

TITLE 38, CHAPTER 5, ARTICLE 3

AND

RELATED STATUTES

ARIZONA REVISED STATUTES

AS AMENDED 2011

ELECTED OFFICIALS' RETIREMENT PLAN

STATE OF ARIZONA

**STATE OF ARIZONA
ELECTED OFFICIALS' RETIREMENT PLAN**

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**TITLE 38, CHAPTER 5, ARTICLE 3
ARIZONA REVISED STATUTES AS AMENDED 2010**

38-801. Definitions

In this article, unless the context otherwise requires:

1. "Accumulated contributions" means the sum of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A plus the amount transferred to the fund on behalf of the member plus the amount deposited in the fund pursuant to section 38-816.
2. "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.
3. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.
4. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
5. "Average yearly salary" means the result obtained by dividing the total salary paid to employee during a considered period by the number of years, including fractional years, in which the salary was received. The considered period shall be:
 - (a) For an elected official who becomes a member of the plan before January 1, 2012, the three consecutive years within the last ten completed years of credited service as an elected official that yield the highest average. If a member does not have three consecutive years of credited service as an elected official, the considered period is the member's last consecutive period of employment with a plan employer immediately before retirement.
 - (b) For an elected official who becomes a member of the plan on or after January 1, 2012, the five consecutive years within the last ten completed years of credited service as an elected official that yield the highest average. If a member does not have five consecutive years of credited service as an elected official, the considered period is the member's last consecutive period of employment with a plan employer immediately before retirement.
6. "Board" means the board of trustees of the system.
7. "Credited service" means the number of whole and fractional years of a member's service as an elected official after the elected official's effective date of participation for which member and employer contributions are on deposit with the fund, plus credited service transferred to the plan from another retirement system or plan for public employees of this state, plus service as an elected official before the elected official's effective date of participation that is being funded pursuant to a joinder agreement pursuant to section 38-810, subsection C and section 38-815 or service that was redeemed pursuant to section 38-816. Credited service does not include periods of service for which an active member is uncompensated by the employer and for which no contributions to the plan are made.
8. "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.
9. "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.
10. "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.

11. "Direct rollover" means a payment by the plan to an eligible retirement plan that is specified by the distributee.
12. "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.
13. "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.
14. "Effective date of participation" means August 7, 1985, except with respect to employers and their elected officials whose contributions to the plan commence after that date, in which case the effective date of their participation in the plan is specified in the applicable joinder agreement.
15. "Elected official" means:
 - (a) Every elected official of this state.
 - (b) Every elected official of each county of this state.
 - (c) Every justice of the supreme court.
 - (d) Every judge of the court of appeals.
 - (e) Every judge of the superior court.
 - (f) Every full-time superior court commissioner who is a member of the plan before July 1 of the first fiscal year after the social security administration approves the inclusion of superior court commissioners on this state's section 218 agreement, except full-time superior court commissioners who failed to make a timely election of membership under the judges' retirement plan, repealed on August 7, 1985.
 - (g) The administrator of the board if the administrator is a natural person but only if the administrator is employed by the board before January 1, 2012.
 - (h) Each elected official of an incorporated city or town whose employer has executed a proper joinder agreement for coverage of its elected officials.
16. "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.
17. "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.
18. "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.
- 19. "Employer" means a department, agency or political subdivision of this state that makes employer contributions to the plan pursuant to section 38-810 on behalf of an elected official who participates in the plan.
 - 20. "Fund" means the Elected Officials' Retirement Plan fund.
 - 21. "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.
 - 22. "Participant" means a member who is subject to a domestic relations order.
 - 23. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.
 - 24. "Pension" means a series of monthly payments to a person who is entitled to receive benefits under the plan.
 - 25. "Personal representative" means the personal representative of a deceased alternate payee.
 - 26. "Plan" means the Elected Officials' Retirement Plan.
 - 27. "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.
 - 28. "Retired member" means a person who is being paid a pension based on the person's credited service as a member of the plan.
 - 29. "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.
 - 30. "System" means the Public Safety Personnel Retirement System.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1987, Ch. 146, § 1; Laws 1994, Ch. 207, § 2; Laws 2000, Ch. 126, § 1; Law 2007, Ch. 87, § 1; Laws 2009, Ch. 35, § 1, effective September 30, 2009. Amended by Laws 2010, Ch. 30. Amended by Laws 2011, Ch. 357.

38-802. Elected officials' retirement plan and fund; administration

- A. The Elected Officials' Retirement Plan is established.
- B. The Elected Officials' Retirement Plan fund is established. The fund shall be made up of the assets of the judges' retirement plan and the Elected Officials' Retirement Plan terminated on August 7, 1985 plus the assets generated by this plan and the assets of the administrator of the board in the state employees retirement plan on the date of transfer plus any assets transferred to the fund in accordance with a joinder agreement. The fund shall be used exclusively for payment of benefits to retired members or their beneficiaries as provided in this article and for payment of the administration, operation and investment expenses of the plan. In no case shall any portion of the fund revert or otherwise be paid to an employer.
- C. The board shall administer, manage and operate the plan and fund.
- D. The Elected Officials' Retirement Plan is a jural entity that may sue and be sued.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1987, Ch. 146, § 2. Amended by Laws 2010, Ch. 30

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.

38-803.01. 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 limitations 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 governmental 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 governmental excess benefit arrangement.

- G. For the purposes of this section:
1. "Internal revenue code" has the same meaning prescribed 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, § 1. Amended by Laws 1998, Ch. 1, § 111, effective January 1, 1999.

