

**TITLE 38, CHAPTER 5, ARTICLE 6
AND RELATED STATUTES**

**ARIZONA REVISED STATUTES
AS AMENDED 2020**

**CORRECTIONS OFFICER RETIREMENT PLAN
STATE OF ARIZONA**

**STATE OF ARIZONA
CORRECTIONS OFFICER RETIREMENT PLAN
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**CORRECTIONS OFFICER RETIREMENT PLAN
TITLE 38, CHAPTER 5, ARTICLE 6
ARIZONA REVISED STATUTES AS AMENDED 2017**

38-881. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department and was incurred in the performance of the employee's duties .
2. "Accumulated member contributions" means for each member the sum of the amount of all the member's contributions deducted from the member's salary and paid to the fund, plus member contributions transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions that are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.
3. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the board.
4. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.
5. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
6. "Annuitant" means a person who is receiving a benefit pursuant to section 38-911.
7. "Average monthly salary" means:
 - (a) For an employee who becomes a member of the plan:
 - (i) Before January 1, 2012, one-thirty-sixth of the aggregate amount of salary that is paid a member by a participating employer during a period of thirty-six consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service.
 - (ii) On or after January 1, 2012 and before July 1, 2018, one-sixtieth of the aggregate amount of salary that is paid a member by a participating employer during a period of sixty consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service.
 - (iii) On or after July 1, 2018, one sixtieth of the aggregate amount of salary that is paid a member by a participating employer during a period of sixty consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service.
 - (b) The aggregate amount of salary that is paid a member divided by the member's months of service if the member has less than thirty-six or sixty months of service. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the salary the employee would have received in the employee's job classification if the employee was not on industrial leave.
8. "Beneficiary" means an individual who is being paid or who has entitlement to the future payment of a pension on account of a reason other than the individual's membership in the retirement plan.
9. "Board" means the board of trustees of the public safety personnel retirement system.
10. "Claimant" means a member, beneficiary or estate that files an application for benefits with the retirement plan.
11. "Credited service" means credited service transferred to the retirement plan from another retirement system or plan for public employees of this state, plus those compensated periods of service as a member of the retirement plan for which member contributions are on deposit in the fund.
12. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the plan issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.

13. "Designated position" means:
 - (a) For a county:
 - (i) A county detention officer.
 - (ii) A nonuniformed employee of a sheriff's department whose primary duties require direct contact with inmates.
 - (b) For the state department of corrections and the department of juvenile corrections, only the following specifically designated positions:
 - (i) Food service.
 - (ii) Nursing personnel.
 - (iii) Corrections physician assistant.
 - (iv) Therapist.
 - (v) Corrections dental assistant.
 - (vi) Hygienist.
 - (vii) Corrections medical assistant.
 - (viii) Correctional service officer, including assistant deputy warden, deputy warden, warden and superintendent.
 - (ix) State correctional program officer.
 - (x) Parole or community supervision officers.
 - (xi) Investigators.
 - (xii) Teachers.
 - (xiii) Institutional maintenance workers.
 - (xiv) Youth corrections officer.
 - (xv) Youth program officer.
 - (xvi) Behavioral health treatment unit managers.
 - (xvii) The director and assistant directors of the department of juvenile corrections and the superintendent of the state educational system for committed youth.
 - (xviii) The director, deputy directors and assistant directors of the state department of corrections.
 - (xix) Other positions designated by the local board of the state department of corrections or the local board of the department of juvenile corrections pursuant to section 38-891.
 - (c) For a city or town, a city or town detention officer.
 - (d) For an employer of an eligible group as defined in section 38-842, full-time dispatchers.
 - (e) For the judiciary, juvenile detention officers and those positions designated by the local board of the judiciary pursuant to section 38-891.
 - (f) For the department of public safety, state detention officers.
 - (g) For the judiciary, probation and surveillance officers.
14. "Determination" means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.
15. "Determination period" means the ninety-day period in which the plan must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the plan mails a notice of receipt to the participant and alternate payee.
16. "Direct rollover" means a payment by the plan to an eligible retirement plan that is specified by the distributee.
17. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under a plan approved domestic relations order.
18. "Domestic relations order" means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.
19. "Eligible child" means an unmarried child of a deceased active or retired member who meets one of the following qualifications:
 - (a) Is under eighteen years of age.
 - (b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.

- (c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or guardian.
- 20. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:
 - (a) An individual retirement account described in section 408(a) of the internal revenue code.
 - (b) An individual retirement annuity described in section 408(b) of the internal revenue code.
 - (c) An annuity plan described in section 403(a) of the internal revenue code.
 - (d) A qualified trust described in section 401(a) of the internal revenue code.
 - (e) An annuity contract described in section 403(b) of the internal revenue code.
 - (f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from this plan.
- 21. "Eligible rollover distribution" means a payment to a distributee, but does not include any of the following:
 - (a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's beneficiary or for a specified period of ten years or more.
 - (b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.
 - (c) The portion of any distribution that is not includable in gross income.
 - (d) Any distribution made to satisfy the requirements of section 415 of the internal revenue code.
 - (e) Hardship distributions.
 - (f) Similar items designated by the commissioner of the United States internal revenue service in revenue rulings, notices and other guidance published in the internal revenue bulletin.
- 22. "Employee" means a person employed by a participating employer in a designated position.
- 23. "Employer" means an agency or department of this state or a political subdivision of this state that has one or more employees in a designated position.
- 24. "Fund" means the corrections officer retirement plan fund.
- 25. "Juvenile detention officer" means a juvenile detention officer responsible for the direct custodial supervision of juveniles who are detained in a county juvenile detention center.
- 26. "Local board" means the retirement board of the employer that consists of persons appointed or elected to administer the plan as it applies to the employer's members in the plan.
- 27. "Member":
 - (a) Means any employee who meets all of the following qualifications:
 - (i) Who is a full-time paid person employed by a participating employer in a designated position.
 - (ii) Who is receiving salary for personal services rendered to a participating employer or would be receiving salary except for an authorized leave of absence.
 - (iii) Whose customary employment is at least forty hours each week.
 - (b) Includes an employee who meets the requirements of subdivision (a) of this paragraph, who is hired on or after July 1, 2018, who is in a designated position as defined in paragraph 13, subdivision (g) of this section and who makes the irrevocable election to participate in the plan pursuant to section 38-881.01.
 - (c) Except as provided in subdivision (b) of this paragraph, does not include an employee who is hired on or after July 1, 2018, unless the employee was an active, an inactive or a retired member of the plan or a member of the plan with a disability on June 30, 2018.
- 28. "Normal retirement date" means:
 - (a) For an employee who becomes a member of the plan before January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty years of service or, in the case of a dispatcher, twenty-five years of service, the employee's sixty-second birthday and completion of ten years of service or the month in which the sum of the employee's age and years of credited service equals eighty.

- (b) For an employee who becomes a member of the plan on or after January 1, 2012 and before July 1, 2018, the first day of the calendar month immediately following the employee's completion of twenty-five years of service if the employee is at least fifty-two and one-half years of age or the employee's sixty-second birthday and completion of ten years of service.
- (c) For an employee who becomes a member of the plan on or after July 1, 2018, the first day of the calendar month immediately following the employee's completion of ten years of credited service if the employee is at least fifty-five years of age.
29. "Notice of receipt" means a written document that is issued by the plan to a participant and alternate payee and that states that the plan has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.
30. "Ordinary disability" means a physical condition that the local board determines will totally and permanently prevent an employee from performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will totally and permanently prevent an employee from engaging in any substantial gainful activity.
31. "Participant" means a member who is subject to a domestic relations order.
32. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.
33. "Participating employer" means an employer that the board has determined to have one or more employees in a designated position or a county, city, town or department of this state that has entered into a joinder agreement pursuant to section 38-902.
34. "Pension" means a series of monthly payments by the retirement plan but does not include an annuity that is payable pursuant to section 38-911.
35. "Personal representative" means the personal representative of a deceased alternate payee.
36. "Physician" means a physician who is licensed pursuant to title 32, chapter 13 or 17.
37. "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.
38. "Plan year" or "fiscal year" means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.
39. "Probation or surveillance officer" means an officer appointed pursuant to section 8-203, 12-251 or 12-259 but does not include other personnel, office assistants or support staff.
40. "Retired member" means an individual who terminates employment and who is receiving a pension pursuant to either section 38-885 or 38-886.
41. "Retirement" or "retired" means termination of employment after a member has fulfilled all requirements for a pension or, for an employee who becomes a member of the plan on or after January 1, 2012, attains the age and service requirements for a normal retirement date.
42. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.
43. "Salary" means the base salary, shift differential pay, military differential wage pay and holiday pay paid a member for personal services rendered in a designated position to a participating employer on a regular monthly, semimonthly or biweekly payroll basis. Salary includes amounts that are subject to deferred compensation or tax shelter agreements. Salary does not include payment for any remuneration or reimbursement other than as prescribed by this paragraph. For the purposes of this paragraph, "base salary" means the amount of compensation each member is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, fringe benefit pay and similar extra payments.
44. "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.
45. "Service" means employment rendered to a participating employer as an employee in a designated position. Any absence that is authorized by an employer, including any periods during which the employee is on an employer-sponsored long-term disability program, is considered as service if the employee returns or is deemed by the employer to have returned to a designated position within the period of the authorized absence.

46. "Total and permanent disability" means a physical or mental condition that is not an accidental disability, that the local board finds totally and permanently prevents a member from engaging in any gainful employment and that is the direct and proximate result of the member's performance of the member's duty as an employee of a participating employer.

Added by Laws 1986, Ch. 325, § 1, effective August 13, 1986, retroactively effective to July 1, 1986. Amended by Laws 1989, Ch. 310, § 12, effective January 1, 1990; Laws 1990, Ch. 272, § 1, effective September 27, 1990, retroactively effective July 1, 1990; Laws 1991, Ch. 155, § 3; Laws 1991, Ch. 210, § 13; Laws 1992, Ch. 315, § 1; Laws 1993, Ch. 197, § 26; Laws 1993, Ch. 255, § 82, effective January 1, 1994; Laws 1995, Ch. 178, § 25; Laws 1995, Ch. 205, § 7; Laws 1996, Ch. 282, § 1; Laws 1997, Ch. 197, § 1; Laws 1997, Ch. 239, § 21; Laws 2001, Ch. 309, § 1; Laws 2002, Ch. 335, § 8; Laws 2006, Ch. 264, § 13; Laws 2006, Ch. 308, § 1; Laws 2007, Ch. 87, § 5; Laws 2008, Ch. 144, § 1; Laws 2008, Ch. 185, § 1; Laws 2009, Ch. 35, § 21; Laws 2009, Ch. 83, § 1; Laws 2010, Ch. 200, § 53, eff. April 28, 2010. Amended by Laws 2011, Ch. 357. Amended by Laws 2013, Ch. 78. Amended by Laws, 2015, Ch.62. Amended by Laws, 2017, Ch. 163, § 10. Amended by Laws 2019, Ch. 286, § 1.

38-881.01. Employees hired on or after July 1, 2018; defined contribution plan; benefit election; disability

- A. Except as provided in subsection B of this section, an employee who is hired on or after July 1, 2018, who is a member as defined in section 38-881, paragraph 27, subdivision (a) and who was not an active, an inactive or a retired member of the plan or a member of the plan with a disability on June 30, 2018 shall participate in the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to article 4.1 of this chapter. For an employee who is hired on or after September 1, 2019, the employee's participation in the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to article 4.1 of this chapter begins ninety days after the date the employee is hired.
- B. An employee who is hired on or after July 1, 2018, who is in a designated position as defined in section 38-881, paragraph 13, subdivision (g) and who was not an active, an inactive or a retired member of the plan or a member of the plan with a disability on June 30, 2018 is eligible to participate in the Corrections Officer Retirement Plan or the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to article 4.1 of this chapter, depending on the employee's election under this section. During the first sixty days of an employee's employment and before the employee makes a decision regarding the individual's retirement plan, the board shall provide each probation and surveillance officer who is hired on or after July 1, 2018 interactive, objective educational training, counseling and participant-specific plan information about both the Corrections Officer Retirement Plan and the Public Safety Personnel Defined Contribution Retirement Plan options. The employee's participation in either the plan or the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to article 4.1 of this chapter begins ninety days after the date the employee is hired. Unless the elections made under this section are made before the ninetieth day after the date of employment, the employee is automatically enrolled in the plan for the remainder of the employee's employment with any employer under the plan. Any election made under this section is irrevocable and is the employee's election for the remainder of the employee's employment with any employer under the plan, regardless of whether the employee's employment is continuous. The employee may make one of the following irrevocable elections:
1. To participate solely in the Corrections Officer Retirement Plan.
 2. To participate solely in the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to article 4.1 of this chapter.
- C. If an employee specified in subsection B of this section in the employee's first ninety days of employment is determined to be eligible for an accidental or total and permanent disability pension pursuant to section 38-886, the employee shall be automatically enrolled in the Corrections Officer Retirement Plan for the remainder of the employee's employment with any employer under the plan commencing on the employee's date of disability and shall receive an accidental or total and permanent disability pension as prescribed in this article.

- D. If an employee specified in subsection b of this section in the employee's first ninety days of employment is killed in the line of duty or dies from injuries suffered in the line of duty, the employee shall be considered as having been enrolled in the corrections officer retirement plan and the surviving spouse of the deceased employee is eligible for survivor benefits as prescribed in this article.

Added by Laws, 2017, Ch. 163, § 11. Amended by Laws 2018, Ch. 42, § 11. Amended by Laws 2019, Ch. 36, § 16.

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

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

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

38-883. Board of trustees; powers and duties

- A. The board shall:
1. Maintain records of the operation and administration of the plan and fund.
 2. Contract on a fee basis for an independent annual audit of the accounting records of the plan and fund and file a copy of the audit report with the auditor general.
 3. Employ on a fee basis an independent firm of actuaries to perform annual actuarial valuations for each participating employer of the plan and fund based on an actuarial cost method and actuarial assumptions recommended by the actuary and adopted by the board. The actuarial valuations shall be performed by or under the direct supervision of an actuary who is a member of the American academy of actuaries. By November 1 of each year the board shall provide a preliminary report and by December 31 of each year provide a final report to the Governor, the Speaker of the House of Representatives and the President of the Senate on the contribution rate for the ensuing fiscal year.
 4. Invest and reinvest the monies and assets of the fund in accordance with the investment provisions of the Public Safety Personnel Retirement System. The board may commingle securities and monies of the fund subject to the crediting of receipts and earnings and charging of payments to the account of the appropriate employer.
 5. Submit a detailed annual report of the operation and investment performance of the plan and fund to the Governor, the legislature, and the members of the plan. The board shall submit the annual report no later than six months after the end of the fiscal year to which it pertains.
- B. The board of trustees may:
1. Employ services it deems necessary, including legal services, for the operation and administration of the plan and fund.
 2. Utilize separate or commingled investment vehicles.
 3. Delegate authority to the administrator employed pursuant to section 38-848, subsection M, paragraph 6.
 4. Appear before local boards and the courts and political subdivisions of this state through counsel or appointed representatives to protect the fund. The board of trustees is not responsible for the actions or omissions of the local boards under this plan but may seek review or a rehearing of actions or omissions of local boards. The board of trustees does not have a duty to review actions of the local boards but may do so, in its discretion, in order to protect the fund.

5. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the protection of the plan and fund.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 2; Laws 1997, Ch. 210, § 26, effective March 1, 1998; Laws 2005, Ch. 331, § 8. Laws 2010, Ch. 200, § 56, eff. April 28, 2010. Amended by Laws 2016, Ch. 2, § 16. Amended by Laws 2018, Ch. 279, § 25. Amended by Laws 2019, Ch. 36, § 17.

38-883.01. Qualified governmental excess benefit arrangement; definitions

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

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

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

- A. Each employee of a participating employer is a member of the plan unless the employee is receiving a pension from the plan. A person employed shall undergo a medical examination performed by a designated physician or a physician working in a clinic that is appointed by the local board or, in the case of a state correctional officer who is employed by the state department of corrections, complete a physical examination pursuant to section 41-1822, subsection B. For the purposes of subsection B of this section, the designated physician or a physician working in a clinic that is appointed by the local board may be the employer's regular employee or contractor.
- B. The purpose of the medical examination authorized by this section is to identify a member's physical or mental condition or injury that existed or occurred before the member's date of membership in the plan. Any employee who fails or refuses to submit to the medical examination prescribed in this section is deemed to waive all rights to disability benefits under this article. Medical examinations conducted under this article shall be conducted by a physician and shall not be conducted or used for purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to receipt or qualification for pension benefits or service credits from the fund. This subsection does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.
- C. If a member who becomes a member of the plan before January 1, 2012 ceases to be an employee for any reason other than death or retirement, within twenty days after filing a completed application with the board, the member is entitled to receive the following amounts, less any benefit payments the member has received and any amount the member may owe to the plan:
 - 1. If the member has less than five years of credited service with the plan, the member may withdraw the member's accumulated contributions from the plan.
 - 2. If the member has five or more years of credited service with the plan, the member may withdraw the member's accumulated contributions plus an amount equal to the amount determined as follows:
 - (a) 5.0 to 5.9 years of credited service, twenty-five percent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
 - (b) 6.0 to 6.9 years of credited service, forty percent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
 - (c) 7.0 to 7.9 years of credited service, fifty-five percent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
 - (d) 8.0 to 8.9 years of credited service, seventy percent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
 - (e) 9.0 to 9.9 years of credited service, eighty-five percent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
 - (f) 10.0 or more years of credited service, one hundred percent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
- D. If a member who becomes a member of the plan before January 1, 2012 has more than ten years of credited service with the plan, leaves the monies prescribed in subsection C of this section on account with the plan for more than thirty days after termination of employment and after that time period requests a refund of those monies, the member is entitled to receive the amount prescribed in subsection C of this section plus interest at a rate determined by the board for each year computed from and after the member's termination of employment.
- E. The accumulated member contributions of a member who ceases to be an employee for a reason other than death or retirement and who becomes a member of the plan:
 - 1. On or after January 1, 2012 and before July 1, 2018 shall be paid to the member plus interest at a rate determined by the board as of the date of termination within twenty days after filing with the plan a written application for payment.
 - 2. For a member who has less than ten years of credited service with the plan, on or after July 1, 2018 shall be paid to the member plus interest at a rate determined by the board as of the date of termination within twenty days after filing with the plan a written application for payment.

