from Title 41, Chapter 23, Arizona Revised Statutes.
- D. The committee shall meet at least twice on or before December 31, 2011 and shall provide an interim report to the speaker of the house of representatives, the president of the senate and the governor on or before December 31, 2011. On or before December 31, 2012, the committee shall submit a written report of its findings and recommendations to the speaker of the house of representatives, the president of the senate and the governor. The committee shall provide copies of these reports to the secretary of state.
- E. This section is repealed from and after September 30, 2013.

Added by Laws 2011, Ch. 357

**41-3016.18. Elected officials' retirement plan; public safety personnel retirement system; corrections officer retirement plan; termination July 1, 2016**

- A. The Public Safety Personnel Retirement System Board of Trustees terminates on July 1, 2016.
- B. Title 38, chapter 5, article 3 is repealed on January 1, 2017.
- C. Title 38, chapter 5, article 4 is repealed on January 1, 2017.
- D. Title 38, chapter 5, article 6 is repealed on January 1, 2017.

Added by Laws 1996, Ch. 18, § 2; Amended by Laws 2006, Ch. 125, § 1, 2, and 3; effective retroactively to July 1, 2006. Amended by Laws 2010, Ch. 200, § 79, eff. April 28, 2010.

**Constitution of Arizona, Article XXIX PUBLIC RETIREMENT SYSTEMS**

**Section 1.**

- A. Public retirement systems shall be funded with contributions and investment earnings using actuarial methods and assumptions that are consistent with generally accepted actuarial methods.
- B. The assets of public retirement systems, including investment earnings and contributions, are separate and independent trust funds and shall be invested, administered and distributed as determined by law solely in the interests of the members and beneficiaries of the public retirement systems.
- C. Membership in a public retirement system is a contractual relationship that is subject to article II, section 25, and public retirement system benefits shall not be diminished or impaired.