38-804. Membership; termination; reinstatement of credited service

- A. All elected officials are members of the plan, except that a state elected official who is subject to term limits may elect not to participate in the plan. The state elected official who is subject to term limits shall make the election in writing and file the election with the board within thirty days after the state elected official assumes office. The election is effective on the first day of the state elected official's eligibility for that term of office. The election not to participate is specific for that term of office. If a state elected official who is subject to term limits fails to make an election as provided in this subsection, the state elected official is deemed to have elected to participate in the plan. The election not to participate in the plan is irrevocable and constitutes a waiver of all benefits provided by the plan for the state elected official's entire term, except for any benefits accrued by the state elected official in the plan for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law. The state elected official who elects not to participate in the plan shall participate in the Arizona State Retirement System unless the state elected official makes an irrevocable election not to participate in the Arizona State Retirement System as provided in section 38-727.
- B. If a member who becomes a member of the plan before January 1, 2012 ceases to hold office 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 38-810, subsection A.
 - (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 38-810, subsection A.
 - (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 38-810, subsection A.
 - (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 38-810, subsection A.
 - (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 38-810, subsection A.
 - (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 38-810, subsection A.
- C. If a member has more than ten years of credited service with the plan, leaves the monies prescribed in subsection B 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 B 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.

- D. If an elected official who becomes a member of the plan on or after January 1, 2012 ceases to hold office for any reason other than death or retirement, within twenty days after filing a completed application with the board, the member may withdraw the member's accumulated contributions from the plan and shall be paid the member's accumulated contributions plus interest at a rate determined by the board as of the date of termination, less any benefit payments the member has received and any amount the member may owe the plan.
- E. If the amount prescribed in subsection B, C or D of this section 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. A member who receives the amount prescribed in subsection B, C or D of this section from the plan or who elects a transfer pursuant to this subsection forfeits the member's credited service, and all rights to benefits under the plan and membership in the plan terminate.
- F. 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.
- G. If an elected official who has terminated the member's membership in the plan pursuant to subsection B of this section is subsequently elected or otherwise becomes eligible for membership in the plan pursuant to subsection A of this section, credited service only accrues from the date of the member's most recent eligibility as an elected official.
- H. Notwithstanding subsection G of this section, if an elected official files a written election form with the board within ninety days after the day of the member's reemployment as an elected official and repays the amount previously withdrawn pursuant to subsection B or C of this section within one year after the date of the member's reemployment as an elected official, with interest on that amount at the rate of nine per cent for each year, compounded each year from the date of withdrawal to the date of repayment, credited service shall be restored. Credited service shall not be restored until complete repayment is made to the fund.
- I. If a retired member subsequently becomes an elected official, contributions shall not be made by the retired member and credited service shall not accrue while the retired member is holding office.
- J. In addition to subsection I of this section, if a retired member subsequently becomes, by reason of election or reelection, an elected official of the same office from which the member retired within a time period following the member's retirement that is less than one full term for that office, the member shall not receive a pension. If the elected official ceases to hold the same office, the elected official is entitled to receive the same pension the elected official was receiving when the elected official's pension was discontinued pursuant to this subsection. Nothing in this subsection prohibits a retired judge called by the supreme court to active duties of a judge pursuant to section 38-813 from receiving retirement benefits.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1990, Ch. 236, § 1, effective May 16, 1990; Laws 1994, Ch. 356, § 21; Laws 1995, Ch. 135, § 1; Laws 1997, Ch. 127, § 2; Laws 1999, Ch. 327, § 19; Laws 1999 Ch. 329, § 2; Laws 2001, Ch. 62, § 1, retroactively effective to September 1, 1999; Laws 2001, Ch. 280, § 4 and Ch. 380, § 9; Laws 2002, Ch. 335, § 1. Amended by Laws 2010, Ch. 30. Amended by Laws 2011, Ch. 357.

38-804.01. Reinstatement of credited service; effect of prior law

An elected official who received a refund as provided in section 38-804, who is subsequently reemployed as an elected official and who redeposits the amount withdrawn with interest as provided in section 38-804 or an elected official who redeems prior service pursuant to statute is subject to the benefits and duties in effect at the time of the elected official's most recent reemployment. This section does not apply if a court of competent jurisdiction orders reinstatement of benefits and duties under a prior law.

Added by Laws 2011, Ch. 357.

38-805. Normal retirement and early retirement pensions

- A. A member who becomes a member of the plan before January 1, 2012 and who ceases to hold office is eligible for a normal retirement pension, if the member satisfies one of the following requirements:
 - 1. Has attained age sixty-five with five or more years of credited service.
 - 2. Has attained age sixty-two with ten or more years of credited service.
 - 3. Has twenty or more years of credited service.
- B. A member who becomes a member of the plan on or after January 1, 2012 and who ceases to hold office is eligible for a normal retirement pension, if the member satisfies one of the following requirements:
 - 1. Has attained age sixty-five with five or more years of credited service.
 - 2. Has attained age sixty-two with ten or more years of credited service.
- C. A member who becomes a member of the plan before January 1, 2012, who has at least five years of credited service and who ceases to hold office as an elected official may take early retirement.
- D. On normal or early retirement a retired member shall receive a pension computed pursuant to section 38-808, subsection B or C until the member's death.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1999, Ch. 329, § 3; Amended by Laws 2011, Ch. 357.