- F. If the refund includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the board.
- G. For distributions occurring from and after December 31, 2007, a member or a member's beneficiary, including a nonspouse designated beneficiary to the extent allowed under subsection H of this section, may roll over an eligible rollover distribution as defined in section 402(c)(4) of the internal revenue code to a Roth individual retirement account, if, for distributions occurring before January 1, 2010, the member or the member's beneficiary satisfies the requirements for making a Roth individual retirement account contribution under section 408A(c)(3)(B) of the internal revenue code, as in effect on the date of the rollover. Any amount rolled over to a Roth individual retirement account is included in the gross income of the member or the member's beneficiary to the extent the amounts would have been included in gross income if not rolled over as required under section 408A(d)(3)(A) of the internal revenue code. For the purposes of this subsection, the administrator is not responsible for ensuring the member or the member's beneficiary is eligible to make a rollover to a Roth individual retirement account.
- H. For distributions made from and after December 31, 2009, a nonspouse designated beneficiary as defined in section 401(a)(9)(E) of the internal revenue code may elect to directly roll over an eligible rollover distribution to an individual retirement account under section 408(a) of the internal revenue code or an individual retirement annuity under section 408(b) of the internal revenue code that is established on behalf of the designated beneficiary and that will be treated as an inherited individual retirement plan pursuant to section 402(c)(11) of the internal revenue code. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution as defined in section 402(c)(4) of the internal revenue code. In applying this subsection, a nonspouse rollover is subject to the direct rollover requirements under section 401(a)(31) of the internal revenue code, the rollover notice requirements under section 402(f) of the internal revenue code and the mandatory withholding requirements under section 3405(c) of the internal revenue code.
- I. For plan years occurring before January 1, 2007, the period for providing the rollover notice as required under section 402(f) of the internal revenue code is not less than thirty days and not more than ninety days before the date of distribution and, for plan years beginning from and after December 31, 2006, the period for providing the rollover notice as required under section 402(f) of the internal revenue code is not less than thirty days and not more than one hundred eighty days before the date of distribution.
- J. Service shall be credited to a member's individual credited service account in accordance with rules the local board prescribes. In no case shall more than twelve months of credited service be credited on account of all service rendered by a member in any one year. In no case shall service be credited for any period during which the member is not employed in a designated position, except as provided by sections 38-921 and 38-922.
- K. Credited service is forfeited if the amounts prescribed in subsection C, D or E of this section are paid or are transferred in accordance with this section.
- L. If a former member becomes reemployed with the same employer within two years after the former member's termination date, a member may have forfeited credited service attributable to service rendered during a prior period of service as an employee restored on satisfaction of each of the following conditions:
1. The member files with the plan a written application for reinstatement of forfeited credited service within ninety days after again becoming an employee.
 2. The retirement fund is paid the total amount previously withdrawn pursuant to subsection C, D or E of this section plus compound interest from the date of withdrawal to the dates of repayment. Interest shall be computed at the rate of nine percent for each year compounded each year from the date of withdrawal to the date of repayment. Forfeited credited service shall not be restored until complete payment is received by the fund.

3. The required payment is completed within one year after returning to employee status.
- M. If a member who receives a severance refund on termination of employment pursuant to subsection C, D or E of this section is subsequently reemployed by an employer, the member's prior service credits are cancelled, and the board shall credit service only from the date the member's most recent reemployment period commenced. However, a present active member of the plan who received a refund of accumulated contributions from the plan pursuant to subsection C, D or E of this section, forfeited credited service pursuant to subsection K of this section and becomes reemployed with the same employer two years or more after the member's termination date or becomes reemployed with another employer may elect to redeem any part of that forfeited credited service by paying into the plan any amounts required pursuant to this subsection. A present active member who elects to redeem any part of forfeited credited service for which the member is deemed eligible by the board shall pay into the plan the amounts previously paid or transferred as a refund of the member's accumulated contributions plus an amount, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary. On satisfaction of this obligation, the board shall reinstate the member's prior service credits.
- N. A retired member may become employed by the employer from which the employee retired in a designated position and continue to receive a pension if the employment occurs at least twelve months after retirement. The retired member shall not contribute to the fund and shall not accrue credited service. If a retired member becomes employed by the employer from which the employee retired in a designated position before twelve months after retirement the following apply:
1. Payment of the retired member's pension shall be suspended until the retired member again ceases to be an employee. The amount of pension shall not be changed on account of service as an employee subsequent to retirement.
 2. The retired member shall not contribute to the fund and shall not accrue credited service.
 3. Any pension payments received by a retired member, who retired on or after July 1, 2009, during a period of reemployment are considered overpayments pursuant to section 38-899. If the board determines in the board's sole discretion, for a member who retired on or after July 1, 2009, that the retired member's reemployment during the twelve-month period and the failure of the employer or the local board to suspend the member's pension were not intentional to circumvent the requirements of this subsection, the pension payments received by the retired member during reemployment are subject to repayment up to only the amount received between the date of the member's reemployment and the expiration of the twelve-month period.
 4. If a retired member who retired on or after July 1, 2009 and who is reemployed terminates employment, the retired member may be subsequently reemployed with the employer from which the member retired in a designated position and resume receiving pension payments after a period of twelve months, less the period of time the retired member was not reemployed by the employer from which the member retired in a designated position after retirement, if at least sixty days of the twelve months are consecutive.
- O. Notwithstanding any other provision of this article, a member who retires having met all of the qualifications for retirement and who subsequently becomes an elected official, by election or appointment, is not considered reemployed by the same employer.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 3; Laws 1992, Ch. 340, § 3; Laws 1994, Ch. 356, § 29; Laws 1995, Ch. 205, § 8; Laws 1997, Ch. 133, § 1; Laws 1999, Ch. 41, § 1; Laws 1999, Ch. 327, § 26; Laws 2006, Ch. 241 § 2, effective from June 30, 2008; Laws 2009, Ch. 83, § 4, effective September 30, 2009; Laws 2010, Ch. 200, § 58, eff. April 28, 2010. Amended by Laws 2011, Ch. 357. Amended by Laws 2012, Ch. 136. Amended by Laws 2013, Ch. 78. Amended by Laws 2015, Ch. 62. Amended by Laws 2016, Ch. 323, § 4. Amended by Laws 2017, Ch. 163, § 12. Amended by Laws 2017, Ch. 269, § 22. Amended by Laws 2019, Ch. 302, § 4.

Sec. 12. Previous return to work retirees

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

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

- A. A member who received a severance refund on termination of employment as provided in section 38-884, who is subsequently reemployed by an employer and who may have redeposited the amount withdrawn with interest as provided in section 38-884 or a member who redeems prior service pursuant to statute is subject to the benefits and duties in effect at the following times for the specified situations:
 - 1. At the time of the member's reemployment if the member is reemployed by an employer other than the same employer.
 - 2. At the time of the member's reemployment if the member is reemployed by the same employer at least ninety days after the date of termination.
 - 3. At the time of the member's most recent termination if the member is reemployed by the same employer in any capacity within ninety days after the date of termination.
- B. Subsection A of this section does not apply if a court of competent jurisdiction orders reinstatement of benefits and duties under a prior law.
- C. If a member was initially employed on or after July 1, 2018, regardless of whether the member received a severance refund or redeposits the amount withdrawn with interest, the member shall return to the plan as irrevocably elected pursuant to section 38-881.01.
- D. A member who transfers credited service from one employer to another employer pursuant to section 38-908 retains the benefits and duties in effect at the time of the member's transfer.

Added by Laws 2011, Ch. 357. Amended by Laws 2019, Ch. 36, § 18.

Sec. 21. Retroactivity

Section 38-884.01, Arizona Revised Statutes, as amended by this act, applies retroactively to from and after June 30, 2018.

38-885. Normal retirement; conditions and pension

- A. A member may retire if the member:
 - 1. Files a written application for normal retirement with the plan in the form prescribed by the plan.
 - 2. Ceases to be an employee before the date of retirement.
 - 3. Meets one of the age and service requirements for normal retirement prescribed in subsection B, D or F of this section.
- B. A member who becomes a member of the plan before January 1, 2012 is eligible for a normal retirement pension if the member satisfies one of the following requirements:
 - 1. Is at least sixty-two years of age and has ten or more years of service.
 - 2. Has twenty or more years of service or in the case of a dispatcher, twenty-five or more years of service.
 - 3. The sum of the member's age and years of credited service equals at least eighty.
- C. A member who meets the requirements for a normal retirement pension pursuant to subsection B of this section and who has twenty years or twenty-five years, as applicable, of credited service is entitled to receive a pension that equals fifty percent of the member's average monthly salary, except that:

1. If the member retires with more than twenty years of credited service the foregoing amount shall be increased by a monthly amount equal to two percent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional years, except that if a member retires with twenty-five or more years of credited service the foregoing amount shall be increased by a monthly amount equal to two and one-half percent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional year.
 2. If the member retires pursuant to subsection B of this section but has less than twenty years of credited service, the member is entitled to receive a pension equal to the product of:
 - (a) Two and one-half percent of the member's average monthly salary.
 - (b) The member's credited service.
- D. A person who becomes a member of the plan on or after January 1, 2012 and before July 1, 2018 is eligible for a normal retirement pension if the person satisfies one of the following requirements:
1. Is at least sixty-two years of age and has ten or more years of service.
 2. Is at least fifty-two and one-half years of age and has twenty-five or more years of service.
- E. A person who meets the requirements for a normal retirement pension pursuant to subsection D of this section and who has twenty-five years of credited service is entitled to receive a pension that equals sixty-two and one-half percent of the member's average monthly salary, except that:
1. If the person retires with more than twenty-five years of credited service the foregoing amount shall be increased by a monthly amount equal to two and one-half percent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty-five years, with pro rata increase for any fractional year.
 2. If the person retires pursuant to subsection D of this section but has less than twenty-five years of credited service, the person is entitled to receive a pension equal to the product of:
 - (a) Two and one-half percent of the member's average monthly salary.
 - (b) The member's credited service.
- F. A member who becomes a member of the plan on or after July 1, 2018 is eligible for a normal retirement pension if the member is at least fifty-five years of age and has ten or more years of credited service. A person who becomes a member of the plan on or after July 1, 2018 and who retires on or after the member's normal retirement date shall receive a monthly amount equal to the member's average monthly salary multiplied by the number of whole and fractional years of credited service multiplied by the following:
1. 1.25 percent if the member has at least ten years of credited service but less than fifteen years of credited service.
 2. 1.50 percent if the member has at least fifteen years of credited service but less than twenty years of credited service.
 3. 1.75 percent if the member has at least twenty years of credited service but less than twenty-two years of credited service.
 4. 2.00 percent if the member has at least twenty-two years of credited service but less than twenty-five years of credited service.
 5. 2.25 percent if the member has at least twenty-five years of credited service.
- G. In no case shall the amount of a member's pension exceed eighty percent of the member's average monthly salary. Such limitation does not preclude cost-of-living increases granted by the legislature.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 13; Laws 1994, Ch. 207, § 7, retroactively effective to July 1, 1994; Laws 1995, Ch. 205, § 9; Laws 1997, Ch. 197, § 2; Laws 2001, Ch. 309 § 2; Laws 2001, Ch. 380 § 12; Laws 2002, Ch. 241, § 8; Laws 2011, Ch. 357. Amended by Laws 2017, Ch. 163, § 13.

38-885.01 Reverse deferred retirement option plan; purpose

- A. A reverse deferred retirement option plan is established. The purpose of the reverse deferred retirement option plan is to add flexibility to the plan and to provide members who elect to participate in the reverse deferred retirement option plan access to a lump sum benefit in addition to their normal monthly retirement benefit on actual retirement.
- B. The board shall offer the reverse deferred retirement option plan to members on a voluntary basis as an alternative method of benefit accrual under the plan.
- C. Any member who is eligible for a normal pension pursuant to section 38-885, who is not awarded an accidental, ordinary or total and permanent disability pension and who has at least twenty-four years of credited service, or in the case of a dispatcher, who has at least twenty-five years of credited service, is eligible to participate in the reverse deferred retirement option plan
- D. A member who elects to participate in the reverse deferred retirement option plan shall voluntarily and irrevocably:
 - 1. Designate a reverse deferred retirement option plan date that is the first day of the calendar month immediately following a member's completion of twenty-four years of credited service or a date not more than sixty consecutive months before the date the member elects to participate in the reverse deferred retirement option plan, whichever is later.
 - 2. Agree to terminate employment on the date the member elects to participate in the reverse deferred retirement option plan.
 - 3. Receive benefits from the plan on termination of employment at the same time and in the same manner as otherwise prescribed in this article using the factors of credited service and average monthly salary in effect on the reverse deferred retirement option plan date.
- E. On election, a reverse deferred retirement option plan participation account is established within the plan on behalf of each reverse deferred retirement option plan participant. All benefits accrued pursuant to this article shall be accounted for in the reverse deferred retirement option plan participation account. A reverse deferred retirement option plan participant does not have a claim on the assets of the plan with respect to the member's reverse deferred retirement option plan participation account and assets shall not be set aside for any reverse deferred retirement option plan participant that are separate from all other system assets.
- F. All amounts credited to a member's reverse deferred retirement option plan participation account are fully vested.
- G. A member's reverse deferred retirement option plan participation account shall be credited with the following:
 - 1. An amount that is credited as though accrued monthly from the reverse deferred retirement option plan date to the date the member elected to participate in the reverse deferred retirement option plan and that is computed in the same manner as a normal retirement benefit using the factors of credited service and average monthly salary in effect on the reverse deferred retirement option plan date.
 - 2. An amount that is credited as though accrued monthly and that represents interest at a rate equal to the yield on a five year treasury note as of the first day of the month as published by the federal reserve board.
- H. Employee and employer contributions pursuant to section 38-891 that are deposited during the period of the reverse deferred retirement option plan are not eligible to be refunded to the employer or member.
- I. The participant is not entitled to receive any amount prescribed by section 38-905 or 38-906 during the reverse deferred retirement option plan participation period.
- J. The form of payment shall be a lump sum distribution that is directly deposited in an account created for the member in the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to article 4.1 of this chapter. On deposit of the lump sum payment, the member shall immediately be able to either withdraw all or any portion of the lump sum deposit or directly transfer all or any portion of the lump sum deposit to an eligible retirement plan as required by section 401(a)(31) of the internal revenue code.
- K. The reverse deferred retirement option plan shall not jeopardize in any way the tax qualified status of the plan under the rules of the internal revenue service. The board may adopt additional provisions to the extent necessary or appropriate for the reverse deferred retirement option plan to comply with applicable federal laws or rules.

Added by Laws 2006, Ch. 241, § 4, repealed from and after June 30, 2011. Amended by Laws 2009, Ch. 83, § 5, effective September 30, 2009. Amended by Laws 2010, Ch. 163, § 1 and Ch. 200, § 59, eff. April 28, 2010. Amended by Laws 2015, Ch. 62. Amended by Laws 2016, Ch. 74, § 1. Amended by Laws 2017, Ch. 163, § 14. Amended by Laws 2018, Ch. 42, § 12 and § 13.

Sec. 2. 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.

Added by Laws 2016, Ch. 74, § 2, effective March 30, 2016.

Sec. 16. Conditional enactment

Section 38-885.01, Arizona Revised Statutes, as amended by Laws 2017, chapter 163, section 14 and this act, becomes effective on the date prescribed by Laws 2017, chapter 163, section 24 but only on the occurrence of the condition prescribed by Laws 2017, chapter 163, section 24.

38-885.02. Early retirement

Members who are hired on or after July 1, 2018 and who have earned at least ten years of credited service may retire at fifty-two and one-half years of age and will receive an actuarially equivalent retirement benefit to the benefit amount prescribed in section 38-885, subsection F.

Added by Laws 2017, Ch. 163, § 15.

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

- A. A member may retire and receive an accidental disability pension or a total and permanent disability pension if the local board finds that all of the following conditions occur:
 - 1. An application for disability retirement is filed with the retirement plan or the local board by either the member or the member's participating employer after the disabling incident or within one year after the date the member ceases to be an employee and the member's employment is terminated by reason of accidental disability or total and permanent disability. Timely application for an accidental or a total and permanent disability pension is a prerequisite to receipt of the pension.
 - 2. The member undergoes all medical examinations and tests ordered by the local board and releases to the local board all medical reports and records requested by the local board.
 - 3. The local board determines that an accidental disability or total and permanent disability condition exists that meets the requirements for accidental disability retirement or total and permanent disability retirement.
- B. The effective date of an accidental disability retirement or a total and permanent disability retirement shall not predate the date of disability or the date the member ceases to be an employee, and the disability pension payments shall not violate section 38-895.02.
- C. The amount of an accidental disability pension or a total and permanent disability pension is equal to fifty percent of the member's average monthly salary or the amount computed using the member's average monthly salary and the member's actual years of credited service, whichever is higher.
- D. The local board may require a retired member with a disability to undergo periodic reevaluation of the continuation of accidental disability or total and permanent disability. If the retired member with a disability refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the retired member's with a disability rights to the pension. An accidental disability pension or a total and permanent disabled pension is terminated if the local board finds the retired member no longer meets the requirements for accidental disability retirement or total and permanent disability retirement. This subsection does not apply after a retired member with a disability reaches the member's normal retirement date. The amount of a disability pension shall not be recomputed at a retired member's with a disability normal retirement date.

- E. A member does not qualify for an accidental disability pension or a total and permanent disability pension if the local board determines that the member's disability results from any of the following:
 - 1. An injury suffered while engaged in a felonious criminal act or enterprise.
 - 2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.
 - 3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.
- F. Local boards shall base a finding of total and permanent disability and accidental disability on medical evidence obtained by a designated physician or a physician working in a clinic that is selected by the local board and shall disregard any other medical evidence or opinions. If the local board retains more than one physician in connection with any case, the local board shall resolve any material conflicts in the medical evidence that is presented by the local board's designated physicians or clinics.
- G. If an accidental disability ceases before a retired member reaches the member's normal retirement date and the member is reemployed by an employer under the plan, the pension payable on the member's subsequent retirement shall be determined as provided in section 38-885.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 4; Laws 1992, Ch. 315, § 3; Laws 1997, Ch. 239, § 23; Laws 2006, Ch. 264, § 15. Amended by Laws 2013, Ch. 78. Amended by Laws 2014, Ch. 215.

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

- A. A member may retire and receive an ordinary disability pension if the local board finds that all of the following conditions occur:
 - 1. An application for disability retirement is filed with the retirement plan or the local board by either the member or the member's participating employer after the disabling incident or within one year after the date the member ceases to be an employee and the member's employment is terminated before the member's normal retirement date by reason of ordinary disability. Timely application for an ordinary disability pension is a prerequisite to receipt of the pension.
 - 2. The member undergoes all medical examinations and tests ordered by the local board and releases to the local board all medical reports and records requested by the local board.
 - 3. The local board determines that an ordinary disability condition exists that meets the requirements for an ordinary disability.
 - 4. The member is not participating in the reverse deferred retirement option plan pursuant to section 38-885.01.
- B. The effective date of an ordinary disability retirement shall not predate the date of disability or the date the member ceases to be an employee, and the disability pension payments shall not violate section 38-895.02.
- C. Except for a full-time dispatcher or a person who becomes a member of the plan on or after January 1, 2012, the amount of an ordinary disability pension is equal to a fraction times the member's normal retirement pension that is computed pursuant to section 38-885, subsection C as if the member had twenty years of credited service. The fraction is the result obtained by dividing the member's actual years of credited service, not to exceed twenty years of credited service, by twenty. For a full-time dispatcher or a person who becomes a member of the plan on or after January 1, 2012, the amount of an ordinary disability pension is equal to a fraction times the member's normal retirement pension that is computed pursuant to section 38-885, subsection E as if the member had twenty-five years of credited service or subsection F as if the member had twenty-five years of credited service. The fraction is the result obtained by dividing the member's actual years of credited service, not to exceed twenty-five years of credited service, by twenty-five.

- D. The local board may require a retired member with a disability to undergo periodic reevaluation of the continuation of ordinary disability. If the retired member with a disability refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the rights to the pension of the retired member with a disability. An ordinary disability pension is terminated if the local board finds the retired member no longer meets the requirements for ordinary disability retirement. This subsection does not apply after a retired member with a disability reaches the member's normal retirement date. The amount of a disability pension shall not be recomputed at the normal retirement date of a retired member with a disability.
- E. A member does not qualify for an ordinary disability pension if the local board determines that the member's disability results from any of the following:
 - 1. An injury suffered while engaged in a felonious criminal act or enterprise.
 - 2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.
 - 3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.
- F. Local boards shall base a finding of ordinary disability on medical evidence that is obtained by a designated physician or a physician working in a clinic selected by the local board and shall disregard any other medical evidence or opinions. If the local board retains more than one physician or clinic in connection with the application, the local board shall resolve any material conflicts presented in the medical evidence that is presented by the designated physicians or clinics.
- G. If an ordinary disability ceases before a retired member reaches the member's normal retirement date and the member is reemployed by an employer under the plan, the pension payable on the member's subsequent retirement shall be determined as provided in section 38-885.
- H. For the purposes of this section, "ordinary disability" means a physical condition that the local board determines will prevent an employee from totally and permanently performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will prevent an employee from totally and permanently engaging in any substantial gainful activity.

Added by Laws 2006, Ch. 301, § 1; Laws 2007, Ch. 261, § 5 and § 17. Amended by Laws 2008, Ch. 234 §2, which repeals Laws 2007, Ch. 261, § 17; Laws 2011, Ch. 357. Amended by Laws 2013, Ch. 78. Amended by Laws 2014, Ch. 215. Amended by Laws 2017, Ch. 163, § 16.

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

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

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

38-888. Pension to the surviving spouse of a member

- A. The surviving spouse of a deceased member is entitled to receive a surviving spouse's pension if the spouse was married to the member on the date of the member's death. Payment of a surviving spouse's pension commences as of the last day of the month following the member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs. The amount of a surviving spouse's pension is forty percent of the deceased member's average monthly salary. The surviving spouse shall file a written application with the plan in order to receive the survivor benefit.

- B. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly benefit compensation. For the purposes of this subsection, "killed in the line of duty" means the decedent's death was the direct and proximate result of physical injuries incurred in the performance of the decedent's public safety duties and does not include suicide.
- C. If a deceased member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each eligible child is entitled to a child's pension as calculated pursuant to section 38-904.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 5; Laws 1999, Ch. 50, § 8; Laws 2002, Ch. 335, § 10; Laws 2006, Ch. 264, § 16; Laws 2009, Ch. 83, § 7, effective September 30, 2009. Amended by Laws 2017, Ch. 163, § 17.

38-889. Guaranteed minimum aggregate payout

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

Added by Laws 1986, Ch. 325, § 1.

38-890. Pensions: commencement and duration

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

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

38-891. Employer and member contributions

- A. As determined by actuarial valuations reported to the employers and the local boards by the board, each employer shall make contributions sufficient under the actuarial valuations to meet both the normal cost for members hired before July 1, 2018 plus the actuarially determined amount required to amortize the unfunded accrued liability on a level percent of salary basis for all employees of the employer who are members of the plan or participants as defined in section 38-865, paragraph 7, subdivision (b) over, beginning July 1, 2018, a closed period of not more than twenty years except as provided in subsection M or O of this section, that is established by the board taking into account the recommendation of the plan's actuary, except that, beginning with fiscal year 2006-2007, except as otherwise provided, the employer contribution rate shall not be less than six percent of salary.

For any employer whose actual contribution rate is less than six percent of salary for fiscal year 2006-2007 and each year thereafter, that employer's contribution rate shall be at least five percent and not more than the employer's actual contribution rate. An employer may pay a higher level percent of salary thereby reducing its unfunded past service liability. All contributions made by the employers and all state taxes allocated to the fund shall be irrevocable and shall be used to pay benefits under the plan or to pay expenses of the plan and fund. The minimum employer contribution that is paid and that is in excess of the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability as calculated pursuant to this subsection shall be used to reduce future employer contribution increases and shall not be used to pay for an increase in benefits that are otherwise payable to members. The board shall separately account for these monies in the fund. Forfeitures arising because of severance of employment before a member becomes eligible for a pension or for any other reason shall be applied to reduce the cost to the employer, not to increase the benefits otherwise payable to members. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account contains excess valuation assets other than excess valuation assets that were in the employer's account as of fiscal year 2004-2005 and is more than one hundred percent funded, the board shall account for fifty percent of the excess valuation assets in a stabilization reserve account. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account has a valuation asset deficiency and an unfunded actuarial accrued liability, the board shall use any valuation assets in the stabilization reserve account for that employer, to the extent available, to limit the decline in that employer's funding ratio to not more than two percent.

- B. Each member who was hired before July 1, 2018, shall contribute the amount prescribed in subsection H of this section to the retirement plan. Each member who was hired on or after July 1, 2018, through the member's period of service from the member's effective date of participation, shall contribute an amount equal to the amount prescribed in subsection K of this section. Member contributions shall be made by payroll deduction. Continuation of employment by the member constitutes consent and agreement to the deduction of the applicable member contribution. Payment of the member's salary less the deducted contributions constitutes full and complete discharge and satisfaction of all claims and demands of the member relating to salary for services rendered during the period covered by the payment. A member may not, under any circumstances, borrow from, take a loan against or remove contributions from the member's account before the termination of membership in the plan or the receipt of a pension.
- C. Each employer shall transfer to the board the employer and employee contributions provided for in this section within ten working days after each payroll date. Contributions transferred after that date shall include a penalty of ten percent per annum, compounded annually, for each day the contributions are late. The employer shall pay this penalty. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer liable for the payments or, at the request of the board, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.
- D. During a period when an employee is on industrial leave and the employee elects to continue contributions during the period of industrial leave, the employer and employee shall make contributions based on the salary the employee would have received in the employee's job classification if the employee was in normal employment status.
- E. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a position within that department as a designated position if the position is filled by an employee who has at least five years of credited service under the plan, who is transferred to temporarily fill the position and who makes a written request to the local board to specify the position as a designated position within ninety days after being transferred. On the employee leaving the position, the position is no longer a designated position.

- F. The local board of the state department of corrections, the local board of the department of juvenile corrections, the local board of the judiciary or the local board of a county, city or town that operates detention facilities may specify a designated position within the department or facility as a nondesignated position if the position is filled by an employee who has at least five years of credited service under the Arizona State Retirement System and who makes a written request to the local board to specify the position as a nondesignated position within ninety days after accepting the position. On the employee leaving the position, the position reverts to a designated position.
- G. The local board of the judiciary may specify positions within the Administrative Office of the Courts that require direct contact with and primarily provide training or technical expertise to county probation, surveillance or juvenile detention officers as a designated position if the position is filled by an employee who is a member of the plan currently employed in a designated position as a probation, surveillance or juvenile detention officer and who has at least five years of credited service under the plan. An employee who fills such a position shall make a written request to the local board to specify the position as a designated position within ninety days after accepting the position. On the employee leaving the position, the position reverts to a nondesignated position.
- H. The amount contributed by a member who was hired before July 1, 2018 pursuant to subsection B of this section is:
1. Through June 30, 2011, 8.41 percent of the member's salary, except for a full-time dispatcher. The amount contributed by a full-time dispatcher through June 30, 2011 is 7.96 percent of the member's salary.
 2. For fiscal year 2011-2012 and each fiscal year thereafter, 8.41 percent of the member's salary or fifty percent of the sum of the member's contribution rate from the preceding fiscal year and the aggregate computed employer contribution rate that is calculated pursuant to subsection A of this section, whichever is lower, except that the member contribution rate shall not be less than 7.65 percent of the member's salary and the employer contribution rate shall not be less than the rate prescribed in subsection A of this section.
- I. Notwithstanding subsection H, paragraph 2 of this section, the contribution rate for a full-time dispatcher is forty-five basis points less than the member contribution amount calculated pursuant to subsection H, paragraph 2 of this section, except that after the close of any fiscal year, if the plan's actuary determines that the aggregate ratio of the funding value of the accrued assets to the accrued liabilities of the fund is at least one hundred percent, from and after June 30 of the following year the member contribution rate for a full-time dispatcher is equal to the member contribution rate for a member who is not a full-time dispatcher.
- J. For fiscal year 2011-2012 and each fiscal year thereafter, the amount of the member's contribution that exceeds 8.41 percent of the member's salary for a member other than a full-time dispatcher or 7.96 percent of the member's salary for a full-time dispatcher shall not be used to reduce the employer's contributions that are calculated pursuant to subsection A of this section.
- K. For members hired on or after July 1, 2018, the employer and member contributions are determined as follows:
1. as determined by actuarial valuations reported to the employer and the local board by the board of trustees, each employer shall make contributions sufficient under such actuarial valuations to pay 33.3 percent of the normal cost plus 50 percent of the actuarially determined amount required to amortize the total unfunded accrued liability for each employer attributable only to those members hired on or after July 1, 2018. for each year that new unfunded liabilities are attributable to the employer's own members hired on or after July 1, 2018, a new amortization base representing the most recent annual gain or loss, smoothed over a period not more than five years as determined by the board, shall be created on a level-dollar basis over a closed period equal to the average expected remaining service lives of all members but not more than ten years, as determined by the board.
 2. The remaining 66.7 percent of the normal cost and the remaining 50 percent of the actuarially determined amount required to amortize the total unfunded accrued liability as determined pursuant to paragraph 1 of this subsection shall be divided by the total number of the employer's members who were hired on or after July 1, 2018 such that each member contributes an equal percentage of the member's compensation. Member contributions shall begin simultaneously with membership in the plan and shall be made by payroll deduction.

- L. In any fiscal year, an employer's contribution to the plan in combination with member contributions may not be less than the actuarially determined normal cost for that fiscal year. The board may not suspend contributions to the plan unless both of the following apply:
 - 1. The plan's actuary, based on the annual valuation, determines that continuing to accrue excess earnings could result in disqualification of the plan's tax-exempt status under the provisions of the United States Internal Revenue Code.
 - 2. The board determines that the receipt of any additional contributions required under this section would conflict with its fiduciary responsibility.
- M. For the purposes of calculating unfunded liability amortization payments pursuant to subsection a of this section, an employer may make a one-time election to request that the board use a closed period of not more than thirty years if the employer meets both of the following requirements:
 - 1. The governing body of the employer adopts a resolution requesting the longer amortization period and specifying the actuarial valuation date for which the new amortization period is to begin. The actuarial valuation date chosen must be the plan's fiscal year end either immediately before or immediately after the date of the resolution.
 - 2. The employer submits a written request for the longer amortization period along with the adopted resolution to the administrator of the board.
- N. For the purposes of subsection m of this section, employer does not include this state or any state agency.
- O. For the purposes of calculating unfunded liability amortization payments pursuant to subsection A of this section, the board may use a closed period of not more than thirty years for the judiciary.
- P. If a member's employment is terminated with an employer by either party, the total liability under the plan associated with the member's service with the employer remains with the employer.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 14; Laws 1990, Ch. 272, § 6; Laws 1991, Ch. 155, § 4, retroactively effective to July 1, 1991; Laws 1991, Ch. 210, § 14; Laws 1995, Ch. 205, § 10; Laws 1995, Ch. 178, § 26; Laws 1996, Ch. 282, § 2, retroactively effective to January 1, 1995; Laws 1997, Ch. 197, § 3; Laws 1997, Ch. 239, § 24; Laws 2000, Ch. 126, § 6; Laws 2004, Ch. 229, § 1; Laws 2005, Ch. 208, § 4; Laws 2006, Ch. 261, § 3, effective immediately; Laws 2008, Ch. 234, § 1; Laws 2009, Ch. 83, § 8, effective September 30, 2009. Amended by Laws 2010, Ch. 163, § 3 and Ch. 200, § 60, eff. April 28, 2010. Amended by Laws 2011, Ch. 298, applies retroactively to September 30, 2009; Laws 2011, Ch. 347 and Ch. 357. Amended by Laws 2013, Ch. 78. Amended by Laws 2014, Ch. 190. Amended by Laws 2017, Ch. 163, § 18. Amended by Laws 2018, Ch. 42, § 14.

38-891.01 Retired member; return to work; employer contributions

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

Added by Laws 2011, Ch. 357, § 47. Amended by Laws 2016, Ch. 323, § 5.

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.

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

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

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

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

- A. The administration of the plan and the responsibility for making the provisions of the plan effective for each employer are vested in a local board. The state department of corrections, the department of juvenile corrections, the Department of Public Safety, each participating county sheriff's department, each participating city or town, each participating employer of full-time dispatchers for eligible groups as defined in section 38-842, and the judiciary shall have a local board. Each local board is constituted as follows:
1. For the state departments, two members who are elected by secret ballot by members employed by that department in a designated position and two citizens who are appointed by the Governor. The director of each state department shall appoint one member to the local board who is knowledgeable in personnel actions. Each state department local board shall elect a chairman.
 2. For each participating county, the chairman of the board of supervisors, or the chairman's designee who is approved by the board of supervisors, as chairman, two members who are elected by secret ballot by members employed by the participating county in a designated position and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, who are appointed by the chairman of the board of supervisors with the approval of the board of supervisors.
 3. For political subdivisions, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the city council or governing body of the employer.

4. For the judiciary, two members who are elected by secret ballot by members who are employed as a probation, surveillance or juvenile detention officer, a designee of the chief justice of the Arizona supreme court and two citizens, one of whom shall be the head of a human resource department for the group of members, appointed by the chief justice.
- B. The appointments and elections of local board members shall take place with one elective and one appointive board member, as designated by the appointing authority, serving a term ending two years after the date of appointment or election and the other local board members serving a term ending four years after the date of appointment or election. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as provided in this section. Each local board shall meet at least twice each year.
 - C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the plan. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees shall appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two year or four year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Within ten days after the member's appointment or election, each member of a local board shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the plan.
 - D. Except as limited by subsection E of this section, a local board shall:
 1. Decide all questions of eligibility and service credits and determine the amount, manner and time of payment of any benefit under the plan.
 2. Make a determination as to the right of a claimant to a benefit and afford a claimant or the board, or both, a right to a rehearing on the original determination. Except as otherwise required by law, unless all parties involved in a matter presented to the local board for determination otherwise agree, the local board shall commence a hearing on the matter within ninety days after the date the matter is presented to the local board for determination. If a local board fails to commence a hearing as provided in this paragraph, on a matter presented to the local board for determination, the relief demanded by the party petitioning the local board is deemed granted and approved by the local board. The granting and approval of this relief is considered final and binding unless a timely request for rehearing or appeal is made as provided in this article, unless the board of trustees determines that granting the relief requested would violate the internal revenue code or threaten to impair the plan's status as a qualified plan under the internal revenue code. If the board of trustees determines that granting the requested relief would violate the internal revenue code or threaten to impair the plan's status as a qualified plan, the board of trustees may refuse to grant the relief by issuing a written determination to the local board and the party petitioning the local board for relief. The decision by the board of trustees is subject to judicial review pursuant to Title 12, Chapter 7, Article 6.
 3. Request and receive from the employers and from members information as is necessary for the proper administration of the plan and action on claims for benefits and forward the information to the board of trustees.
 4. Distribute, in the manner the local board determines to be appropriate, information explaining the plan that is received from the board of trustees.
 5. Furnish the employer, the board of trustees and the legislature on request, with annual reports with respect to the administration of the plan that are reasonable and appropriate.
 6. Appoint a medical board that is composed of a designated physician or physicians working in a clinic other than the employer's regular employee or contractor. If required, the local board may employ other physicians to report on special cases. The examining physician or clinic shall report the results of examinations made to the local board, and the secretary of the local board shall preserve the report as a permanent record.
 7. Sue and be sued to effectuate the duties and responsibilities set forth in this article.
 8. Prescribe procedures to be followed by claimants in filing applications for benefits.

9. Receive and review the actuarial valuation of the plan for its group of members.
 10. Receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.
- E. A local board has no power to add to, subtract from, modify or waive any of the terms of the plan, change or add to any benefits provided by the plan or waive or fail to apply any requirement of eligibility for membership or benefits under the plan. Notwithstanding any limitations periods imposed in this article, including subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or threatens to impair the plan's status as a qualified plan under the internal revenue code the local board's decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.
- F. A local board, from time to time, shall establish and adopt rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.
- G. Except as otherwise provided in this article, an action by a majority vote of the members of a local board that is not inconsistent with the provisions of the plan and the internal revenue code is final, conclusive and binding on all persons affected by it, unless a timely application for a rehearing or appeal is filed as provided in this article. No later than twenty days after taking action, the local board shall submit to the board of trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and ALL documents submitted to the local board for the action taken, including the reports of a medical board. The board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the plan's status as a qualified plan under the internal revenue code.
- H. A claimant or the board of trustees may apply for a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the plan's status as a qualified plan under the internal revenue code, no limitation period for the board of trustees to seek a rehearing of a local board decision applies. A claimant or the board of trustees shall file an application for rehearing in writing with a member of the local board or its secretary within sixty days after:
1. The claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the plan pursuant to the local board's original action, whichever occurs first.
 2. The board of trustees receives notification of the local board's original action as prescribed by subsection G of this section.
- I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.
- J. Decisions of local boards are subject to judicial review pursuant to title 12, Chapter 7, Article 6.
- K. When making a ruling, determination or calculation, the local board is entitled to rely on information furnished by the employer, the board of trustees, independent legal counsel or the actuary for the plan.
- L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.
- M. The local board shall adopt bylaws as it deems necessary. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with Chapter 3, Article 3.1 of this title and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section.

- N. The employer and not the board or plan shall pay the fees of the medical board and of the local board's legal counsel and all other expenses of the local board necessary for the administration of the plan at rates and in amounts as the local board approves. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in the manner it deems convenient and proper, all reports from the board of trustees and the actuary.
- O. The local board and the individual members of the local board are indemnified from the assets of the fund for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the plan.

Added by Laws 1990, Ch. 272, § 8. Amended by Laws 1991, Ch. 155, § 5; Laws 1991, Ch. 210, § 15; Laws 1995, Ch. 178, § 27; Laws 2001, Ch. 309, § 3; Laws 2006, Ch. 308, § 3; Laws 2008, Ch. 144, § 3; Laws 2009, Ch. 83, § 9, effective September 30, 2009; Laws 2010, Ch. 200, § 62, eff. April 28, 2010. Amended by Laws 2011, Ch. 347. Amended by Laws 2012, Ch. 136. Amended by Laws 2013, Ch. 78.

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

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

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

38-895. Maximum annual pension; limitations; definition

- A. The maximum annual pension for a limitation year shall not exceed the following:
 - 1. For limitation years beginning before 1995, the lesser of ninety thousand dollars, as indexed for inflation, or one hundred per cent of the member's average monthly salary.
 - 2. For limitation years beginning in 1995 and ending before 2002, ninety thousand dollars, as indexed for inflation.
 - 3. For limitation years beginning in and after 2002, one hundred sixty thousand dollars, as indexed for inflation.
- B. The limitations prescribed in subsection A shall be determined under section 415 of the internal revenue code and the regulations that are then in effect under that section.
- C. Notwithstanding this section, the pension payable under this plan may be reduced to the extent necessary, as determined by the plan, to prevent disqualification of the plan under section 415 of the internal revenue code, which imposes additional limitations on the pension payable to members who also may be participating in another tax qualified pension plan or other plan of this state. The plan shall advise affected members of any additional limitation of their pension required by this section.

D. For the purposes of this section, "limitation year" means the plan's fiscal year.

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

38-895.01. Compensation limitation; adjustments; definition

- 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, \$150,000.
 2. Except for members hired on or after July 1, 2018, beginning January 1, 2002, \$200,000. The board shall adjust the \$200,000 annual compensation limit under this paragraph 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 paragraph for a calendar year applies to annual compensation for that calendar year.
 3. For members who are hired on or after July 1, 2018, \$70,000. The board shall adjust the \$70,000 annual compensation limit under this paragraph as prescribed in subsection C of this section. Notwithstanding the adjustments made under subsection C of this section, the limit under this paragraph, as adjusted by the board, may not exceed the maximum compensation limit of section 401(a)(17) of the Internal Revenue Code, as adjusted by the United States Secretary of the Treasury.
- B. If compensation under the plan is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.
- C. Beginning in fiscal year 2021-2022, and every third fiscal year thereafter, the board shall adjust the annual compensation limit specified in subsection A, paragraph 3 of this section by the average change in the probation wage index as determined pursuant to this subsection. The board shall annually publish the probation wage index in January. The annual compensation limit adjustment under this subsection for a calendar year applies to the annual compensation for that calendar year. To determine the probation wage index:
1. The administrative office of the courts shall provide to the board pay scales for the month of July for the classifications of probation officers, by county, annually in July.
 2. The board shall determine the weighted average of the change in the top of the pay scale for probation officers. The average change shall be weighted by measuring each county's total number of members divided by the total number of members of all counties represented in the probation wage index.
- D. The board shall establish a probation wage index that reflects the calculation made pursuant to subsection C of this section.
- E. For the purposes of this section, "probation officers" means the classifications of probation officers or surveillance officers or their equivalent classifications.