38-806. Disability retirement pensions

- A. A member who becomes permanently mentally or physically incapacitated for the purpose of performing the duties of the member's office may receive disability retirement benefits if the board of trustees finds that all of the following apply:
 - 1. The member submits either personally or by a guardian an affidavit as to the nature of the member's incapacity.
 - 2. The member is medically examined by a board of three physicians, one designated by the administrator of the fund, one designated by the member or the member's guardian and one designated by the governor.
 - 3. A majority of the board of physicians certifies to the board of trustees that:
 - (a) The member is mentally or physically incapacitated for the purpose of performing the duties of the member's office.
 - (b) The member's incapacity occurred during the member's term of office and is expected to be of an indefinite duration.
 - (c) The member should be retired.
- B. on retirement by reason of disability under this section, a retired member shall receive a pension computed pursuant to section 38-808, subsection B, paragraph 2 or subsection C, paragraph 2 until the member's death or until the member's pension is suspended, revoked or discontinued pursuant to this section.
- C. If the board of trustees has reason to believe that a member, retired pursuant to this section but not yet eligible for normal retirement, may no longer be mentally or physically incapacitated from performing the duties of the public office from which the member retired, the board of trustees may require such retired member to be medically examined. The examination shall be conducted by a board of three physicians, one designated by the administrator of the fund, one designated by the retired member or the member's guardian and one designated by the governor.
- D. The board of trustees shall discontinue pension payments to a member retired pursuant to this section, if the board of physicians certifies that the member is mentally and physically capable of performing the duties of the public office from which the member retired.
- E. If the retired member refuses to submit to the medical examination, the administrator of the fund may suspend payment of the member's pension until the member submits to the medical examination. If the retired member refuses for one year or more to submit to medical examination, the board of trustees shall revoke the pension of a member retired under this section.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1991, Ch. 270, § 7; AMENDED BY LAWS 2011, Ch. 357.

38-807. Survivor pensions

- A. The surviving spouse of a deceased retired member shall be paid 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. For a member who becomes a member of the plan before January 1, 2012, the amount of pension paid a surviving spouse is equal to three-fourths of the amount of the deceased retired member's pension at the time of death. For a member who becomes a member of the plan on or after January 1, 2012, the amount of pension paid a surviving spouse is equal to one-half of the amount of the deceased retired member's pension at the time of death, except that at the time of retirement a member may elect an optional form of retirement benefit, as determined by the board, that provides for an actuarially reduced pension and an increased surviving spouse's benefit. 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 active or inactive member shall be paid 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. For the purposes of this subsection, for a member who becomes a member of the plan before January 1, 2012, the surviving spouse's pension shall be three-fourths of the amount calculated in the same manner as a disability pension is calculated pursuant to section 38-806. For a member who becomes a member of the plan on or after January 1, 2012, the surviving spouse's pension shall be one-half of the amount calculated in the same manner as a disability pension is calculated pursuant to section 38-806. The surviving spouse shall file a written application with the plan in order to receive the survivor benefit.
- C. If the deceased retired or active or inactive member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each eligible child is entitled to receive 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 surviving minor or disabled child's pension shall be paid to the person who is the legally appointed guardian or custodian of the eligible child.
- D. If a member dies and no pension is payable on account of the member's death, the deceased member's accumulated contributions shall be paid to the person or persons 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 accumulated contributions shall be paid to the estate of the deceased member.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1990, Ch. 236, § 2, effective May 16, 1990; Laws 1994, Ch. 356, § 22; Laws 1997, Ch. 239, § 2; Laws 1999, Ch. 50, § 1. Amended by Laws 2010, Ch. 30; Amended by Laws 2011, Ch. 357.

38-808. Pension payments; computation of amounts; termination

- A. Plan retirement commences on the first day of the month following the date of the member's retirement or death. Pension payments shall be received on or about the first day of the month next following the member's plan retirement. The last pension payment shall be made as of the last day of the month in which the death of the retired member or the surviving spouse or minor children occurs. Pension payments shall not be made in advance.
- B. For a member who becomes a member of the plan before January 1, 2012, the monthly pension shall be equal to one-twelfth of the following amount:
 - 1. Four per cent of the member's average yearly salary multiplied by the member's credited service, not to exceed eighty per cent of the member's average yearly salary. This

amount shall be reduced if the member takes early retirement pursuant to section 38-805, subsection C. The amount of reduction is three-twelfths of one per cent for each month the retired member's early retirement age precedes the member's normal retirement age pursuant to section 38-805, subsection A, except that the reduction shall not be more than thirty per cent.

2. A member who meets the requirements for a disability retirement pension shall receive a disability pension equal to four per cent of the member's average yearly salary multiplied by twenty years of credited service if the member has ten or more years of credited service, four per cent of the member's average yearly salary multiplied by ten years of credited service if the member has five or more years of credited service but fewer than ten years of credited service or four per cent of the member's average yearly salary multiplied by five years of credited service if the member has fewer than five years of credited service.
- C. The monthly pension of a member who becomes a member of the plan on or after January 1, 2012 shall be equal to one-twelfth of the following amount:
1. Three per cent of the member's average yearly salary multiplied by the member's credited service, not to exceed seventy-five per cent of the member's average yearly salary.
 2. A member who meets the requirements for a disability retirement pension shall receive a disability pension equal to three per cent of the member's average yearly salary multiplied by twenty-five years of credited service if the member has ten or more years of credited service, three per cent of the member's average yearly salary multiplied by twelve and one-half years of credited service if the member has five or more years of credited service but fewer than ten years of credited service or three per cent of the member's average yearly salary multiplied by 6.25 years of credited service if the member has fewer than five years of credited service.
- 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 this 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.
- E. If all pension payments terminate before an amount equal to the member's accumulated contributions has been paid, the difference between the member's accumulated contributions and the aggregate amount of pension payments shall be paid to the person or persons and in such shares as designated by the retired member in writing and filed with the board. If the designated person or persons do not survive the retired member, the difference shall be paid to the estate of the retired member.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1987, Ch. 146, § 3; Laws 1988, Ch. 253, § 1, effective June 29, 1988; Laws 1990, Ch. 236, § 3, effective May 16, 1990; Laws 1991, Ch. 270, § 8; Laws 1994, Ch. 207, § 3; Laws 1999, Ch. 329, § 4; Laws 2009, Ch. 35, § 2, effective September 30, 2009. Amended by Laws 2011, Ch. 357.