Added by Laws 2009, Ch. 35, § 26, effective September 30, 2009; Laws 2010, Ch. 200, § 64, eff. April 28, 2010. Amended by Laws 2017, Ch. 163, § 19. Amended by Laws 2019, Ch. 36, § 19.

38-895.02. Payment of pension

The board shall not make a retroactive payment of a pension to a person for a period of more than one hundred eighty days before the date of the person's application for benefits.

Added by Laws 2012, Ch. 136. Amended by Laws 2013, Ch. 78.

38-895.03. Required distributions

All distributions required under this article shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States Secretary of the Treasury.

Added by Laws 2017, Ch. 269, § 23.

38-896. Taxation of pensions; exemption for contributions

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

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

38-897. Assignments prohibited; liability of fund

- A. The right of an individual to a pension, to a refund of accumulated member contributions, to the pension itself or to any other right accrued or accruing to any individual, and the monies and assets of the retirement plan, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or other process of law except a qualified domestic relations order and are unassignable except as may be otherwise specifically provided.
- B. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right provided in subsection A is void. The fund is not liable in any manner for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to these rights.
- C. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.
- D. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to civil suit by the plan in the superior court in Maricopa County. On entry of an order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201, subsection A, until all amounts owed are paid to the plan.
- E. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to an active or retired member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

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

38-898. Subrogation; right of setoff

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

Added by Laws 1986, Ch. 325, § 1.

38-899. Correction of errors

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

Added by Laws 1986, Ch. 325, § 1.

38-900. Internal revenue code qualification

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

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

38-900.01. Statutory construction

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

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

38-900.02. Adjustment and refund; termination of plan

- A. If more than the correct amount of employer or member contributions is paid into the plan by an employer through a mistake of fact, the board shall return those contributions to the employer if the employer requests return of the contributions within one year after the date of the overpayment. The board may not pay an employer earnings attributable to excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions.
- B. On termination or partial termination of the plan, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

Added by Laws 2017, Ch. 269, § 23.

Sec. 24. 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.

Added by Laws 2017, Ch. 269, § 24.

38-901. Transfers into or out of retirement plan

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

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

38-902. Joinder agreement

- A. County detention officers and non-uniformed employees of a sheriff's department whose primary duties require direct contact with inmates may participate in this plan if the board of supervisors of the county enters into a joinder agreement with the board of trustees to bring such employees into this plan. The joinder agreement shall be in accordance with the provisions of this plan. All such employees shall be designated for membership in the joinder agreement unless written consent to the contrary is obtained from the board.
- B. City or town detention officers may participate in this plan if the governing body of the city or town enters into a joinder agreement with the board to bring its detention officers into this plan. The joinder agreement shall be in accordance with the provisions of the plan. The governing body of the city or town shall designate all detention officers for membership in the plan unless written consent to the contrary is obtained from the board.
- C. Full-time dispatchers may participate in this plan if the governing body or agency of the employer of an eligible group as defined in section 38-842 enters into a joinder agreement with the board to bring its full-time dispatchers into this plan before November 24, 2009 and if the person was employed by the employer as a full-time dispatcher before November 24, 2009. The joinder agreement shall be in accordance with the provisions of this plan and for those dispatchers designated for membership in the plan on the joinder date all credited service from any other Arizona defined benefit state retirement system or plan that represents credited service in a designated position shall be transferred to the Corrections Officer Retirement Plan. The governing body or agency of the employer shall designate all full-time dispatchers for membership in the plan except for a full-time dispatcher who signs an irrevocable agreement before the joinder agreement becomes effective electing not to become a member of the plan. A full-time dispatcher employed by an employer who becomes eligible for membership in the plan pursuant to this section may elect to participate in the plan within the deadlines and pursuant to the terms prescribed for such participation by the board.
- D. Probation, surveillance and juvenile detention officers may participate in this plan if the administrative office of the courts enters into a joinder agreement with the board to bring its probation, surveillance and juvenile detention officers into this plan. The joinder agreement shall be in accordance with the provisions of this plan. The administrative office of the courts shall designate all probation, surveillance and juvenile detention officers for membership in this plan unless written consent to the contrary is obtained from the board.
- E. Detention officers who are employed by the Department of Public Safety may participate in this plan if the director of the Department of Public Safety enters into a joinder agreement with the board to bring the department's detention officers into this plan. The joinder agreement shall be in accordance with the provisions of this plan. The director of the Department of Public Safety shall designate all detention officers for membership in this plan unless written consent to the contrary is obtained from the board.
- F. The new employer shall designate the groups of employees who are eligible to participate in the plan and shall agree to make contributions each year that are sufficient to meet both the normal cost of a level cost method attributable to inclusion of its employees and the prescribed interest on the past service cost for its employees.
- G. Before the execution of any joinder agreement each employer contemplating participation in the plan shall have an actuarial valuation made, which is payable by the employer, to determine the estimated cost of participation in accordance with section 38-894.
- H. Assets under any existing public employee defined benefit retirement program, except a military retirement program, that are necessary to equal the actuarial present value of projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation attributable to the employer's designated employee group, calculated using the actuarial methods and assumptions adopted by the existing public employee retirement program, shall be transferred from the program to this fund no later than ninety days after the employer's effective date. That portion of the transferred assets that is attributable to employee contributions, including interest credits, shall be properly allocated to each affected employee of the employer and credited to the employee's initial accumulated contributions in accordance with a schedule furnished by the employer to the board.

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

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

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

38-903. Reservation to the legislature

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

Added by Laws 1986, Ch. 325, § 1.

38-904. Death benefits; amount

- A. If an active or inactive member dies and no pension is payable on account of the member's death, an amount equal to two times the member's accumulated contributions to the retirement plan is payable to the person designated by the deceased member in writing and filed with the board. If the designated person or persons do not survive the deceased member or if the designated person does not claim the benefit, the payment is payable, at the election of the local board, to the designated person's nearest of kin as determined by the local board or to the estate of the deceased member. The beneficiary or person who is claiming to be the nearest of kin shall file a written application in order to receive the refund. For the purposes of this subsection, "inactive member" means a person who previously made contributions to the plan, who has not retired, who is not currently making contributions to the plan and who has not withdrawn contributions from the plan.
- B. If the deceased retired or active member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each eligible child is entitled to a child's pension. A child's pension terminates if the child is adopted. In the case of a child with a disability, the child's pension terminates if the child ceases to be under a disability or ceases to be a dependent of the surviving spouse or guardian. The amount of the pension of each eligible child is an equal share of the amount of the surviving spouse's pension. the board shall pay the surviving minor or child's with a disability pension to the person who is the legally appointed guardian or custodian of the eligible child until the eligible child reaches eighteen years of age, at which time the eligible child's pension shall be paid directly to the eligible child if the person remains eligible to receive the pension and is not subject to a guardianship or conservatorship due to disability or incapacity. The pension of a child with a disability who is eighteen years of age or older and who is subject to a guardianship or conservatorship due to disability or incapacity shall continue to be paid to the guardian or conservator if the child remains eligible for the pension payment.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1995, Ch. 205, § 1; Amended by Laws 1997, Ch. 239, § 26; Amended by Laws 1999, Ch. 50, § 9; Amended by Laws 2009, Ch. 83, § 10, effective September 30, 2009; Laws 2010, Ch. 200, § 68, eff. April 28, 2010. Amended by Laws 2012, Ch. 136. Amended by Laws 2013, Ch. 78. Amended by Laws 2014, Ch. 215.

Section 20. Repeal

Sections 38-905, 38-905.01, 38-905.02, 38-905.03 and 38-905.04, Arizona Revised Statutes, are repealed.

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

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

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

38-905.05. Cost-of-living adjustment; members hired on or before June 30, 2018

- A. For members hired on or before June 30, 2018, each retired member or survivor of a retired member is eligible to receive a compounding cost-of-living adjustment in the base benefit as provided in this section. The first payment under this section shall be made immediately following the first year the cost-of-living adjustment specified in subsection c of this section is paid. The cost-of-living adjustment shall be made on July 1 each year thereafter.
- B. A retired member or a survivor of a retired member shall receive annually a cost-of-living adjustment in the base benefit based on the average annual percentage change in the metropolitan Phoenix-Mesa Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, with the immediately preceding year as the base year for making the determination, not to exceed annually two percent of the retired member's or survivor's base benefit.
- C. In the first year of a member's retirement, the cost-of-living adjustment specified in subsection B of this section shall be prorated based on the date of retirement.
- D. The plan's actuary shall include the projected cost of providing the cost-of-living adjustment specified in subsection B of this section in the calculation of normal cost and accrued liability.

Added by Laws 2017, Ch. 163, § 21.

38-905.06. Cost-of-living adjustment; members hired on or after July 1, 2018; definition

- A. For members who are hired on or after July 1, 2018, each eligible retired member or survivor of a retired member may receive a compounding cost-of-living adjustment in the base benefit as provided in this section.
- B. A retired member or survivor of a retired member is eligible to receive a cost-of-living adjustment under this section beginning the earlier of the first calendar year after the seventh anniversary of the retired member's retirement or when the retired member is or would have been sixty years of age.
- C. A cost-of-living adjustment shall be paid on July 1 each year that the funded ratio for members who are hired on or after July 1, 2018 is seventy percent or more, as reported in the most recent actuarial valuation.
- D. An eligible retired member or survivor of a retired member shall receive annually a cost-of-living adjustment in the base benefit based on the average annual percentage change in the metropolitan Phoenix-Mesa Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, with the immediately preceding year as the base year for making the determination, not to exceed annually the following:
 - 1. Two percent of the retired member's or survivor's base benefit if the funded ratio for members who are hired on or after July 1, 2018 is ninety percent or more, as reported in the most recent actuarial valuation.
 - 2. One and one-half percent of the retired member's or survivor's base benefit if the funded ratio for members who are hired on or after July 1, 2018 is eighty percent or more but less than ninety percent, as reported in the most recent actuarial valuation.

3. One percent of the retired member's or survivor's base benefit if the funded ratio for members who are hired on or after July 1, 2018 is seventy percent or more but less than eighty percent, as reported in the most recent actuarial valuation.
- E. The plan's actuary shall include the projected cost of providing the cost-of-living adjustment specified in subsection D of this section in the calculation of normal cost and accrued liability.
- F. For the purposes of this section, "funded ratio" means the ratio of the market value of assets to the actual accrued liabilities.

Added by Laws 2017, Ch. 163, § 21.

38-906. Group health and accident coverage for retired members; payment; forfeiture of interest

- A. On notification, the board shall pay from the assets of the separate account established pursuant to subsection G of this section part of the single coverage premium of any group health and accident insurance for each retired member or survivor of the plan who receives a pension and who has elected to participate in coverage provided by section 38-651.01 or 38-782 or any other retiree health and accident insurance coverage provided or administered by a participating employer in the plan. The board shall pay up to:
 1. One hundred fifty dollars per month for each retired member or survivor of the plan who is not eligible for Medicare.
 2. One hundred dollars per month for each retired member or survivor of the plan who is eligible for Medicare.
- B. On notification, the board shall pay from the assets of the separate account established pursuant to subsection G of this section part of the family coverage premium of any group health and accident insurance for each retired member or survivor of the plan who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. Payment under this subsection is in the following amounts:
 1. Up to two hundred sixty dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for Medicare.
 2. Up to one hundred seventy dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for Medicare.
 3. Up to two hundred fifteen dollars if either:
 - (a) The retired member or survivor of the plan is not eligible for Medicare and one or more dependents are eligible for Medicare.
 - (b) The retired member or survivor of the plan is eligible for Medicare and one or more dependents are not eligible for Medicare.
- C. The board shall not pay more than the amount prescribed in this section for a benefit recipient as a member or survivor of the plan.
- D. A retired member or survivor of the plan may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's former employer if that former employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the plan.
- E. This section does not apply to a retired member of the plan who becomes a member on or after September 13, 2013 and who is reemployed and participates in health care coverage provided by the member's new employer.
- F. This section does not apply to a survivor of the plan whose deceased spouse becomes a member on or after September 13, 2013 and who is reemployed and participates in health care coverage provided by the survivor's new employer.
- G. The board shall establish a separate account that consists of the benefits provided pursuant to this section. The board shall deposit the benefits provided by this section in the account. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of benefits pursuant to this section unless the liabilities to provide the benefits pursuant to this section are satisfied. If the liabilities to provide the benefits described in this section are satisfied, the board shall return any amount remaining in the account to the employer.

- H. Payment of the benefits provided by this section is subject to the following conditions:
 - 1. The payment of the benefits is subordinate to the payment of retirement benefits payable by the plan.
 - 2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to the plan, minus the contributions to fund past service credits, after the day the account is established.
 - 3. The contributions by the employer to the account shall be reasonable and ascertainable.
- I. If a member who is eligible for benefits under this section forfeits the member's interest in the account before the termination of the plan, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1994, Ch. 356, § 32; Laws 1997, Ch. 239, § 27; Laws 2001, Ch. 376, § 4; Laws 2001, Ch. 383, § 4; Laws 2003, Ch. 247, § 4; Laws 2005, Ch. 297, § 4; Laws 2007, Ch. 253, § 6 effective immediately; Laws 2010, Ch. 200, § 70, eff. April 28, 2010. Amended by Laws 2011, Ch. 347. Amended by Laws 2013, Ch. 78. Amended by Laws 2015, Ch. 62.

Sec. 2. Retroactivity

Section 38-906, subsections G and H, Arizona Revised Statutes, as added by Laws 2013, Chapter 78, Section 9, applies retroactively to from and after September 26, 1990.

38-907. Credit for military service*

- A. Except as provided in the subsection B of this section, a member of the plan who has at least five 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. A member who became a member before January 1, 2012 may redeem eligible prior military service as specified in subsection A of this section without having to have accrued any minimum amount of credited service.
- C. 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 of 1994 (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 D 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 any military reserve unit of any branch of 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.

* See Sec. 16A on page 91.

- D. Contributions made pursuant to subsection C 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.
- E. Notwithstanding any other law, on payment of the contributions made pursuant to subsection C 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.
- F. The employer and the member shall make contributions pursuant to subsection C of this section as follows:
1. Contributions shall be based on the compensation that the member would have received but for the period that the member was ordered into active military service.
 2. If the employer cannot reasonably determine the member's rate of compensation for the period that the member was ordered into military service, contributions shall be based on the member's average rate of compensation during the twelve-month period immediately preceding the period of military service.
 3. If a member has been employed less than twelve months before being ordered into military service, contributions shall be based on the member's compensation being earned immediately preceding the period of military service.
 4. The member has up to three times the length of military service, not to exceed sixty months, to make the member contributions. Once the member has made the member contributions or on receipt of the member's death certificate, the employer shall make the employer contributions in a lump sum. Death benefits shall be calculated as prescribed by law.
 5. If the member's employer pays military differential wage pay to members serving in the military, contributions shall be paid to the plan pursuant to section 38-891 for any military differential wage pay paid to the member while performing military service.
- G. 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.
- H. 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 F of this section on the member's return and in compliance with subsection C of this section.
- I. In addition to, but not in duplication of, subsection C 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.
- J. For plan years beginning after December 31, 2008, a member who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code is not considered having a severance from employment during that qualified military service. Any payments by the employer to the member during the qualified military service shall be considered compensation to the extent those payments do not exceed the amounts the member would have received if the member had continued to perform services for the employer rather than entering qualified military service.
- K. For deaths occurring from and after December 31, 2006 in the case of a member who dies while performing qualified military service as defined in section 414(u)(5) of the internal revenue code, the survivors of the member are entitled to any benefits, other than benefit accruals relating to the period of qualified military service, provided under the plan as though the member resumed and then terminated employment on account of death.

Added by Laws 2009, Ch. 35, § 29, effective September 30, 2009. Amended by Laws 2011, Ch. 357. Amended by Laws 2015, Ch. 62. Amended by Laws 2016, Ch. 90, § 7. Amended by Laws 2019, Ch. 38, § 12 and Ch. 36 § 20.

38-908. Transfer of credited service

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

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

38-909. Redemption of prior service: calculation*

- A. Except as provided in subsection B of this section, an active member of the plan who has at least five years of credited service with the plan who had previous service in this state as an employee with an employer now covered by the plan or who had previous service with an agency of the united states government, a state of the united states or a political subdivision of this state or a state of the united states as a full-time paid corrections officer or full-time paid certified peace officer may elect to redeem up to sixty months of any part of the prior service by paying into the plan any amounts required under subsection C of this section if the prior service is not on account with any other retirement system.
- B. An active member who became a member of the plan before January 1, 2012 may redeem any amount of eligible prior service as specified in subsection A of this section without having to have accrued any minimum amount of credited service.
- C. An member who elects to redeem any part of the prior service or employment for which the employee is deemed eligible by the board under this section shall pay into the plan the amounts previously withdrawn by the member, if any, as a refund of the member's accumulated contributions plus accumulated interest as determined by the board and the additional amount, if any, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary.
- D. A member electing to redeem service pursuant to this section may pay for service being redeemed in the form of a lump sum payment to the plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B) (iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

Added by Laws 2004, Ch. 64, § 1. Amended by Laws 2009, Ch. 35, § 30, effective September 30, 2009; Laws 2010, Ch. 200, § 72, eff. April 28, 2010. Amended by Laws 2011, Ch. 357. Amended by Laws 2012, Ch. 348. Amended by Laws 2012, Ch. 136. Amended by Laws 2016, Ch. 90, § 8. Amended by Laws 2019, Ch. 38, § 13.

38-909.01. Purchase of service: payment

A member who purchases service pursuant to this article or section 38-922 or 38-924 shall make payments directly to the plan in whole or in part by any one or a combination of the following methods:

- 1. In lump sum payments.
- 2. Through an arrangement with the plan that the payments be made in installment payments over a period of time.

* See Sec. 16A on page 91.

3. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code, accepting a direct transfer of any eligible rollover distribution or a contribution by a member of an eligible rollover distribution from one or more:
 - (a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.
 - (b) Annuity contracts described in section 403(b) of the internal revenue code.
 - (c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.
4. Subject to the limitations prescribed in section 408(d)(3)(a)(ii) of the internal revenue code, accepting from a member a rollover contribution of that portion of a distribution from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code that is eligible to be rolled over and would otherwise be includable as gross income.

Added by Laws 2012, Ch. 348. Amended by Laws 2013, Ch. 78.

38-910. Domestic relations orders; procedures; payments

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

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

- G. If the alternate payee identified in a plan approved domestic relations order predeceases the participant and the plan approved domestic relations order does not otherwise provide for the disposition of the alternate payee's interest the plan shall pay the alternate payee's portion to the personal representative of the deceased alternate payee pursuant to this subsection. The personal representative is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any personal representative. The plan is not responsible for making benefit payments to a personal representative until the personal representative has both:
1. Persuaded the plan that the personal representative is authorized to receive payments designated for the deceased alternate payee.
 2. Provided the plan with an address to which the payments should be sent.
- H. If, within thirty days after the date the plan verifies an alternate payee's death, a personal representative does not make demand on the plan for the alternate payee's portion, the plan shall either:
1. Hold the alternate payee's portion until the time a personal representative makes a proper demand for payment of the alternate payee's portion.
 2. Remit the alternate payee's portion to the participant, who shall hold the amounts in trust for the estate of the alternate payee until the personal representative is identified. At that time the participant shall pay the alternate payee's portion paid by the plan to the participant to the personal representative. Thereafter, the plan shall prospectively pay the alternate payee's portion to the personal representative.
- I. Amounts held or paid pursuant to this section shall not accrue interest unless otherwise prescribed by this article.
- J. The plan is not liable to the participant, the alternate payee, any personal representative of the estate of an alternate payee or any other person for any amount paid, withheld or disbursed by the plan pursuant to this section. If one or more payments are made by the plan to a person not otherwise entitled to receive the payments, the recipient of the payment is designated a constructive trustee for the payment received and, together with the marital community, if any, is the sole party against whom an action may be brought to recover the payment.
- K. The plan may adopt policies and procedures that govern the implementation of this section.