38-809. Correction of pension payment errors; assignments prohibited; civil liability; restitution or payment of fine; violation; classification; offset of benefits

- A. If the plan has made pension payments based on incorrect information and a person or an estate has been paid more or less than the person or estate should have been paid the board shall adjust future payments so that the proper amount is paid. The adjustment may be made in such a manner that the equivalent actuarial present value of the benefit to which the person or estate is correctly entitled is paid.
- B. Notwithstanding any other statute, benefits, member contributions or court fees including interest earnings and all other credits payable under the plan are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by the person entitled to the benefit, contribution, earning or credit under the terms of the plan, and any

- attempt to dispose of any right under the terms of the plan as proscribed in this subsection is void. The fund is not liable for or subject to the debts, contracts, liabilities, enlargements or torts of any person entitled to a benefit, contribution, earning or credit under the terms of the plan.
- C. Nothing in this section exempts 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 a 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. 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.
 - F. 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 1 misdemeanor. 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 plan shall correct the error, and as far as practicable shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled to receive shall be paid. If a member is convicted of a crime pursuant to this subsection, the member is entitled to receive a lump sum payment of the member's accumulated contributions but forfeits any future compensation and benefits that would otherwise accrue to the member or the member's estate under this article.
 - G. 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 1985, Ch. 309, § 4. Amended by Laws 1994, Ch. 356, § 23. Amended by Laws 2010, Ch. 30.

38-810. Contributions

- A. Each member shall contribute to the fund an amount equal to the amount prescribed in subsection F of this section. Contributions of members shall be made by payroll deductions. Every member is deemed to consent to these deductions. Payment of a member's compensation, less these payroll deductions, constitutes a full and complete discharge and satisfaction of all claims and demands by the member relating to remuneration for the member's services rendered during the period covered by the payment, except with respect to the benefits provided under the plan.
- B. The board's office shall be credited monthly with monies collected pursuant to section 12-119.01, subsection B, paragraph 2, section 12-120.31, subsection D, paragraph 2, section 12-284.03, subsection A, paragraph 6, section 22-281, subsection C, paragraph 3 and section 41-178. The monies credited to the fund pursuant to this subsection shall be deposited in the fund on a monthly basis, and there shall be a complete accounting of the determination of these monies deposited in the fund.
- C. As determined by actuarial valuations performed by the plan's actuary, each employer shall make level per cent compensation contributions sufficient under the actuarial valuation 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, the employer contribution rate shall not be less than ten per cent of salary. The monies deposited in the fund pursuant to subsection B of this section shall be used to reduce the contributions required of state and county employers only. Employers that entered the plan under a joinder agreement shall also contribute an amount equal to the unfunded accrued liability for that employer. The unfunded liability for each new employer shall be actuarially determined by the plan's actuary as of the effective date of participation of each employer and shall be payable on the effective date of participation. 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. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of the fund contains excess valuation assets and is more than one hundred per cent funded, the board shall account for fifty per cent 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 the fund has a valuation asset deficiency and an unfunded actuarial accrued liability, the board shall use any valuation assets in the stabilization reserve account, to the extent available, to limit the decline in the fund's funding ratio to not more than two per cent.

- D. The department of administration and the treasurer of each county and participating city and town shall transfer to the board the contributions provided for in subsections A and C of this section within ten working days after each payroll date. The state, county treasurers and clerks of the superior court shall transfer the monies credited under subsection B of this section to the board on or before the fifteenth day of each calendar month that follows the month in which the court fees were collected. Contributions and monies credited under subsection B of this section and transferred after these dates shall include a penalty equal to ten per cent a year, compounded annually, for each day that the contributions or monies credited under subsection B of this section are late. Delinquent payments due under this subsection, together with interest charges as provided in this subsection and court costs, may be recovered by action in a court of competent jurisdiction against the person or persons responsible for the payments or, at the request of the board, may be deducted from any other monies, including excise revenue taxes, payable to a political subdivision by any department or agency of this state. If requested by the board, the state, county treasurers or clerks of the superior court shall transfer the monies credited under subsection B of this section, in an amount determined by the board, directly to the qualified governmental excess benefit arrangement established pursuant to section 38-803.01.
- E. The employer shall pay the member contributions required of members on account of compensation earned after August 7, 1985. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the United States internal revenue code. The effective date of the employer payment shall not be before the date the retirement plan has received notification from the United States internal revenue service that pursuant to section 414(h) of the United States internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or pension payments. The employer shall pay the member contributions from monies established and available in the retirement deduction account, which monies would otherwise have been designated as member contributions and paid to the retirement plan. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before August 7, 1985.
- F. The amount contributed by a member pursuant to subsection A of this section is:
1. Through June 30, 2011, seven per cent of the member's gross salary.
 2. For fiscal year 2011-2012, ten per cent of the member's gross salary.
 3. For fiscal year 2012-2013, eleven and one-half per cent of the member's gross salary.
 4. For fiscal year 2013-2014 and each fiscal year thereafter, thirteen per cent of the member's gross salary or 33.3 per cent of the sum of the member's contribution rate from the preceding fiscal year and the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability for the employer as calculated

pursuant to subsection C of this section, whichever is lower, except that the member contribution rate shall not be less than seven per cent of the member's compensation and the employer contribution rate shall not be less than the rate prescribed in subsection C of this section.

- G. For fiscal year 2011-2012 and each fiscal year thereafter, the amount of the member's contribution that exceeds seven per cent of the member's compensation shall not be used to reduce the employer's contributions that are calculated pursuant to subsection C of this section.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1987, Ch. 146, § 4; Laws 1989, Ch. 297, § 2, effective June 28, 1989; Laws 1989, Ch. 310, § 6; Laws 1990, Ch. 365, § 25, effective October 1, 1990; Laws 1991, Ch. 109, § 5, effective October 1, 1991; Laws 1996, Ch. 145, § 15; Laws 1996, Ch. 201, § 7; Laws 1997, Ch. 79, § 34, effective January 1, 1998; Laws 1997, Ch. 239, § 3; Laws 1998, Ch. 138, § 2, effective September 1, 1998; Laws 2000, Ch. 126, § 2; Laws 2005, Ch. 208, § 1; effective April 25, 2005; Laws 2006, Ch. 251, § 1, effective May 2, 2006; Laws 2008, Ch. 80, §10, effective April 28, 2008; Laws 2008, Ch. 286, § 22. Amended by Laws 2011, Ch. 357.

38-810.01. Internal revenue code qualification

The legislature intends that the 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 plan. The board may adopt such additional provisions to the plan as are necessary to fulfill this intent.

Added by Laws 2000, Ch. 126, § 3, retroactively effective to from and after August 6, 1985.

38-810.02. 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 elected officials 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, § 3, retroactively effective to from and after August 6, 1985.

38-810.03. 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 for 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, § 3, effective September 30, 2009.

Sec. 20. Title 38, Chapter 5, Article 3, Arizona Revised Statutes, is amended by adding section 38-810.04 to read:

38-810.04. 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 elected official of the employer. This section applies to a retired member who has been retired for more than one full term for that office.
- 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 ten per cent in any fiscal year.
- D. All contributions made by the employer and allocated to the fund established by section 38-802 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 38-810, subsection D, 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.

38-811. Taxation of benefits; exemption of contributions and securities

The member and employer contributions and the securities in the fund are exempt from state, county and municipal taxes. Member and employer contributions that are made to and subsequently withdrawn from the fund after December 31, 1974 by a member from the accounts of the plan and are not received as benefits from the plan and benefits, annuities and pensions received by a member from the plan after December 31, 1988 are subject to state taxes pursuant to title 43.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1989, Ch. 312, § 8.

38-812. 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 yearly salary.

2. For limitation years beginning in 1995 and ending before 2002, ninety thousand dollars, as indexed for inflation.
 3. For limitation years ending 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, § 5, effective September 30, 2009.

38-813. Availability of retired judges for certain legal services; compensation

- A. Every judge retired under this plan may, if physically and mentally able, be subject to call by the supreme court or the chief justice of the supreme court to assist the supreme court, court of appeals or superior court under such directions as the supreme court may give, including the examination of the facts in cases before the court, the examination of authorities cited and the preparation of opinions for and on behalf of the court. The court may order these opinions, to the extent approved by the court, to constitute the opinion of the court. The retired judge may, subject to any rule which the supreme court adopts, perform any duties preliminary to the final disposition of cases insofar as they are not inconsistent with the constitution of this state.
- B. Notwithstanding any provision of law to the contrary, a retired judge who is temporarily called back to the active duties of a judge is entitled to receive the same compensation and expenses as other like active judges less any amount received for that period in retirement benefits.

Added by Laws 1985, Ch. 309, § 4.

38-814. Termination of plan

- A. If the plan terminates, each member's accrued benefits to the date of termination become one hundred per cent nonforfeitable to the extent funded. After provision is made for all expenses of the plan, including expenses of liquidation, the assets of the plan shall be allocated by the payment or provision for the payment of benefits in the following order of preference:
 1. To pay each elected official and nonretired former elected official an amount equal to his accumulated contributions.
 2. To continue to pay pensions to retired members or their beneficiaries.
 3. To provide for potential rights of elected officials and former elected officials on an equitable and nondiscriminatory basis according to generally accepted actuarial principles.
 4. To pay any excess to this state.
- B. The allocations in subsection A may be implemented through the existing trust, a new trust instrument for that purpose or the purchase by the board of insurance company contracts, or by a combination of these methods. An elected official has no rights or claims on the plan or this state beyond the capacity of the assets held by the board to provide benefits in accordance with subsection A.
- C. If the allocations produce a pension of less than twenty-five dollars per month for any person, the board may pay a lump sum of actuarial equivalent value in lieu of the pension.

Added by Laws 1985, Ch. 309, § 4.

38-815. Joinder agreement

- A. Elected officials of an incorporated city or town may participate in the plan if the governing body of the city or town enters into a joinder agreement with the board on behalf of its elected officials and the employer unconditionally accepts the provisions of the plan and binds its elected officials thereto. All elected officials shall be designated for membership unless written consent to the contrary is obtained from the board. A member shall be qualified for participation in order to obtain written consent to the contrary from the board.
- B. The effective date of participation shall be specifically stipulated in the joinder agreement.
- C. Any city or town that is considering participation in the plan shall request a preliminary actuarial survey to determine the estimated cost of participation, the benefits to be derived and such other information as may be deemed appropriate. The cost of such survey shall be paid by the city or town requesting it.
- D. All assets under any existing public employee defined benefit retirement program, to the extent attributable to the city's or town's elected officials, shall be transferred from the program to this fund no later than sixty days after the city's or town's effective date of participation. That portion of the transferred assets that is attributable to the elected official's contributions, including interest credits thereon, shall be properly allocated to each affected elected official of the city or town and credited to the elected official's accumulated contributions, in accordance with a schedule furnished by the city or town to the board.