Added by Laws 2007, Ch. 87, § 7. Amended by Laws 2010, Ch. 231, § 4. Amended by Laws 2012, Ch. 136.

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

- A. If any member who has at least ten years of credited service terminates employment for reasons other than retirement or disability, the person may elect to receive a deferred annuity, except that if the person withdraws the person's accumulated contributions from the plan, all rights to a deferred annuity are forfeited. A deferred annuity is a lifetime monthly payment that is actuarially equivalent to the annuitant's accumulated contributions in the plan plus an equal amount paid by the employer and commences on application on or after the sixty-second birthday of the annuitant. The deferred annuity is not a retirement benefit and annuitants are not entitled to receive any amount prescribed by section 38-887, 38-888, 38-904 or 38-906.
- B. This section does not apply to a member who becomes a member of the plan on or after January 1, 2012 and before July 1, 2018. Such a person who attains a normal retirement date is eligible for retirement and a retirement benefit even if the member terminates employment with an employer before the age requirement for normal retirement if the member attains the service requirement for normal retirement.

Added by Laws 2009, Ch. 83, § 11, effective September 30, 2009. Amended by Laws 2011, Ch. 357. Amended by Laws 2017, Ch. 163, § 21.

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

- A. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to civil suit by the plan in the superior court in Maricopa County. On entry of an order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201, subsection A, until all amounts owed are paid to the plan.
- B. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member is subject to restitution and fines imposed by a court of competent jurisdiction. The court may order the restitution or fines to be paid from any payments otherwise payable to the member from the plan.
- C. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the plan with an intent to defraud the plan is guilty of a class 5 felony. If any change or error in the records results in any member or beneficiary receiving from the plan more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct the error, and as far as practicable shall adjust the payments in a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime pursuant to this subsection, section 13-713 applies.
- D. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to a member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

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

38-913. Discount rate; service purchase; transfer of service credits*

- A. Beginning July 1, 2017, the discount rate specified in subsection B of this section applies to service purchases or transfers of service credits to the plan pursuant to the following sections:
 - 1. Section 38-907, subsection A or B.
 - 2. Section 38-909, subsection C.
 - 3. Sections 38-921, 38-922, 38-923 and 38-924.
- B. For members enrolled in the system:
 - 1. Before July 1, 2017, the discount rate is the assumed rate of return that is prescribed by the board.
 - 2. On or after July 1, 2017, the discount rate is an amount equal to the lesser of the assumed rate of return that is prescribed by the board or an amount equal to the yield on a ten-year treasury note as of March 1 that is published by the Federal Reserve Board plus two percent. The discount rate is effective beginning in the next fiscal year, and the board shall recalculate the rate each year.

Added by Laws 2016, Ch. 90, § 9. Amended by Laws 2019, Ch. 38, § 14.

* See Sec. 15 and Sec. 16B on page 91.

Sec. 10. Discount rate; applicability; delayed repeal

- A. Until July 1, 2017, for service purchases and transfers of service credits under the Elected Officials' Retirement Plan, the Public Safety Personnel Retirement System and the Corrections Officer Retirement Plan, the discount rate used by the actuary for the calculation of the actuarial present value of the projected benefits is an amount equal to the assumed rate of return that is prescribed by the board of trustees of the Public Safety Personnel Retirement System.
- B. This section applies retroactively to from and after August 1, 2012.
- C. This section is repealed from and after June 30, 2017.

38-914. Employer disclosure; funding ratio

An employer shall disclose the employer's funding ratio under the plan on the employer's public website.

Added by Laws 2017, Ch. 163, § 23.

Sec. 24. Conditional enactment

Section 38-885.01, Arizona Revised Statutes, as amended laws 2017, chapter 163, section 14, sections 38-905, 38-905.01, 38-905.02, 38-905.03 and 38-905.04, Arizona Revised Statutes, as repealed by laws 2017, chapter 163, section 20, section 38-905.05, Arizona Revised Statutes, as added by laws 2017, chapter 163, section 21 and section 38-911, Arizona Revised Statutes, as amended by laws 2017, chapter 163, section 22, do not become effective unless the Constitution of Arizona is amended as prescribed in House Concurrent Resolution 2032, Fifty-Third Legislature, Second Regular Session, by vote of the people at the next general election.

Added by Laws 2017, Ch. 163, § 24. Amended by Laws 2018, Ch. 140, § 3.

**TITLE 38, CHAPTER 5, ARTICLE 7.
TRANSFERS TO ANOTHER RETIREMENT SYSTEM OR PLAN
(38-921 THROUGH 38-924)**

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

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

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

38-922. Transfer or redemption of service credits

- A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.
- B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:
1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.
 2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.
- C. In the event a member decides to transfer:
1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

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

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

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

- A. An active or inactive member of a retirement system or plan of a municipality of this state or the Public Safety Personnel Retirement System who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:
 - 1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.
 - 2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
 - 3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

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

Added Laws 2006, Ch. 264, § 22; Laws 2010, Ch. 200, § 75, eff. April 28, 2010. Amended by Laws 2013, Ch. 111.

38-924. Transfer of service credits

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

- C. If a member decides to transfer:
1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. If the amount calculated in subsection B, paragraph 2 of this section is greater than the amount determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.
 2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.
- D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

Added by Laws 2006, Ch. 264, § 22.

**TITLE 38, CHAPTER 5, ARTICLE 7.1
ARIZONA EMPLOYERS' PENSION PREFUNDING PLAN
(38-931 THROUGH 38-940)**

38-931. Definitions

In this article, unless the context otherwise requires:

1. "Administering and investing":
 - (a) means administering, managing, operating, investing and distributing the prefunding plan and its assets, including accepting, depositing, holding, investing, reinvesting and transferring the assets of the prefunding plan.
 - (b) includes employing legal services.
2. "Board" means the board of trustees of the system.
3. "Defined benefit pension" means the elected officials' retirement plan established by article 3 of this chapter, the Public Safety Personnel Retirement System established by article 4 of this chapter and the Corrections Officer Retirement Plan established by article 6 of this chapter.
4. "Employer" means an employer as defined in section 38-801, 38-842 or 38-881.
5. "Participating employer" means an employer that is authorized and has elected to participate in the prefunding plan and whose governing body has entered into a contract with the board as provided in this article.
6. "Prefunding plan" means the Arizona employers' pension prefunding plan established by this article.
7. "Required pension contributions" means an employer's unfunded liability and future required contributions under the applicable defined benefit pension, whether pertaining to a single year or multiple years.
8. "System" means the Public Safety Personnel Retirement System.
9. "Tax-exempt status of the prefunding plan's income" means that the prefunding plan's income is excluded from gross income for the purposes of the assessment of federal income tax under section 115 of the internal revenue code, intergovernmental immunity or similar grounds.
10. "Trustee" has the same meaning prescribed in section 38-848.04.

Added by Laws 2020, Ch. 79 § 3.

38-932. Arizona employers' pension prefunding plan

- A. The Arizona employers' pension prefunding plan is established as a special trust fund for the purpose of allowing participating employers that provide a defined benefit pension plan to their employees to prefund the employer's required pension contributions.
- B. The prefunding plan and the assets held in the prefunding plan are separate and apart from:
 1. The public safety personnel retirement fund and any other fund, program or plan administered by the board.
 2. Any pension prefunding plan investment accounts established pursuant to section 35-314.04 or any other section of title 35 and any pension prefunding plan monies in such accounts.
- C. The prefunding plan is an integral part of this state and of the political subdivisions of this state, performs an essential governmental function and is an entity with the power to sue and be sued. The prefunding plan is intended to be structured and administered in a manner that results in the tax-exempt status of the prefunding plan's income.

Added by Laws 2020, Ch. 79 § 3.

38-933. Administration and investment by the board; investment options; administrative costs

- A. The board shall have the sole and exclusive control of the administration and investment of the prefunding plan.
- B. The board shall administer and invest the prefunding plan as provided in this article. Notwithstanding any other provision of this title, the board shall offer each participating employer investment options for monies in the prefunding plan consisting of cost-effective, diversified investment portfolios in publicly traded investment options that do not exceed the risk and return profiles established by the board, consistent with the board's fiduciary duty.
- C. Except as otherwise specified in this article, the provisions of article 4 of this chapter pertaining to the administration and investment of the system, including delegation of authority to the administrator and others persons, supplement this article.
- D. The board may keep assets of the prefunding plan separate or commingle the assets of the prefunding plan in one or more group trusts, subject to the crediting of assets, receipts and earnings and charging of payments to the appropriate employer.
- E. All assets of and income earned on the prefunding plan shall be credited to the prefunding plan.
- F. Each participating employer shall pay the reasonable administrative costs as determined by the board in its sole and absolute discretion for the administration and investment of the prefunding plan. The board shall deposit in the prefunding plan all monies received by the board for those administrative costs.

Added by Laws 2020, Ch. 79 § 3.

38-934. Board authorization of employer participation; employer election

- A. The board, pursuant to the terms and conditions set by the board, may authorize an employer to participate in the prefunding plan.
- B. An employer authorized by the board may elect to participate in the prefunding plan if all of the following occur:
 - 1. The governing body of the employer adopts a resolution requesting to participate in the prefunding plan.
 - 2. The employer submits a written request to participate in the prefunding plan with the resolution to the administrator of the board.
 - 3. The governing body of the employer enters into a contract with the board setting forth the terms and conditions of that employer's participation in the prefunding plan, including reflecting or incorporating the requirements of this article and addressing funding and expenditures and actuarial, accounting, reporting and investment considerations.

Added by Laws 2020, Ch. 79 § 3.

38-935. Transfer of monies by employer

- A. The board may authorize a participating employer to transfer monies into the prefunding plan. A transfer of monies into the prefunding plan shall comply with all of the following:
 - 1. The transfer satisfies the terms of the contract between the governing body of the participating employer and the board.
 - 2. The transfer satisfies the requirements under the applicable governmental accounting standards.
 - 3. The transfer does not jeopardize the tax-exempt status of the prefunding plan's income.
- B. Except as otherwise provided in this section and sections 38-936 and 38-937, monies transferred by a participating employer to the prefunding plan pursuant to subsection a of this section are irrevocable and may not be refused by the board or refunded or returned to the participating employer making the transfer.

Added by Laws 2020, Ch. 79 § 3.

38-936. Transfer of assets out of the prefunding plan; requirements

- A. The board may authorize a participating employer to transfer assets out of the prefunding plan if the asset transfer complies with subsection b of this section and all of the following:
 - 1. The transfer satisfies the terms of the contract between the governing body of the participating employer and the board.
 - 2. The transfer satisfies the requirements under the applicable governmental accounting standards.
 - 3. The transfer does not jeopardize the tax-exempt status of the prefunding plan's income.
- B. Except as otherwise provided in section 38-937:
 - 1. The prefunding plan assets shall be used exclusively for the purpose of paying required pension contributions and the administrative costs associated with the prefunding plan and may not be used for any other purpose.
 - 2. A transfer of assets out of the prefunding plan shall be made solely for the purpose of transferring assets to the system to discharge the participating employer's required pension contributions to the applicable defined benefit pension.
- C. The prefunding plan assets and any transfer of assets out of the prefunding plan are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws or other process of law and are not unassignable.
- D. Except for a participating employer to the extent expressly provided in subsection a of this section, an employee, member, beneficiary or other individual or person does not have any right, title or interest in the prefunding plan or any prefunding plan assets.

Added by Laws 2020, Ch. 79 § 3.

38-937. Termination of employer's participation; prefunding plan termination

- A. The board may terminate the participation of a participating employer in the prefunding plan if any of the following applies:
 - 1. The board determines that all obligations of a participating employer to pay required pension contributions in accordance with the terms of the applicable defined pension plan of the participating employer have been satisfied in full by payment or by defeasance with no remaining risk regarding the amounts to be paid or the value of the assets held in the prefunding plan.
 - 2. A participating employer elects to cease to participate in the prefunding plan.
 - 3. The board finds that the participating employer has failed to satisfy the terms and conditions required by this article, by board rules or by the contract between the governing body of the participating employer and the board.
 - 4. The prefunding plan is terminated by the board or the prefunding plan otherwise terminates.
- B. If the board terminates the participation of a participating employer in the prefunding plan as described in subsection a, paragraph 1, 2 or 3 of this section, any assets attributable to that participating employer's transfers into the prefunding plan, including any earnings on such assets, after the payment of any obligation of that participating employer owed to the prefunding plan for reasonable administrative costs, shall be transferred to the system to pay the participating employer's required pension contributions under the applicable defined benefit pension. Any remaining monies in excess of the amount necessary to satisfy the participating employer's required pension contributions shall be transferred to the participating employer only if both of the following apply:
 - 1. The transfer does not jeopardize the tax-exempt status of the prefunding plan's income.
 - 2. The transfer complies with the requirements under the applicable governmental accounting standards.

- C. If the prefunding plan is terminated as described in subsection a, paragraph 4 of this section, the assets attributable to a participating employer's transfers into the prefunding plan, including any earnings on such assets, after the payment of any obligation of that participating employer owed to the prefunding plan for reasonable administrative costs, shall be transferred to the system to pay the participating employer's required pension contributions. Any remaining monies in excess of the amount necessary to satisfy the participating employer's required pension contributions shall be transferred to the participating employer if the transfer complies with subsection b, paragraphs 1 and 2 of this section.

Added by Laws 2020, Ch. 79 § 3.

38-938. Annual financial statements; audit; actuarial valuation report; unfunded pension liability calculation

- A. The board shall cause the annual financial statements of the prefunding plan to be prepared in accordance with the applicable governmental accounting standards and an audit to be conducted of those financial statements by a qualified independent certified accounting firm for each fiscal year in accordance with the applicable governmental auditing standards.
- B. For the purposes of the board's preparation of the annual employer actuarial valuation report regarding the defined benefit pension, a total asset amount comprised of the sum of the assets in the prefunding plan and the assets of the defined benefit pension shall be used in the calculation of the unfunded pension liability and the annual actuarial required contribution amount.

Added by Laws 2020, Ch. 79 § 3.

38-939. Nontaxable status of prefunding plan; intent

- A. Assets transferred into or out of or held in the prefunding plan and investment income on assets in the prefunding plan are exempt from state, county and municipal taxes.
- B. The legislature intends that the prefunding plan's income not be subject to federal income tax. The board may adopt additional rules, policies and procedures as the board deems necessary or appropriate to fulfill the legislature's intent that the prefunding plan's income not be subject to federal income tax.
- C. If the board receives notification from the United States internal revenue service that this article or any portion of this article will jeopardize the tax-exempt status of the prefunding plan's income, the portion of this article that will cause the disqualification does not apply.

Added by Laws 2020, Ch. 79 § 3.

38-940. Board rules; procedures; discretionary fiduciary duty

- A. The board may adopt rules, policies and procedures regarding the prefunding plan, including administering and investing the assets transferred into the prefunding plan by participating employers, investment options and termination of employer's participation in the prefunding plan, as the board deems necessary to implement this article. The board, in administering and investing the prefunding plan, may employ services, including legal services, and do all acts, whether expressly authorized, that it deems necessary or appropriate for defending, protecting or advancing the prefunding plan.
- B. The board has full discretionary fiduciary authority to determine all questions arising in connection with administering and investing the prefunding plan, including its interpretation and any factual questions arising under the prefunding plan. Any determination, authorization, approval, request, requirement or other action, election or decision, including the setting of terms and conditions, in connection with the prefunding plan by the board pursuant to this article is subject to, and shall be made in, the sole and absolute discretion of the board. The board, individual trustees, the administrator, deputy or assistant administrators and employees of the board do not guarantee the prefunding plan in any manner against loss or depreciation, are not personally liable for any act or failure to act made in their official capacity in good faith and are indemnified from the assets of the prefunding plan for any judgment against any of them, including attorney fees, costs and expenses reasonably incurred in the defense of any claim arising from any act or failure to act made in good

faith. The board may appear before and maintain an action in political subdivisions of this state, courts and other forums, in each case through a representative or counsel appointed by the board, as the board deems necessary or appropriate, to defend, protect, advance or otherwise assert the interests of the prefunding plan, the board, a trustee or member of the board, the administrator, deputy or assistant administrators, employees of the board and participating employers.

- C. A trustee or member of the board is, in discharging duties with respect to or in connection with the prefunding plan or the system, entitled to rely on, among other things, information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the following:
 - 1. The administrator, one or more deputy or assistant administrators or employees of the system whom the trustee or member of the board reasonably believes are reliable and competent in the matters presented.
 - 2. Legal counsel, public accountants or other persons as to matters the trustee or member of the board reasonably believes are within the person's professional or expert competence.
 - 3. A committee of the board of which the trustee or member of the board is not a member if the trustee or member of the board reasonably believes the committee merits confidence.
- D. A trustee or member of the board is not liable for any action taken as a trustee or member of the board or any failure to take any action if the duties of the trustee or member of the board were performed in compliance with section 38-848.04. In any legal proceeding or other forum, a trustee or member of the board has all of the defenses and presumptions ordinarily available to a trustee or member of the board. A trustee or member of the board is presumed in all cases to have acted, failed to act or otherwise discharged such duties in accordance with section 38-848.04 and any other applicable law. The burden is on the party challenging the act, failure to act or other discharge of duties of or by a trustee or member of the board to establish by clear and convincing evidence facts rebutting the presumption.

Added by Laws 2020, Ch. 79 § 3.

Sec. 4. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**TITLE 38, CHAPTER 4, ARTICLE 3.
PUBLIC SAFETY CANCER INSURANCE
(38-641 THROUGH 38-645)**

Sec. 2. Heading change

The article heading of title 38, chapter 4, article 3, Arizona Revised Statutes, is changed from "FIREFIGHTER, PEACE OFFICER AND CORRECTIONS OFFICER CANCER INSURANCE" to "PUBLIC SAFETY CANCER INSURANCE".

38-641. Definitions

In this article, unless the context otherwise requires:

1. "Board" means the board of trustees of the Public Safety Personnel Retirement System established by section 38-848, including its authorized employees, administrators, attorneys and agents.
2. "Employer" means this state or any political subdivision of this state, including cities, towns, fire districts and Indian tribes, that employs firefighters, peace officers, corrections officers, detention officers or other members as defined in section 38-881 and that participates in the Public Safety Personnel Retirement System established by Chapter 5, Article 4 of this title or the Corrections Officer Retirement Plan established by Chapter 5, Article 6 of this title.
3. "Peace officer" means a certified peace officer as defined in section 38-842.
4. "Program" means the Public Safety Cancer Insurance Policy Program established by this article.

Added by Laws 1996, Ch. 283, § 2, effective July 1, 1997; Amended by Laws 2000, Ch. 39, § 1; Laws 2007, Ch. 147, § 2, effective September 19, 2007, retroactively effective to July 1, 2007; Amended by Laws 2010, Ch. 200, § 6, effective April 28, 2010; Amended by Laws 2014, Ch.190 § 3. Amended by Laws 2016, Ch. 178, § 3.

38-642. Public safety cancer insurance policy program

- A. Except as provided in subsection D of this section, the board shall establish and administer a Public Safety Cancer Insurance Policy Program for participating employers that employ firefighters or peace officers. For the purposes of the internal revenue code, the program is an integral part of a political subdivision of this state.
- B. Except as provided in subsection D of this section, participating employers that employ firefighters or peace officers shall participate in the program.
- C. The board shall contract for a group cancer insurance policy to provide coverage as prescribed by section 38-645 or may self-insure the program by establishing an insurance policy that is of its own design and that is underwritten by the assets of the public safety cancer insurance policy program account established by section 38-643. When procuring, establishing or administering any cancer insurance policy provided pursuant to this article the board is exempt from the requirements of title 41, chapter 23.
- D. The board shall administer a public safety cancer insurance policy program for employers and their employees who are corrections officers, detention officers or other members as defined in section 38-881 and who join the program. The state department of corrections, the department of juvenile corrections, the department of public safety or a county, city or town may establish a voluntary cancer insurance policy program for employees who are corrections officers, detention officers or other members as defined in section 38-881. The state department of corrections, the department of juvenile corrections, the department of public safety or a county, city or town that, in its discretion, establishes a program shall collect the payments for the program and submit the monies to the board on behalf of the employees who voluntarily enroll in the program and make payments for the cancer insurance.