Added by Laws 1987, Ch. 146, § 5. Amended by Laws 1997, Ch. 239, § 5; Laws 2001, Ch. 280 § 5 and Ch. 380, § 10.

38-816. Redemption of prior service

- A. Any present active elected official who has at least ten years of credited service with the plan may elect to redeem up to sixty months of any part of the following prior service or employment by paying into the fund the amounts required under subsection B of this section if the prior service or employment is not on account with any other retirement system or plan:
 - 1. Prior service in this state as an elected official with an employer now covered by the plan before the effective date of participation if the elected official has received a refund from a prior retirement system or plan on termination of employment before the elected official's application for redemption of prior service.
 - 2. Prior service in this state as an elected official with an employer now covered by the plan before the effective date of participation if the elected official was not covered by a retirement system or plan during the elected official's prior elected official service.
 - 3. Prior service as an elected official of this state or a city, town or county of this state if the elected official was not covered by a retirement system or plan during that service whether or not the city, town or county is an employer now covered by the plan.
 - 4. Prior employment with the United States government, a state of the United States or a political subdivision of a state of the United States.
- B. Any present active elected official who elects to redeem any part of the prior service or employment for which the elected official is deemed eligible by the board under this section shall pay into the plan the amounts previously withdrawn by the elected official as a refund of the elected official's accumulated contributions, if any, plus the additional amount, if any, that is computed by the plan's actuary and 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 that are prescribed by the plan's actuary.
- C. On approval by the governing body of an incorporated city or town that executes a joinder agreement under section 38-815, the city or town may pay into the fund all or any part of the amount sufficient to provide retirement benefits for elected officials or former elected officials for the time of service as an elected official of the city or town before the joinder agreement if no retirement benefits were in effect for elected officials during the time of service being redeemed under this section.
- 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 1987, Ch. 146 § 5. Amended by Laws 1999, Ch. 329, § 5; Laws 2005, Ch. 208, § 2, effective April 25, 2005; Laws 2009, Ch. 35, § 6, effective September 30, 2009. Amended by Laws 2011, Ch. 357.

38-817. Group health and accident coverage for retired members; payment

- 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 if the retired member had eight or more years of credited service under the plan. In order to qualify for payment pursuant to this subsection, the retired member or survivor shall elect single coverage and must have elected to participate in the coverage provided in section 38-651.01 or 38-782 or any other health and accident insurance coverage provided or administered by an employer. 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 each month for a retired member or survivor who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. The board shall pay up to:
1. 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. 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. Two hundred fifteen dollars per month 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. Each retired member or survivor of the plan with less than eight years of credited service and a dependent of such a retired member or survivor who participates in the coverage provided by section 38-651.01 or 38-782 or who participates in any other health and accident insurance coverage provided or administered by an employer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:
1. 7.0 to 7.9 years of credited service, ninety per cent.
 2. 6.0 to 6.9 years of credited service, seventy-five per cent.
 3. 5.0 to 5.9 years of credited service, sixty per cent.
 4. Those with less than five years of credited service do not qualify for the benefit.
- D. 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.
- E. 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. 236, § 4, effective May 16, 1990. Amended by Laws 1997, Ch. 127, § 3; Laws 1997, Ch. 239, § 6; Laws 2001, Ch. 376, § 2; Laws 2001, Ch. 383, § 2; Laws 2003, Ch. 247, § 2; Laws 2005, Ch. 297, § 2. Amended by Laws 2010, Ch. 30 (removed language that terminated June 30, 2009). AMENDED BY LAWS 2011, Ch. 347.

38-818. Benefit increases

- A. Effective July 1 of each year, 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 either:
 - 1. The retired member or survivor of a retired member was receiving benefits on or before July 31 of the two previous years.
 - 2. 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.
- B. The monthly amount of a permanent increase provided by subsection A is determined as follows:
 - 1. Determine the excess investment earnings on the actuarial present value of pensions in payment status.
 - 2. Determine the actuarial present value, as of June 30 of the preceding calendar year, of a one-half of one per cent per month increase in the amount of each pension eligible for an increase.
 - 3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.
 - 4. From the quotient obtained in paragraph 3 of this subsection, drop any fraction.
 - 5. Multiply the number obtained in paragraph 4 of this subsection by one-half of one per cent.
- C. The excess investment earnings of pensions in payment status are equal to the actuarial present value of pensions in payment status multiplied by the positive difference, if any, between the total return of the plan and nine per cent. The excess investment earnings on pensions in payment status 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 the actuarial present value of pensions in payment status 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 pensions in payment status are available for benefit increases as provided in this section. Any excess investment earnings on pensions in payment status 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 on pensions in payment status 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 on pensions in payment status account balance 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. 236, § 4, effective May 16, 1990. Amended by Laws 1994, Ch. 356, § 24; Laws 1996, Ch. 198, § 1, effective retroactively to July 1, 1996; Laws 1998, Ch. 264, § 1; Laws 1999, Ch. 50, § 2, retroactively effective to July 1, 1999. AMENDED BY LAWS 2011, Ch. 357.

38-818.01. 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, 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.
- 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 benefit being received on 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 38-818 for benefit increases for retired members or survivors of the plan.

Added by laws 2011, Ch. 357.

38-818.02. 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.

38-819. 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, § 1, effective. April 27, 1992. Amended by Laws 2009, Ch. 35, § 7, effective September 30, 2009.

38-820. 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 38-810 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, § 9, effective September 30, 2009. Amended by Laws 2011, Ch. 357.

38-821. Charter city retirement system service credits; transfers

- A. A member of a charter city retirement system who is an elected official may apply for a transfer of service credits from the charter city retirement system to the Elected Officials' Retirement Plan pursuant to this section if all of the following conditions are met:
1. The member initiates the transfer by making written application to the Elected Officials' Retirement Plan.
 2. The charter city retirement system and the Elected Officials' Retirement Plan agree regarding the terms of the transfer.

3. The transfer does not cause either the charter city retirement system or the Elected Officials' Retirement Plan to incur any unfunded accrued liabilities as a result of the transfer.
- B. Service credits qualified in accordance with subsection A may be transferred or redeemed in accordance with the following:
1. If a member's contributions remain on deposit with the charter city retirement system, the following shall be calculated:
 - (a) The charter city retirement system shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the charter city retirement system as calculated by the system's actuary using the actuarial method and assumptions recommended by the system's actuary and based on the transferring member's service credits at the time of transfer.
 - (b) The Elected Officials' Retirement Plan 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 the plan's actuary using the actuarial method and assumptions recommended by the plan's actuary and based on the transferring member's service credits at the time of transfer.
 2. If a member decides to transfer:
 - (a) If the amount calculated in paragraph 1, subdivision (b) of this subsection is greater than the amount calculated in paragraph 1, subdivision (a) of this subsection:
 - (i) The charter city retirement system shall transfer to the Elected Officials' Retirement Plan the greater of the amount calculated in paragraph 1, subdivision (a) of this subsection or the member's accumulated contribution account balance.
 - (ii) If the amount transferred is less than the amount calculated under paragraph 1, subdivision (b) of this subsection, 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 paragraph 1, subdivision (a) of this subsection multiplied by the ratio of the amount calculated under paragraph 1, subdivision (a) of this subsection to the amount calculated under paragraph 1, subdivision (b) of this subsection.
 - (b) If the amount calculated in paragraph 1, subdivision (b) of this subsection is less than or equal to the amount calculated in paragraph 1, subdivision (a) of this subsection, the charter city retirement system shall transfer to the Elected Officials' Retirement Plan the greater of the amount calculated in paragraph 1, subdivision (b) of this subsection or the member's accumulated contribution account balance.
 3. If an applicant has withdrawn member contributions from the charter city retirement system, the applicant shall pay into the Elected Officials' Retirement Plan 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. The actuary of the Elected Officials' Retirement Plan shall perform this calculation using the actuarial method and assumptions the actuary recommends.
- C. Service credits shall not be applied to the applicant's account until complete payment is made to the Elected Officials' Retirement Plan. On completion of the transfer provided for in this section, the member's rights in the charter city retirement system are extinguished.

Added by Laws 1999, Ch. 327, § 20.

38-822. 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, § 2. Amended by Laws 2010, Ch. 231.

**ELECTED OFFICIALS' RETIREMENT PLAN
RELATED STATUTES**

12-119.01. Supreme court fees; distribution

A. Except as otherwise provided by law, fees for the Supreme Court shall be established and classified as follows:

<u>Class</u>	<u>Description</u>	<u>Fee</u>
A	Initial case filing fee	
	Petitions for review and cross petitions for review	\$140.00
	Direct appeals and cross appeals appellant	\$140.00
B	Special actions petitioner	\$140.00
	Subsequent case filing fee	
	Intervenors direct appeals and special action	\$ 70.00
	Direct appeals appellee	\$ 70.00
	Special actions respondent	\$ 70.00
E	Response to petition for review	\$ 70.00
	Minimum clerk fee	
	Certifications alone	\$ 17.00
F	Certificates of good standing	
	Certificates	\$ 17.00
	Per page fee	
	Copies – each page	\$. 50
	Special fees	
	New and duplicate certificates	\$ 35.00

B. The clerk of the supreme court shall deposit, pursuant to Sections 35-146 and 35-147, all of the monies collected pursuant to subsection A of this Section as follows:

1. 27.78 per cent in the judicial collection enhancement fund established by Section 12-113
2. 26.00 per cent with the state treasurer for transmission to the Elected Officials' Retirement Plan fund established by Section 38-802. The monies shall be transmitted by the state treasurer to the fund pursuant to Section 38-810.
3. 46.22 per cent in the state general fund.

C. The Supreme Court may increase the Class A and B fees prescribed in subsection A of this Section.

Added as §12-118 by Laws 1990, Ch. 365, § 4, effective October 1, 1990. Renumbered as § 12-119.01. Amended by Laws 1991, Ch. 233, § 1; Laws 1997, Ch. 79, § 9, effective January 1, 1998; Laws 2000, Ch. 193, § 95. Amended by Laws 2008, Ch. 286, § 7.

12-120.31. Fees and costs; distribution

A. Fees and costs in the court of appeals shall be the same as supreme court fees and costs pursuant to section 12-119.01.

B. Fees charged by the court of appeals for electronic filing of documents and electronic access shall be the same amount as fees charged by the supreme court and are subject to the provisions of section 12-119.02

C. The court of appeals shall retain 8.36 per cent of all of the monies it collects monthly pursuant to subsection A of this section. The retained monies shall be used to improve, maintain and enhance the ability to collect and manage monies assessed or received by the court, to improve court automation and to improve case processing or the administration of justice. The clerk of the court of appeals shall submit a plan to the supreme court that the supreme court shall approve before the court spends the retained monies.