If a county, city or town establishes a voluntary cancer insurance policy program, the county, city or town is not required to make payments for the cancer insurance. If the state department of corrections, the department of juvenile corrections or the department of public safety establishes a voluntary cancer insurance policy program, the department shall not make payments for the cancer insurance. The board may adopt policies that establish criteria for participation in the program pursuant to this subsection.

- E. On or before July 31 of each year, the board shall notify each employer required to participate in the program of the total amount payable to the board to pay for the costs of the program. The amount charged to each employer shall not exceed one hundred eighty dollars for each employee of the employer who is a firefighter, peace officer, corrections officer, or detention officer or any other member as defined in section 38-881 on record with the board as of June 30 of that year. Each employer shall pay this amount to the board on or before August 31 of each year.
- F. Employers that fail to pay the amount required by subsection E of this section by August 31 shall pay a fifteen percent late charge to the board on all delinquent amounts accrued monthly. If the amount due and the late charge are not paid within thirty days, the board may recover the amounts due from the employer by either:
 - 1. Filing an action in a court of competent jurisdiction to recover the amount due.
 - 2. Requesting a deduction of any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.
- G. If the board self-insures the program the board and the program are exempt from title 20 and any rules adopted pursuant to title 20.

Added by Laws 1996, Ch. 283, § 2, effective July 1, 1997; Amended by Laws 2000, Ch. 39, § 2; Amended by Laws 2004, Ch. 177, § 1; Amended by Laws 2007, Ch. 147, § 3, effective September 19, 2007, retroactively effective to July 1, 2007; Amended by Laws 2010, Ch. 200, § 7, effective April 28, 2010; Amended by Laws 2014, Ch. 190, § 4; Amended by Laws 2016, Ch. 178, § 4.

38-643. Public safety cancer insurance policy program account

- A. The public safety cancer insurance policy program account is established and shall be under the exclusive control of the board. The board shall deposit monies collected pursuant to section 38-642 in the account to pay the cost of providing a group cancer insurance policy under the program and the cost of administering the program.
- B. The board may use up to ten percent of the monies deposited in the account each year ending July 31 to pay the costs of administering the program, except that board attorney fees and court costs relating to the program shall be paid out of the account and are not subject to this limitation. If no monies are deposited in the account in a given year, the board may use up to five percent of the monies deposited in the account in the most recent year in which there was a deposit to pay the costs of administering the program.
- C. The board shall cause an independent audit of the account to be performed at the end of each fiscal year and shall report the results of the audit to each employer within six months following the end of the fiscal year.
- D. The employer contributions and securities in the account and investment earnings on monies in the account are exempt from state, county and municipal taxes.
- E. The program is a welfare benefit plan or trust intended to pay expenses incurred in the treatment of cancer as provided in the policy of insurance secured or established by the board pursuant to section 38-642. The legislature intends that the program's income be excluded as gross income for the purposes of the assessment of federal income tax under section 115 of the internal revenue code and that coverage under the program be excluded as gross income to the employees or retirees under section 106 of the internal revenue code. The board may adopt additional program provisions as are necessary to fulfill its intent that the program's income and premiums are not subject to federal income tax.

- F. Employers, the board of trustees and any member of a local board do not guarantee the account in any manner against loss or depreciation and are not liable for any act or failure to act made in good faith pursuant to this article, including determinations on program claims.

Added by Laws 1996, Ch. 283, § 2, effective July 1, 1997; Amended by Laws 2000, Ch. 39 § 3; Amended by Laws 2007, Ch. 147, § 4, effective September 19, 2007, retroactively effective to July 1, 2007; Amended by Laws 2010, Ch. 200, § 8, effective April 28, 2010; Amended by Laws 2013, Ch. 203, § 1; Amended by Laws 2014, Ch. 190, § 5; Amended by Laws 2016, Ch. 178, § 5.

38-644. Eligibility

- A. Except as provided in subsections B, C and D of this section, to qualify for covered benefits under the program, a person must satisfy all of the following criteria:
1. Be an active or retired member of the Public Safety Personnel Retirement System or the Corrections Officer Retirement Plan or a participant in the Public Safety Personnel Defined Contribution Retirement Plan.
 2. Be one of the following:
 - (a) A firefighter who is or was regularly assigned to hazardous duty of the type normally expected of a firefighter.
 - (b) A peace officer.
 - (c) A corrections officer employed by the state department of corrections or the department of juvenile corrections, a detention officer employed by a county, city or town or any other member as defined in section 38-881 if the department, county, city, town or participating employer as defined in section 38-881 has voluntarily established a program and the corrections officer, detention officer or other member as defined in section 38-881 voluntarily enrolled in the program and made the payments pursuant to section 38-642, subsection D.
 3. Have cancer that was first diagnosed after the person's date of membership in the Public Safety Personnel Retirement System or the Corrections Officer Retirement Plan or date of participation in the Public Safety Personnel Defined Contribution Retirement Plan.
- B. Persons who terminate employment with a participating employer are not eligible for benefits under the program unless the person has made a valid claim for payment of expenses under the program before termination of employment.
- C. On retirement, persons who were either receiving benefits under the program before retirement or who are diagnosed with cancer subsequent to retirement remain eligible for coverage under the program for the total of:
1. Either:
 - (a) Five months for each year of credited service accumulated toward retirement under the Public Safety Personnel Retirement System or the Corrections Officer Retirement Plan or for five months for each year of service under the Public Safety Personnel Defined Contribution Retirement Plan.
 - (b) For five months for each year of service under the Public Safety Personnel Defined Contribution Retirement Plan.
 2. Plus actual time spent in the Deferred Retirement Option Plan pursuant to section 38-844.03 or the Reverse Deferred Retirement Option Plan pursuant to section 38-885.01.
- D. A person whose eligibility to receive benefits under subsection C of this section is expiring may continue to remain eligible for coverage under the program if the person makes an election with the board and pays to the board the cost of the premium as determined by the board at the time determined by the board.
- E. A person is not eligible for benefits under the program if there is any evidence that the cancer that forms the basis for a benefit claim under the program existed before the person's membership in the Public Safety Personnel Retirement System or the Corrections Officer Retirement Plan or the person's participation in the Public Safety Personnel Defined Contribution Retirement Plan.

Added by Laws 1996, Ch. 283, § 2, effective July 1, 1997; Amended by Laws 2000, Ch. 39, § 4; Laws 2001, Ch. 13, § 1; Amended by Laws 2004, Ch. 177, § 2; Amended by Laws 2007, Ch. 147, § 5, effective September 19, 2007, retroactively to July 1, 2007; Amended by Laws 2010, Ch. 200, § 9, effective April 28, 2010; Amended by Laws 2014, Ch. 190, § 6; Amended by Laws 2016, Ch. 178, § 6. Amended by Laws 2017, Ch. 269, § 1. Amended by Laws 2019, Ch. 36, § 1.

38-645. Coverage

- A. Coverage provided under the program shall provide benefits to eligible persons to pay for expenses that are designated by the board and that are incurred in the treatment of cancer, including treatments by clinics or providers outside of the United States.
- B. The board may provide for additional coverage or exclusions under the program based on available monies in the public safety cancer insurance policy program account.
- C. Coverage under the public safety cancer insurance policy program may be canceled, changed or terminated by the board at any time without notice. If the program is terminated, the board shall refund monies in the public safety cancer insurance policy program account on a pro rata basis to employers, excluding monies held in reserve for benefits as determined by the board.
- D. If the program is self-insured, benefits are limited to the assets in the public safety cancer insurance policy program account and those benefits may be reduced or eliminated at any time.

Added by Laws 1996, Ch. 283, § 2, effective July 1, 1997; Amended by Laws 2000, Ch. 39, § 5; Amended by Laws 2007, Ch. 147, § 6, effective September 19, 2007, retroactively effective to July 1, 2007; Amended by Laws 2010, Ch. 200, § 10, effective April 28, 2010; Amended by Laws 2014, Ch. 190, § 7; Amended by Laws 2016, Ch. 178, § 7.

TITLE 38, CHAPTER 5, ARTICLE 4.1
PUBLIC SAFETY PERSONNEL DEFINED CONTRIBUTION RETIREMENT PLAN
(38-865 THROUGH 38-868.01)

38-865. Definitions

In this article, unless the context otherwise requires:

1. "Annuity account" means an account that is established for each participant to record the deposit of participant contributions, employer contributions and interest, dividends or other accumulations credited on behalf of the participant.
2. "Board" means the board of trustees of the public safety personnel retirement system established by section 38-848.
3. "Compensation":
 - (a) for participants as defined in paragraph 7, subdivision (a) of this section and section 38-865.01, has the same meaning prescribed in section 38-842.
 - (b) for participants as defined in paragraph 7, subdivision (b) of this section, means salary as defined in section 38-881.
4. "Defined contribution plan" means the public safety personnel defined contribution retirement plan established pursuant to this article.
5. "Employer" has the same meaning prescribed in section 38-842 or 38-881, as applicable.
6. "Employer contribution" means an amount deposited by an employer, from the employer's own monies, in the participant's annuity account on a periodic basis coinciding with the participant's regular pay period.
7. "Participant" means:
 - (a) A member as defined in section 38-842, paragraph 31, subdivision (a), excluding subdivision (a), item (vi), who is one of the following:
 - (i) An employee who is hired on or after July 1, 2017, who makes the irrevocable election to participate solely in the defined contribution plan established pursuant to this article and who was not an active, an inactive or a retired member of the system or a member of the system with a disability on June 30, 2017.
 - (ii) An employee who is hired on or after July 1, 2017, who is not covered by the federal old age and survivors insurance system and who makes the irrevocable election to participate in the system or is enrolled in the system pursuant to section 38-842.01, subsection A.
 - (b) A member as defined in section 38-881, paragraph 27, subdivision (a) who is one of the following:
 - (i) An employee who is hired on or after July 1, 2018 who is not in a designated position as defined in section 38-881, paragraph 13, subdivision (g) and who was not an active, an inactive or a retired member of the corrections officer retirement plan or a member of the corrections officer retirement plan with a disability on June 30, 2018.
 - (ii) An employee who is hired on or after July 1, 2018, who is in a designated position as defined in section 38-881, paragraph 13, subdivision (g), who makes the irrevocable election pursuant to section 38-881.01 to participate solely in the defined contribution plan established pursuant to this article and who was not an active, an inactive or a retired member of the corrections officer retirement plan or a member of the corrections officer retirement plan with a disability on June 30, 2018.
8. "Pensionable compensation" means the amount of the participant's annual compensation that does not exceed the limitation specified in section 38-843.04 or 38-895.01, as applicable.
9. "System" means the public safety personnel retirement system established by article 4 of this chapter.

Added by Laws 2016, Ch. 2, § 15. Amended by Laws 2017, Ch. 163, § 4. Amended by Laws 2018, Ch. 42, § 6.

38-865.01. Definition of participant*

For the purposes of this article, "participant" includes a member as defined in section 38-842, paragraph 31, subdivision (a) excluding subdivision (a), item (vi), who is hired on or after January 1, 2012 and before July 1, 2017, who is not covered by the federal old age and survivors insurance system and who is a member of the system.

Added by Laws 2016, Ch. 2, § 15. Amended by Laws 2018, Ch. 42, § 7.

38-866. Defined contribution plan design; purpose; powers and duties of the board; administration

- A. The board shall establish, design and administer a defined contribution plan to provide for the retirement of specified participants beginning July 1, 2017.
- B. The purpose of this article is to provide a defined contribution plan that is fully funded on a current basis from employer and participant contributions.
- C. The legislature intends that the defined contribution plan for participants under this article be designed to be a qualified governmental plan under section 401(a) of the internal revenue code, as amended, or successor provisions of law, and be exempt from taxation under section 501 of the internal revenue code. The board may adopt any additional provision to the defined contribution plan that is necessary to fulfill this intent. Consistent with this intent, the board may submit to the internal revenue service a request for a determination letter that the defined contribution plan is a plan qualified under section 401(a) of the internal revenue code and a private letter ruling that all participant contributions that are picked up by the employer as provided in section 38-867 shall be treated as employer contributions pursuant to section 414(h) of the internal revenue code
- D. The board shall:
 - 1. Enter into a contract with a provider or providers to provide retirement plan investments, plan administration and services to participants in the defined contribution plan. The plan shall provide for appropriate long-term retirement-oriented investments and shall include both fixed and variable deferred annuity options. The board shall consider all of the following when determining a company with which to contract:
 - (a) the financial stability of the company and the ability of the company to provide the contracted rights and benefits to the participants.
 - (b) the cost of the investments, plan administration and services to the participants.
 - (c) the experience of the company in providing defined contribution retirement plans in lieu of defined benefit plan participation to public employees.
 - (d) the experience of the company in paying retirement income to public employees.
 - (e) the experience of the company in providing plan education, counseling and advice to participants in public employee retirement plans that are offered in lieu of state defined benefit plan participation.
 - 2. Require under a contract that a provider provide education, counseling and objective participant-specific plan advice to participants. Any participant-specific advice and counseling shall be administered by a federally registered investment advisor. The federally registered investment advisor shall act as a fiduciary to participants and is required to act in the participant's best interest.
 - 3. Require under the contract that the defined contribution plan include not less than five and not more than twenty-five predetermined investment portfolio options to participants. The predetermined investment portfolio options shall include options that reflect different risk profiles and options that automatically reallocate and rebalance contributions as a participant ages. In addition, the defined contribution plan may permit participants to construct investment portfolios using some or all of the investment options comprising the predetermined investment portfolio options.
 - 4. Require under a contract that the defined contribution retirement plan offer participants a menu of lifetime annuity options, either fixed or variable or a combination of both.

* See Sec. 22 on page 94.

- E. The board may:
 - 1. Employ other services it deems necessary, including legal services, for the operation and administration of the defined contribution plan.
 - 2. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plan.
- F. The board shall adopt policies regarding the defined contribution plan, including the administration of the participant and employer contributions, investment options, termination of participation in the defined contribution plan, administration of the payout options under the defined contribution plan and administration of the participant distributions.
- G. The board shall participate in a competitive bid process at least once every five years to contract with a private person or any qualified company or companies to administer the defined contribution plan established pursuant to this article.
- H. Any contract for a third-party administrator of the defined contribution plan shall include competitive fees and provisions requiring quarterly meetings with the system, annual updates to the board on the status of the defined contribution plan and quarterly statements to each participant. On or before December 31 of each year, the board shall report the status of the defined contribution plan to the Governor, the President of the Senate, the Speaker of the House of Representatives and the joint legislative budget committee.

Added by Laws 2016, Ch. 2, § 15. Amended by Laws 2017, Ch. 269, § 16. Amended by Laws 2018, Ch. 279, § 24. Amended by Laws 2019, Ch. 36, § 13.

38-867. Contributions; member; employer; pick-up

- A. Each participant in the defined contribution plan shall contribute the following percentage of the participant's gross pensionable compensation by salary reduction that shall be deposited in the participant's annuity account:
 - 1. For a participant as defined in section 38-865, paragraph 7, subdivision (a), Item (ii), three percent.
 - 2. For a participant as defined in section 38-865, paragraph 7, subdivision (a), item (i), nine percent.
 - 3. For a participant as defined in section 38-865, paragraph 7, subdivision (b), seven percent.
- B. A participant as defined in section 38-865 may make a one-time irrevocable election, before the participant is eligible to participate in any qualified plan of the employer, to contribute more than the percentage of the participant's gross pensionable compensation specified in this section, up to the amount allowable under section 415(c) of the internal revenue code. A participant as defined in section 38-865, paragraph 7, subdivision (b) may make a one-time irrevocable election, before the participant is eligible to participate in any qualified plan of the employer, to contribute less than the percentage of the participant's gross pensionable compensation specified in this section but may not elect to contribute less than five percent of the participant's gross pensionable compensation. The election made pursuant to this subsection shall be the participant's contribution rate for the remainder of the participant's employment with any employer under the system or the Corrections Officer Retirement Plan, as applicable.
- C. Although designated as employee contributions, all participant contributions made to the defined contribution 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 participant's compensation. A participant in the defined contribution plan may not choose to receive the contributed amounts directly instead of the employer paying the amounts to the defined contribution plan. All participant 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 the participant's gross income for federal and state income tax purposes and are includable in the gross income of the participant or the participant's beneficiaries only in the taxable year in which they are distributed.
- D. Each employer shall annually make a contribution equal to the following percentages of each participant's gross pensionable compensation:

1. For a participant as defined in section 38-865, paragraph 7, subdivision (a), item (ii) three percent.
 2. For a participant as defined in section 38-865, paragraph 7, subdivision (a), item (i) nine percent.
 3. For a participant as defined in section 38-865, paragraph 7, subdivision (b), five percent.
- E. The pro rata share of the amount paid in subsection d of this section shall be paid on each date that a participant contribution is made and shall be credited to the participant's annuity account.
- F. A participant of the defined contribution plan may not take loans on any portion of the accumulated assets in the participant's annuity account.
- G. Each participant as defined in section 38-865, paragraph 7, subdivision (a), item (i) and subdivision (b) and each employer shall contribute to the public safety personnel defined contribution retirement plan disability program established by article 4.2 of this chapter.
- H. A participant's contributions and earnings on those contributions are immediately vested.
- I. A participant as defined in section 38-865, paragraph 7, subdivision (a) or section 38-865.01 is fully vested in the defined contribution plan after ten years of service, with employer contributions vesting at a rate of ten percent per year. If a participant described in this subsection dies or is determined to be eligible for an accidental or catastrophic disability pension pursuant to section 38-844 before completing ten years of service, the employer contributions are immediately fully vested.
- J. A participant as defined in section 38-865, paragraph 7, subdivision (b) is fully vested in the defined contribution plan after three years of service, with the employer contributions vesting at the following rates:
1. Twenty-five percent after the first year of service.
 2. Fifty percent after the second year of service.
 3. One hundred percent after the third year of service.
- K. If a participant as defined in section 38-865, paragraph 7, subdivision (b) dies or is determined to be eligible for an accidental or total and permanent disability pension pursuant to section 38-886 before completing three years of service, the employer contributions are immediately fully vested.

Added by Laws 2016, Ch. 2, § 15. .Amended by Laws 2017, Ch. 163, § 5. Amended by Laws 2017, Ch. 269, § 17. Amended by Laws 2018, Ch. 42, § 8.