D. Excluding the monies that are retained pursuant to subsection C of this Section, the clerk of the court of appeals shall deposit, pursuant to sections 35-146 and 35-147, all monies collected pursuant to subsection A of this section as follows:

1. 19.42 per cent in the judicial collection enhancement fund established by section 12-113.
2. 26.00 per cent with the state treasurer for transmission to the Elected Officials' Retirement Plan fund established by section 38-802. The monies shall be transmitted by the state treasurer to the fund pursuant to section 38-810.

3. 46.22 per cent in the state general fund.

Added by Laws 1964, Ch. 102, § 1. Amended by Laws 1990, Ch. 365, § 5, effective October 1, 1990; Laws 1991, Ch. 233, § 2; Laws 1995, Ch. 113, § 3, effective April 17, 1995; Laws 1997, Ch. 79, § 11, effective Jan. 1, 1998; Laws 2000, Ch. 193, § 97.

12-284.03. Distribution of fees

- A. Excluding the monies that are kept by the court pursuant to subsection B of this section, the county treasurer shall transmit, distribute or deposit all monies received from the clerk of the superior court pursuant to section 12-284, subsection K as follows:
 1. 1.31 per cent to the state treasurer for deposit in the drug and gang enforcement account established by section 41-2402 for the purposes of section 41-2402, subsection H.
 2. 8.87 per cent to the state treasurer for deposit in the domestic violence shelter fund established by section 36-3002.
 3. 1.93 per cent to the state treasurer for deposit in the child abuse prevention fund established by section 8-550.01.
 4. In the county law library fund established pursuant to section 12-305, either:
 - (a) 7.62 per cent if the county treasurer is serving in a county with a population of more than five hundred thousand persons according to the most recent United States decennial census.
 - (b) 15.30 per cent if the county treasurer is serving in a county with a population of five hundred thousand persons or less according to the most recent United States decennial census.
 5. 0.35 per cent to the state treasurer for deposit in the alternative dispute resolution fund established by section 12-135.
 6. To the Elected Officials' Retirement Plan fund established by section 38-802, either of the following percentages, which shall be distributed to the fund pursuant to section 38-810.
 - (a) 23.79 per cent if the county treasurer is serving in a county with a population of more than five hundred thousand persons according to the most recent United States decennial census.
 - (b) 15.30 per cent if the county treasurer is serving in a county with a population of five hundred thousand persons or less according to the most recent United States decennial census.
 7. 17.07 per cent to the state treasurer for deposit in the judicial collection enhancement fund established by section 12-113.
 8. 0.26 per cent to the state treasurer for deposit in the confidential intermediary and fiduciary fund established by section 8-135.
 9. In the county general fund, the following percentages:
 - (a) 31.29 per cent if the county treasurer is serving in a county with a population of more than five hundred thousand persons according to the most recent united states decennial census.
 - (b) 32.10 per cent if the county treasurer is serving in a county with a population of five hundred thousand persons or less according to the most recent united states decennial census.
- B. 7.51 per cent of the monies transmitted, distributed or deposited pursuant to subsection A of this section shall be kept and used by the court collecting the fees in the same manner as the seven dollars of the time payment fee prescribed by section 12-116, subsection B.

Amended by Laws 1999, Ch. 346, § 9, effective August 6, 1999, retroactively effective July 1, 1999; Laws 2000, Ch. 312, § 2; Laws 2002, Ch. 267, § 2.

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.

38-651.01. 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.

38-651.02. Expenditure of funds for group life and group accidental death and dismemberment insurance; group life coverage for former elected officials

- A. The department of administration may expend public funds appropriated for such purpose to procure group life insurance of at least five thousand dollars in coverage and group accidental death and dismemberment insurance of at least five thousand dollars in coverage for full-time officers and employees of the state and its departments and agencies. The department of administration by rule shall adopt standards for and designate qualifying plans and eligibility of officers and employees to participate in such plans. Any group life insurance and group accidental death and dismemberment insurance plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees.
- B. The department of administration may by rule offer on a cost basis additional group life and group accidental death and dismemberment insurance to such officers and employees and the dependents of such officers and employees in amounts of not to exceed:
 1. For the officer or employee, three times the annual salary of such officer or employee.
 2. For the dependents of such officers or employees, an amount prescribed by the department of administration.
- C. The department of administration, by rule, may adopt standards to establish group life insurance coverage for former elected officials of this state and their dependents and to establish eligibility for the former elected officials to participate in the coverage. The department of administration may promulgate rules which provide that if the former elected official dies before an insured surviving spouse the surviving spouse is eligible to participate in the coverage. The standards may provide that all or any group of the former elected officials, their dependents or a surviving spouse may be grouped with officers and employees of this state or their dependents as necessary to obtain life insurance coverage at favorable rates. No public monies may be expended to pay the premium for insurance coverage pursuant to this subsection.

Amended by Laws 1986, Ch. 97, § 1, effective April 18, 1986. Amended by Laws 1987, Ch. 91, § 1, effective April 16, 1987; Laws 1996, Ch. 256, § 5.

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.

38-848. 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, § 53, effective April 28, 2010.

Laws 2010, Ch. 200, § 53 provides: 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.

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 or board of trustees governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board or board of trustees 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 or board of trustees 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.

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 Laws 2011, Ch. 277.

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.

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.