38-867.01. Rollover distribution from the system; definition

- A. A lump sum distribution made pursuant to section 38-844.08, subsection B or section 38-885.01, subsection J shall be deposited in a separate rollover account for the participant as defined in subsection C, paragraph 2, subdivision (a) or (b) of this section and made immediately available for the participant to either withdraw all or any portion of the lump sum deposit or directly transfer all or any portion of the lump sum deposit to an eligible retirement plan as required by section 401(a)(31) of the internal revenue code.
- B. A participant as defined in subsection C, paragraph 2, subdivision (c) of this section may make a rollover contribution from a qualified plan or an IRA that shall be deposited in a separate rollover account for the participant and made immediately available for the participant to either withdraw all or any portion of the lump sum deposit or directly transfer all or any portion of the lump sum deposit to an eligible retirement plan as required by section 401(a)(31) of the internal revenue code.
- C. For the purposes of this section:
1. "IRA" means an individual retirement account or an individual retirement annuity described in sections 408(a) or 408(b) of the internal revenue code.
 2. "Participant" means any of the following:
 - (a) A member as defined in section 38-842, paragraph 31, excluding subdivision (a), item (vi), who is hired before January 1, 2012 and who has elected to enter the deferred retirement option plan established by section 21 38-844.02.
 - (b) A member as defined in section 38-881 who has elected to enter the reverse deferred retirement option plan established by section 38-885.01.
 - (c) An individual who has made a rollover contribution pursuant to subsection b of this section and who is either:

- (i) A current employee of an employer as defined in section 38-842 or section 38-881.
 - (ii) Currently receiving or entitled to receive a pension from the Public Safety Personnel Retirement System or the Corrections Officer Retirement Plan.
 - (iii) A former employee who was an active participant, as defined in section 38-865 or 38-865.01, in the defined contribution plan who has an annuity account balance or a separate rollover account balance.
- 3. "Qualified plan" means an eligible deferred compensation plan under 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, a tax-qualified retirement plan described in section 401(a) or 403(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code.
 - 4. "Separate rollover account" means a fully vested and nonforfeitable separate account maintained under the defined contribution plan for the benefit of a participant who has made a rollover contribution to the plan as authorized by subsection a or b of this section.

Added by Laws 2017, Ch. 269, § 18. Amended by Laws 2018, Ch. 42, § 9.

38-868. Contributions; member; employer; applicability of article*

- A. On or before June 30, 2017, a participant as defined in section 38-865.01 may make an irrevocable election to opt out of the defined contribution plan established by this article, which shall be the participant's election for the remainder of the participant's employment with any employer under the system.
- B. Beginning July 1, 2017, a participant as defined in section 38-865.01 in the defined contribution plan shall contribute three percent of the participant's gross pensionable compensation by salary reduction that shall be deposited in the participant's annuity account.
- C. Each employer of a participant as defined in section 38-865.01 shall annually make a contribution equal to the following percentages of the participant's gross pensionable compensation:
 - 1. For a participant that is hired in 2012, for fiscal years 2017-2018 through 2023-2024, four percent and three percent for each fiscal year thereafter.
 - 2. For a participant that is hired in 2013, for fiscal years 2017-2018 through 2022-2023, four percent and three percent for each fiscal year thereafter.
 - 3. For a participant that is hired in 2014, for fiscal years 2017-2018 through 2021-2022, four percent and three percent for each fiscal year thereafter.
 - 4. For a participant that is hired in 2015, for fiscal years 2017-2018 through 2020-2021, four percent and three percent for each fiscal year thereafter.
 - 5. For a participant that is hired in 2016, for fiscal years 2017-2018 through 2019-2020, four percent and three percent for each fiscal year thereafter.
 - 6. For a participant that is hired on or after January 1, 2017 and before July 1, 2017, for fiscal year 2017-2018, four percent and three percent for each fiscal year thereafter.
- D. If a participant as defined in section 38-865.01 is subsequently covered by the federal old age and survivors insurance system, the participant and the participant's employer may not make any contributions on the participant's behalf pursuant to this section during the period the participant is covered by the federal old age and survivors insurance system. If at a later time the participant is not covered by the federal old age and survivors insurance system through an employer under the system, the participant and the participant's employer shall again be required to contribute on behalf of the employee pursuant to this section.
- E. All of the provisions of this article apply to a participant as defined in section 38-865.01.
- F. For a participant as defined in section 38-865.01, an employer may choose to pay a portion of the participant's contributions under this section in an amount of not more than the difference between the contribution rate specified under section 38-843 for employees hired on or after January 1, 2012 and before July 1, 2017 and for any employee hired before January 1, 2012.

Added by Laws 2016, Ch. 2, § 15. Amended by Laws 2018, Ch. 42, § 10.

* See Sec. 22 on page 94.

38-868.01 Credit for military time

- A. An active member of the defined contribution system who volunteers or is ordered to perform military service may receive years of service for not more than sixty months of military service as provided by the uniformed services employment and reemployment rights act of 1994 (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 b of this section if the member meets the following requirements:
1. Was an active member of the defined contribution system on the day before the member began military service.
 2. Entered into and served in the armed forces of the United States or any military reserve unit of any branch of 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.
- B. Contributions made pursuant to subsection a of this section are 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.
- C. 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 vesting 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 service corresponding to the period of military service.
- D. The employer and the member shall make contributions pursuant to subsection A of this section as follows:
1. Contributions are based on the compensation that the member would have received but for the period that the member was ordered into or volunteered for military service.
 2. If the employer cannot reasonably determine the member's rate of compensation for the period that the member was ordered into or volunteered for military service, contributions are 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 or volunteering for military service, contributions are 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 are paid to the defined contribution system pursuant to section 38-843 for any military differential wage pay paid to the member while performing military service.
- E. In computing the length of total credited service of a member for the purpose of determining vesting pursuant to section 38-867 or disability pursuant to article 4.2 of this chapter, the period of military service, as prescribed by this section, is included.
- F. 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 D of this section on the member's return and in compliance with subsection A of this section.
- G. In addition to, but not in duplication of, the provisions of subsection A of this section, beginning July 1, 2017, contributions, benefits and credited service provided pursuant to this section are 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.

- H. For plan years beginning after July 1, 2017, a member who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code is not considered having a severance from employment during that qualified military service. Any payments by the employer to the member during the qualified military service shall be considered compensation to the extent those payments do not exceed the amounts the member would have received if the member had continued to perform services for the employer rather than entering qualified military service.
- I. For deaths occurring from and after July 1, 2017, in the case of a member who dies while performing qualified military service as defined in section 414(u)(5) of the internal revenue code, the survivors of the member are entitled to any benefits, other than benefit accruals relating to the period of qualified military service, provided under the defined contribution system as though the member resumed and then terminated employment on account of death.

Added by Laws 2019, Ch. 36, § 14.

Sec. 21. Retroactivity

Section 38-868.01, Arizona Revised Statutes, as added by this act, applies retroactively to from and after June 30, 2017.

**TITLE 38, CHAPTER 5, ARTICLE 8.
DEFINED CONTRIBUTION PLANS
(38-951 THROUGH 38-954)**

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 or the board of trustees established by section 38-848.
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. "Plan" means a defined contribution plan authorized by this article.

Added by Laws 2001, Ch. 280 § 9 and Ch. 390, § 15. Amended by Laws 2010, Ch. 200. Amended by Laws 2013, Ch. 216.

38-952. Supplemental defined contribution plan; establishment; administration

- A. The board or employer of an eligible group may establish, administer, manage and operate a supplemental defined contribution plan. The board of trustees established by section 38-848 may establish a single supplemental defined contribution plan for all contributing members of the retirement system and plans it administers.
- B. If a board or employer establishes a supplemental defined contribution plan:
 1. The Arizona state retirement system 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 of trustees may delegate authority to implement the plan to the administrator employed pursuant to section 38-848, subsection M, paragraph 6.
 4. The board or employer 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 or employer 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. Amended by Laws 2016, Ch. 2, § 17.

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.

**TITLE 35, CHAPTER 2, 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 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 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 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 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.

**TITLE 35, CHAPTER 2, ARTICLE 9.
ISRAEL BOYCOTT DIVESTMENTS**

35-393. Definitions

In this article, unless the context otherwise requires:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
 - (a) together with other investors that are not subject to this section.
 - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title

Added by Laws 2016, Ch. 46, § 1. Amended by Laws 2019, Ch. 94, § 1.

35-393.01. Contracting; procurement; investment; prohibitions

- A. A public entity may not enter into a contract with a value of \$100,000 or more with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.
- B. A public entity may not adopt a procurement, investment or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

Added by Laws 2016, Ch. 46, § 1. Amended by Laws 2019, Ch. 94, § 2.

35-393.02. Investment; restricted companies list; notice; immunity; exception

- A. On or before April 1 of each year, each public fund shall prepare a list of restricted companies and shall provide a copy of the list on request.
- B. In preparing the list of restricted companies, the public fund may consider at least the following:
 1. Publicly available information, including information provided by nonprofit organizations, research firms and government entities.
 2. Information prepared by an independent research firm Retained by the public fund.
 3. A statement by a company that it is participating in a boycott of Israel or that it has taken a boycott action at the request of, in compliance with or in furtherance of calls for a boycott of Israel.

- C. The public fund shall notify each company that is included on the list of restricted companies that the company is subject to divestment by the state treasurer and the retirement systems.
- D. If A company that receives notice pursuant to subsection C of this section submits a written certification to the public fund that it has ceased its boycott of Israel and will not engage in a boycott of Israel for the period of time that the state treasurer or a retirement system invests in the company, the public fund shall remove the company from the restricted list.
- E. Each public fund shall:
 - 1. Sell, redeem, divest or withdraw all direct holdings of a restricted company from the assets under its management in an orderly and fiducially responsible manner within three months after preparing the list of restricted companies pursuant to subsection A of this section. On or before August 1 of each year, the state treasurer and each retirement system shall post on their websites a list of investments that are sold, redeemed, divested or withdrawn pursuant to this paragraph.
 - 2. Not acquire securities of a restricted company as part of its direct holdings.
 - 3. Request that managers of its indirect holdings consider selling, redeeming, divesting or withdrawing holdings of a restricted company from the assets under its management.
- F. With respect to any action performed pursuant to this section, the state treasurer, each retirement system and any person acting on behalf of the state treasurer or the retirement system:
 - 1. Are exempt from any conflicting statutory or common law obligation or fiduciary duties with respect to choice of asset managers, investment funds or investments.
 - 2. Are subject to Title 12, chapter 7, article 2 regarding immunity for acts and omissions.
 - 3. Are indemnified and held harmless by this State from claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including attorney fees, and against all liability, losses and damages because of a decision to sell, redeem, divest or withdraw holdings of a restricted company made pursuant to this section.
- G. This section does not apply to investments that are made by the state treasurer pursuant to section 35-314.01.

Added by Laws 2016, Ch. 46, § 1.

35-393.03. Applicability; severability

- A. This article does not apply to a boycott prohibited by 50 United States Code section 4842 or a regulation issued pursuant to that section.
- B. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Added by Laws 2016, Ch. 46, § 1. Amended by Laws 2019, Ch. 94, § 3.

Sec. 2. Legislative findings

- A. Boycotts and related tactics have become a tool of economic warfare that threaten the sovereignty and security of key allies and trade partners of the United States.
- B. The state of Israel is the most prominent target of such boycott activity, beginning with the Arab League Boycott adopted in 1945, even before Israel's declaration of independence as the reestablished national state of the Jewish people.
- C. Companies that refuse to deal with United States trade partners such as Israel, or entities that do business with or in such countries, make discriminatory decisions on the basis of national origin that impair those companies' commercial soundness.
- D. It is the public policy of the United States, as enshrined in several federal acts, including 50 United States Code section 4607, to oppose such boycotts, and Congress has concluded as a matter of national trade policy that cooperation with Israel materially benefits United States companies and improves American competitiveness.
- E. Israel in particular is known for its dynamic and innovative approach in many business sectors, and a company's decision to discriminate against Israel, Israeli entities or entities that do business with Israel or in Israel is an unsound business practice making the company an unduly risky contracting partner or vehicle for investment.

- F. This state seeks to implement Congress's announced policy of "examining a company's promotion or compliance with unsanctioned boycotts, divestment from, or sanctions against Israel as part of its consideration in awarding grants and contracts and supports the divestment of State assets from companies that support or promote actions to boycott, divest from, or sanction Israel."

Added by Laws 2016, Ch. 46, § 1.

RELATED STATUTES

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

- A. Notwithstanding any other law, if a member of a state retirement system or plan is convicted of or pleads no contest to an offense that is a class 1, 2, 3, 4 or 5 felony and that was committed in the course of the member's employment as a public official or for a public employer, the court shall order the person's membership terminated and the person shall forfeit all rights and benefits earned under the state retirement system or plan. A member who forfeits all rights and benefits earned pursuant to this section is entitled to receive, in a lump sum amount, the member's contribution to the state retirement system or plan plus interest as determined by the board of that state retirement system or plan, less any benefits received by the member.
- B. An order forfeiting a member's benefits on conviction of an offense listed in subsection A shall not be stayed on the filing of any appeal of the conviction. While an appeal of the conviction is being adjudicated and until a final judgment is issued, for a member who is not receiving benefits, the member and the member's employer are required to continue making contributions to the retirement system or plan and for a member who is receiving benefits, the retirement system or plan shall suspend payments to the member and hold the assets in trust. If the conviction is reversed on final judgment, no rights or benefits shall be forfeited and the member's membership shall be reinstated.
- C. Notwithstanding subsection A, the court may award to a spouse, dependent or former spouse of a member who is subject to subsection A some or all of the amount that was forfeited under subsection A. The award under this subsection shall not require the board of the state retirement system or plan to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided by the laws governing the state retirement system or plan from which the award is being made. In determining whether to make an award under this subsection, the judge shall consider the totality of circumstances, including:
 - 1. The role, if any, of the person's spouse, dependent or former spouse in connection with the illegal conduct for which the person was convicted.
 - 2. The degree of knowledge, if any, possessed by the person's spouse, dependent or former spouse in connection with the illegal conduct for which the person was convicted.
 - 3. The community property nature of the benefits involved.
 - 4. The extent to which the person's spouse, dependent or former spouse was relying on the forfeited benefits.
- D. Notwithstanding subsection H, the court shall order that a person who is subject to forfeiture under this section is ineligible for future membership in any state retirement system or plan.
- E. The court shall provide a copy of the order of forfeiture to the state retirement system or plan to which it applies.
- F. This section does not apply to a member whose most recent retirement occurs before the effective date of this section, unless the member has resumed making contributions to the state retirement system or plan.
- G. Notwithstanding subsection A, a court shall not order the forfeiture of rights and benefits earned under the state retirement system or plan that accrued before the effective date of this section or for a felony committed before the effective date of this section.
- H. This section applies only to the state retirement system or plan in which the person was a contributing member at the time the offense was committed.
- I. For the purposes of this section, "state retirement system or plan" means the Arizona State Retirement System established by Title 38, Chapter 5, Article 2, the Elected Officials' Retirement Plan established by Title 38, Chapter 5, Article 3, the Public Safety Personnel Retirement System established by Title 38, Chapter 5, Article 4 and the Corrections Officer Retirement Plan established by Title 38, Chapter 5, Article 6.

Added by Laws 2011, Ch. 357.

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

- A. Subject to subsection B of this section, any person engaged in law enforcement activities shall be compensated for each hour worked in excess of forty hours in one work week, unless otherwise agreed to by the employer and the person engaged in law enforcement activities, at the option of the employer at the following rates:
 - 1. One and one-half times the regular rate at which the person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.
 - 2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.
- B. If an employee and employer have an agreement pursuant to subsection A of this section regarding the employee's alternate work period and the employee becomes employed in a new position with the employer, the employee may terminate the existing alternate work period agreement.
- C. Subsection A of this section does not preempt agreements that supplant, revise or otherwise alter the provisions of this section, including preexisting agreements between the employer and the law enforcement officer or the law enforcement officer's lawful representative association.
- D. Any person engaged in probation officer activities shall be compensated for each hour worked in excess of eighty hours in a two week work period at the option of the employer at the following rates:
 - 1. One and one-half times the regular rate at which the person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.
 - 2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.
- E. Paid leave may be considered hours worked for the purpose of calculating overtime.
- F. The director of the department of public safety may establish alternate work periods, in accordance with federal law, for the purpose of determining overtime compensation for those employees of the air rescue section of the department of public safety.
- G. Notwithstanding subsection E of this section, an alternate work period established by the director of the department of public safety for the purpose of determining overtime compensation shall not exceed twenty-eight days or one hundred sixty hours.
- H. For the purposes of this section:
 - 1. "Person engaged in law enforcement activities":
 - (a) Means:
 - (i) A law enforcement officer as defined by section 38-1001.
 - (ii) A peace officer as defined by section 41-1701.
 - (iii) Any security personnel responsible for controlling or maintaining custody of inmates in correctional institutions maintained by this state or a county, city or town.
 - (iv) Any law enforcement personnel under section 41-1714 responsible for directly assisting law enforcement officers in the performance of law enforcement activities.
 - (b) Does not include any person employed in a bona fide executive or administrative capacity as defined by the employer.
 - 2. "Person engaged in probation officer activities":
 - (a) Means a probation officer or surveillance officer who is appointed pursuant to section 8-203, 12-251 or 12-259.
 - (b) Does not include any person employed in a bona fide executive or administrative capacity as defined by the employer.

Amended by Laws 2006, Ch. 151, § 1, effective immediately. Amended by Laws 2011, Ch. 27. Amended by Laws 2012, Ch. 144 § 1. Amended by Laws 2013, Ch. 200.

35-311. State board of investment; membership; powers and duties

- A. The state board of investment is established consisting of the state treasurer, the director of the department of administration or the director of the department of administration's designee, the director of the department of insurance and financial institutions or the director of the department of insurance and financial institutions' designee and two individuals appointed by the state treasurer, one of whom has verifiable expertise in investment management and one of whom represents a public entity with current deposits in a local government investment pool. The state treasurer is ~~chairman~~ chairperson of the board. The board shall keep an accurate record of its proceedings. A certified copy of the record is prima facie evidence of the matters appearing in the record in any court. A meeting of the board may be called at any time by the ~~chairman~~ chairperson or a majority of the board members.
- B. The state board of investment shall:
1. Hold regular monthly meetings.
 2. Review investments of treasury monies.
 3. Serve as trustees of the permanent state land funds and provide management of the assets of the funds consistent with the requirements of article X, section 7, Constitution of Arizona.
 4. Serve as trustees of any endowments established pursuant to section 35-314.03.
 5. Serve as trustees of any pension prefunding plan investment accounts established pursuant to section 35-314.04.
- C. The state treasurer shall furnish to the board of investment at its regular monthly meeting a report of the performance of current investments and a report of the current investments as of the close of business of the preceding month. The state treasurer shall make these reports available for inspection by the public during normal working hours at the office of the state treasurer for a period of time of not less than two years after the date of the report.
- D. The board of investment may order the state treasurer to sell any of the securities, and any order shall specifically describe the securities and fix the time period during which they are to be sold. Securities so ordered to be sold shall be sold for cash by the state treasurer at the current market price. The state treasurer and the members of the board are not accountable for any loss occasioned by sales of securities at prices lower than their book value. Any loss shall be charged against earnings received from interest or capital gains on the applicable treasury monies.
- E. The board may establish standards in addition to those established by section 35-317, subsection A for the qualification of agents acting pursuant to section 35-317, subsection B.

Added by Laws 1987, Ch. 184, § 1. Amended by Laws 1996, Ch. 64, § 2; Amended by Laws 1997, Ch. 151, § 1; Amended by Laws 1998, Ch. 69, § 6; Amended by Laws 1999, Ch. 74, § 2; Amended by Laws 2004, Ch. 188, § 35, eff. Jan. 1, 2006; Amended by Laws 2008, Ch. 136, § 1; Amended by Laws 2019, Ch. 252, § 44, eff. July 1, 2020. Amended by Laws 2020, Ch. 79, § 1.

35-314.04. Pension prefunding plan investment accounts; state treasurer; investment authority; definitions

- A. In addition to the investment authority pursuant to section 35-313, the state treasurer may invest and reinvest pension prefunding plan monies in equity securities pursuant to section 35-314 for pension prefunding plan investment accounts.
- B. All pension prefunding plan monies shall be accounted for separately from all other funds. Monies may not be taken from one investment account for deposit in any other investment account.
- C. All monies in pension prefunding plan investment accounts shall be invested in safe interest-bearing securities and prudent equity securities consistent with the requirements of section 35-314.
- D. The earnings, interest, dividends and realized capital gains and losses from the investment of each investment account shall be credited to that investment account.
- E. Pension prefunding plan monies are for the purpose of allowing employers that provide a defined benefit pension plan to their employees to prefund the employer's required defined benefit pension payments.

- F. Pension prefunding plan monies are an integral part of this state and of the political subdivisions of this state and perform an essential governmental function. Investments of pension prefunding plan monies are intended to be structured and administered in a manner that results in the tax-exempt status of the pension prefunding plan's income. The state board of investment may adopt rules, policies and procedures as the board deems necessary to ensure that the prefunding plan's income is not subject to federal income tax.
- G. The governing body of an employer may authorize and request the state treasurer to invest pension prefunding plan monies in a pension prefunding plan investment account and set forth the terms of the distributions from such investment account for the employer pursuant to this section.
- H. Pension prefunding plan investment accounts established pursuant to this section or any other section in this title and the pension prefunding plan monies in such accounts are separate and apart from the Arizona employers' pension prefunding plan established by title 38, chapter 5, article 7.1 and the assets, receipts, earnings and income of that plan.
- I. For the purposes of this section:
 - 1. "Defined benefit pension" means:
 - (a) the Arizona State Retirement System established by title 38, chapter 5, articles 2 and 2.1.
 - (b) the Elected Officials' Retirement Plan established by title 38, chapter 5, article 3.
 - (c) the Public Safety Personnel Retirement System established by title 38, chapter 5, article 4.
 - (d) the Corrections Officer Retirement Plan established by title 38, chapter 5, article 6.
 - (e) any defined benefit pension plan established by the governing body of any political subdivision of this state for its employees.
 - 2. "Employer" means an employer as defined in section 38-711, 38-801, 38-842 or 38-881 or any governing body of a political subdivision of this state that has established a defined benefit pension plan for its employees.
 - 3. "Tax-exempt status of pension prefunding plan's income" means that the prefunding plan's income is excluded from gross income for the purposes of the assessment of federal income tax under section 115 of the internal revenue code, intergovernmental immunity or similar grounds.

Added by Laws 2020, Ch. 79 § 2.

38-446. Acts based on written opinions; immunity

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

Added by Laws 1987, Ch. 288, § 1. Amended by Laws 2006, Ch. 264, § 1.

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

- A. The department of administration shall, by rule, adopt standards to establish group health and accident coverage for former employees who worked for the state of Arizona and who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona, or with a disability, 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 state employees or state employees with a disability to participate in the coverage. The department of administration may adopt rules which provide that if a retired insured or insured person with a disability 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 death of the retired insured or insured person with a disability

and the insured surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the 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 former state employees with a disability 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 state employee members of the system and plan who are retired or who have a disability, retired members of the Elected Officials' Defined Contribution Retirement System established pursuant to Chapter 5, Article 3.1 of this title and retired participants of the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to Chapter 5, Article 4.1 of this title 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 members or state employee members with a disability of the Public Safety Personnel Retirement System, the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to Chapter 5, Article 4.1 of this title, the Elected Officials' Retirement Plan, the Elected Officials' Defined Contribution Retirement System established pursuant to Chapter 5, Article 3.1 of this title, 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 Public Safety Personnel Defined Contribution Retirement Plan established pursuant to Chapter 5, Article 4.1 of this title, the Elected Officials' Retirement Plan, the Elected Officials' Defined Contribution Retirement System established pursuant to Chapter 5, Article 3.1 of this title, 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 county employees or county employees with a disability 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.
- K. A retired member of the Elected Officials' Defined Contribution Retirement System established pursuant to Chapter 5, Article 3.1 of this title may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.
- L. A retired participant of the Public Safety Personnel Defined Contribution Retirement Plan established pursuant to Chapter 5, Article 4.1 of this title may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-857.

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. Amended by Laws 2013, Ch. 217. Amended by Laws 2014, Ch. 215. Amended by Laws 2016, Ch. 2, § 1.

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

- A. The board shall establish group health and accident coverage for eligible retired, surviving and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to administer the self-insurance program unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be transferred to another account of ASRS as determined by ASRS. If an insured retired or member with a disability 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 or 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 elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, 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 elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, 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 elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, 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, surviving and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions 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 from 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, surviving or members with a disability 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.
- I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.
- J. For the purposes of this section, "eligible retired, surviving and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

Added by Laws 1995, Ch. 32, § 14, effective March 30, 1995. Amended by Laws 1995, Ch. 134, § 13; eff. April 17, 1995; Laws 1997, Ch. 291, § 4, effective July 1, 1998; Laws 1998, Ch. 236, § 3; Laws 1999, Ch. 300, § 15; Laws 2001, Ch. 136, § 18. Amended by Laws 2010, Ch. 200, § 12, eff. April 28, 2010; Amended by Laws 2013, Ch. 110, § 10 and Ch. 217, § 3. Amended by Laws 2014, Ch. 215, § 164.

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

- A. Beginning January 1, 2017, the board of trustees shall consist of nine 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. The board shall select a chairperson from among its members each calendar year. Members are eligible to receive compensation in an amount of \$50 a day, but not to exceed \$1,000 in any one fiscal year, and are eligible for reimbursement of expenses pursuant to Chapter 4, Article 2 of this title. Beginning January 1, 2017, the board consists of the following members appointed as follows:
1. Two members representing law enforcement, one of whom is appointed by the president of the senate and one of whom is appointed by the Governor. A statewide association representing law enforcement in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. At least one of the members appointed under this paragraph shall be an elected local board member.
 2. Two members representing firefighters, one of whom is appointed by the speaker of the House of Representatives and one of whom is appointed by the Governor. A statewide association representing firefighters in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. At least one of the members appointed under this paragraph shall be an elected local board member.
 3. Three members representing cities and towns in this state, one of whom is appointed by the president of the senate, one of whom is appointed by the speaker of the House of Representatives and one of whom is appointed by the Governor. An association representing cities and towns in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. These nominees shall represent taxpayers or employers and may not be members of the system.
 4. One member who represents counties in this state and who is appointed by the Governor. An association representing county supervisors in this state shall forward nominations to the Governor, providing at least three nominees for the position. These nominees shall represent taxpayers or employers and may not be members of the system.
 5. One member who is appointed by the Governor from a list of three nominees forwarded by the board. The board shall select the nominees to forward to the Governor from a list of at least five nominees received from the advisory committee.
- B. Each appointment made pursuant to subsection A of this section shall be chosen from the list of nominees provided to the appointing elected official. For any appointment made by the Governor pursuant to subsection A of this section, before appointment by the Governor, a prospective member of the board shall submit a full set of fingerprints to the Governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and public law 92-544. The Department of Public Safety may exchange this fingerprint data with the Federal Bureau of Investigation. A board member may be reappointed. Notwithstanding section 38-295, a board member may be removed from office only for cause by the appointing power or because the board member has vacated the member's seat on the board. A board member who is removed for cause shall be provided written notice and an opportunity for a response. The appointing power may remove a board member based on written findings that specify the reason for removal. Any Vacancy that occurs other than by expiration of a term shall be filled for the balance of the term. All vacancies shall be filled in the same manner as the initial appointment. A board member vacates the office if the member either:
1. Is absent without excuse from three consecutive regular meetings of the board.

* See Sec. 19 on page 91.

2. Resigns, dies or becomes unable to perform board member duties.
- C. The members of the board who are appointed pursuant to subsection A of this section and who are not members of the system shall be independent, qualified professionals who are responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the fund and 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. A senior executive 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 chartered financial analyst institute.
 5. A current or former professor or instructor at the college or university level in the field of economics, finance, actuarial science, accounting or pension-related subjects.
 6. An economist.
 7. Any other senior executive engaged in the field of public or private finances or with experience with public pension systems.
 8. A senior executive in insurance, banking, underwriting, auditing, human resources or risk management.
- D. 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 or trust administered by the board, the fund and assets of the plans and the plans' trusts 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 is not an improper delegation of the board's investment authority.
- E. 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.
- F. 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 and trusts 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 M, paragraph 6 of this section, and any deputy or assistant administrators to invest the monies of the system and other retirement plans and trusts that the board administers if the administrator, investment management and deputy or any assistant administrators follow the investment policies that are adopted by the board. The board may commingle securities and monies of the fund, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan and other plans or monies entrusted to its care, subject to the crediting of receipts and earnings

and charging of payments to the account of the appropriate employer, system or plan. In making every investment, the board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income from their funds as well as the probable safety of their capital, if:

1. Not more than eighty percent of the combined assets of the system or other plans that the board manages is invested at any given time in corporate stocks, based on the cost value of the stocks irrespective of capital appreciation.
 2. Not more than five percent of the combined assets of the system or other plans that the board manages is 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. Not more than five percent of the voting stock of any one corporation is 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. Corporate stocks and exchange traded funds eligible for direct purchase are restricted to stocks and exchange traded funds that, except for bank stocks, insurance stocks, stocks acquired for coinvestment in connection with the system's or the plans' or trusts' commingled investments and interests in limited liability companies and mutual funds, are any of the following:
 - (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 78pp).
 - (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 78pp).
 - (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 not more than twenty percent of the combined assets of the system and other plans that the board manages is 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.
- G. Notwithstanding any other law, the board is not 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.
- H. 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.

- I. The board is not 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 is not 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.
- J. Except as provided in subsection F 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. Access to and deposit or withdrawal of the securities from any place of deposit selected by the board is not allowed and may not be made except as the terms of the agreement provide.
 - 7. Appear before local boards and the courts of this state and political subdivisions of this state through counsel or an 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. A limitation period does not prohibit the board or administrator from contesting or require 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.
- K. Investment expenses and operation and administrative expenses of the board shall be accounted for separately and allocated against investment income.
- L. 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 that contains, 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 percent 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.
7. An analysis of the long-term level percent of employer contributions and compensation structure and whether the funding methodology is sufficient to pay one hundred percent of the unfunded accrued liability under the Elected Officials' Retirement Plan.
8. An estimate of the aggregate employer contribution rate for the public safety personnel retirement system for the next ten fiscal years and an estimate of the aggregate employer contribution rate for the corrections officer retirement plan for the next ten fiscal years.
9. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the public safety personnel retirement system:
 - (A) Department of Liquor Licenses and Control.
 - (B) Department of Public Safety.
 - (C) Northern Arizona University.
 - (D) University of Arizona.
 - (E) Arizona State University.
 - (F) Arizona Game and Fish Department.
 - (G) Department of Law.
 - (H) Department of Emergency and Military Affairs.
 - (I) Arizona State Parks Board.
10. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the corrections officer retirement plan:
 - (A) State Department of Corrections.
 - (B) Department of Public Safety.
 - (C) the Judiciary.
 - (D) Department of Juvenile Corrections.
11. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

M. 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 requests a statement.
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 transmit the results 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 Public Safety 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.

- N. The administrator, under the direction of the board, shall:
1. Administer this article.
 2. Be responsible for the recruitment, hiring and day-to-day management of employees.
 3. Invest the monies of the system and other plans that the board administers as the board deems necessary and prudent as provided in subsections F and J of this section and subject to the investment policies and fund objectives adopted by the board.
 4. 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 operate most effectively and at minimum expense and that duplication of records and accounts is avoided.
 5. In accordance with the board's governance policy and procedures and the budget adopted by the board, hire employees and services the administrator deems necessary and prescribe their duties, including the hiring of one or more deputy or assistant administrators to manage the system's operations, investments and legal affairs.
 6. Be responsible for income, the collection of the income and the accuracy of all expenditures.
 7. Recommend to the board annual contracts for the system's actuary, auditor, investment counsel, legal counsel and safeguarding of securities.
 8. Perform additional duties and powers prescribed by the board and delegated to the administrator.
- O. The system is an independent trust fund and the board is not subject to Title 41, Chapter 6. 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 monies 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. Loans, guarantees, investment management agreements and investment contracts that are entered into by the board are contracts memorializing obligations or interests in securities that the board has concluded, after thorough due diligence, do not involve investments in Sudan or Iran or otherwise provide support to terrorists or in any way facilitate illegal immigration into the united states. These contracts do not involve the procurement, supply or provision of goods, equipment, labor, materials or services that would require the warranties required by Section 41-4401.
- P. The board, the administrator, the deputy or assistant administrators and all persons employed by them are subject to Title 41, Chapter 4, Article 4. The administrator, deputy or assistant administrators and other employees of the board are entitled to receive compensation pursuant to section 38-611.
- Q. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following system positions:
1. Administrator.
 2. Deputy or Assistant Administrator.
 3. Chief Investment Officer.
 4. Deputy Chief Investment Officer.
 5. Fiduciary or Investment Counsel.
- R. The attorney general or an attorney approved by the attorney general and paid by the fund is the attorney for the board and shall represent the board in any legal proceeding or forum that the board deems appropriate. The board, administrator, deputy or 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.
- S. 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.

- T. 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 at least every year. By November 1 of each year the board shall provide a preliminary report and by December 31 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.
- U. 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.
- V. 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.
- W. A person who is a dealer as defined in section 44-1801 and who is involved in securities or investments related to the board's investments is not eligible to serve on the board.
- X. The Public Safety Personnel Retirement System advisory committee is established and shall serve as a liaison between the board and the members and employers of the system. The committee shall be appointed by the chairperson of the board from names submitted to the chairperson by associations representing law enforcement, firefighters, state government, counties, cities and towns and tribal governments. The committee shall select a chairperson from among its members each calendar year. The committee shall consist of the following ten members:
 1. A member who is a law enforcement officer.
 2. A member who is a firefighter.
 3. A member of the Elected Officials' Retirement Plan.
 4. A member of the Corrections Officer Retirement Plan.
 5. A retiree from the Public Safety Personnel Retirement System.
 6. A representative from a city or town in this state.
 7. A representative from a county in this state.
 8. A representative from a fire district in this state.
 9. A representative from a state employer.
 10. A representative from a tribal government located in this state.

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. Amended by Laws 2010, Ch. 118. Amended by Laws 2012, Ch. 321 § 99 and Ch. 63 § 1. Amended by Laws 2013, Ch. 203 and Ch. 217. Amended by Laws 2014, Ch. 14. Amended by Laws 2014, Ch. 190. Amended by Laws 2016, Ch. 2, § 11, Ch. 121 § 6 and Ch. 178, § 8. Amended by Laws 2017, Ch. 327, § 20. Amended by Laws 2018, Ch. 42, § 4 and Ch. 279, §22. Amended by Laws 2019, Ch. 36, § 9.

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

38-848.01. 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 system whose benefits under the system 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 system are eligible to participate in the qualified governmental excess benefit arrangement if their benefits under the system 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 system 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 system, without regard to any provisions in the system 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 system 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 system.
- 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 system, 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 system if:
 - (a) The portion is maintained solely to provide to members of the system that part of a member's annual benefit that is otherwise payable under the terms of the system 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 system unless the trust is maintained solely for the purpose of providing excess benefits.

Added by Laws 1997, Ch. 239, § 15. Amended by Laws 1998, Ch. 1, § 112, effective January 1, 1999.

38-848.02. Board of trustees report on employer and employee costs; posting funding ratio

- A. On or before December 31 of each year, the board of trustees shall provide to the legislature and the joint legislative budget committee and shall post on its website the shared cost structure of employees and employers, the funding status and the rate of return. The report to the legislature shall include when the trigger to the reduction in the employee rates is being met.
- B. The board of trustees shall post on its website for each plan the board administers each employer's funding ratio.

Added as Laws 2011, Ch. 357, § 63. Renumbered as § 38-848.02. Amended by Laws 2017, Ch. 163, § 2. Amended by Laws 2018, Ch. 279, § 23. Amended by Laws 2019, Ch. 36, § 10.

38-848.03. Appointed investment management

- A. The board 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 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, is 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, chief investment officer and other in-house investment professionals employed by the board to make discretionary investments for the system and other plans or trusts that the board administers that do not exceed fifty per cent of the assets of the system and other plans or trusts measured at cost.
- G. To exercise the responsibilities prescribed in this article, 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.

Added by Laws 2008, Ch. 125 § 3, eff. April 29, 2008. Amended by Laws 2010, Ch. 118, § 9. Amended by Laws 2010, Ch. 200, § 44, eff. April 28, 2010.

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.

38-848.04. Board fiduciary obligations and duties; enforcement; definitions

- A. The board and any other fiduciary of the system shall discharge their duties:
 - 1. Solely in the interest of the members and beneficiaries.
 - 2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses in administering the plans and systems administered by the board.
 - 3. With the care, skill and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.
 - 4. Impartially, taking into account any differing interests of members and beneficiaries.
 - 5. Incurring only costs that are appropriate and reasonable.

6. Pursuant to a good-faith interpretation of the law governing the retirement plans and systems administered by the board.
- B. In investing and managing assets of the retirement plans and systems administered by the board, a trustee with authority to invest and manage assets:
 1. Shall consider at least the following:
 - (a) The General economic conditions.
 - (b) The possible effect of inflation or deflation.
 - (c) The role that each investment or course of action plays within the overall portfolio of the retirement plans and systems administered by the board or appropriate grouping of plans or systems.
 - (d) The expected total return from income and the appreciation of capital.
 - (e) The Needs for liquidity, regularity of income and preservation or appreciation of capital.
 - (f) For defined benefit plans, the adequacy of funding for the plan based on reasonable actuarial factors.
 2. Shall diversify the investments of the retirement plans and systems administered by the board or appropriate grouping of plans or systems unless the trustee reasonably determines that, because of special circumstances, it is clearly prudent not to do so.
 3. Shall make a reasonable effort to verify facts relevant to the investment and management of assets of a retirement plan or system.
 4. May invest in any kind of property or type of investment consistent with this article.
 5. May consider benefits created by an investment in addition to investment return only if the trustee determines that the investment providing these collateral benefits would be prudent even without the collateral benefits.
- C. A trustee with authority to invest and manage assets of a retirement plan or system shall adopt a statement of investment objectives and policies for each retirement plan and system administered by the board or appropriate grouping of plans or systems. The statement must include the desired rate of return on assets overall, the desired rates of return and acceptable levels of risk for each asset class, asset-allocation goals, guidelines for the delegation of authority and information on the types of reports to be used to evaluate investment performance. At least annually, the trustee shall review the statement and change or reaffirm it.
- D. In evaluating the performance of a trustee or any other fiduciary of the plan or system:
 1. Compliance with this section must be determined in light of the facts and circumstances existing at the time of the trustee's or fiduciary's decision or action and not by hindsight.
 2. The trustee's investment and management decisions must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the retirement plans and systems administered by the board or appropriate grouping of plans or systems.
- E. An employer, member, beneficiary or fiduciary may maintain an action in which the court may award reasonable attorney fees and costs to either party:
 1. To enjoin an act, practice or omission that violates this section.
 2. For appropriate equitable relief to redress the violation of or to enforce this section.
- F. For the purposes of this section:
 1. "Fiduciary" means a person who does any of the following:
 - (a) Exercises any discretionary authority to manage a retirement plan or system administered by the board.
 - (b) Exercises any authority to invest or manage assets of a retirement plan or system administered by the board.
 - (c) Provides investment advice for a fee or other direct or indirect compensation with respect to assets of the system or has any authority or responsibility to do so.
 - (d) Serves as a trustee or member of the board.
 2. "Trustee" means a person who has ultimate authority to manage a retirement system or plan or to invest or manage its assets.

Added by Laws 2016, Ch. 2, § 12.

38-961. Public safety officer; duty-related injury; supplemental benefits plan; definitions
(Rpld. 10/1/25)

- A. This state or a political subdivision of this state that employs a public safety employee on a full-time basis shall establish a supplemental benefits plan for a public safety employee who is injured while on duty to the extent that the public safety employee cannot perform the functions of the position. To become eligible for the supplemental benefits plan, the public safety employee must be receiving workers' compensation benefits pursuant to title 23, chapter 6. This state or a political subdivision of this state shall design the supplemental benefits plan so that, with the addition of other benefits being paid to the public safety employee pursuant to title 23, chapter 6, the public safety employee will receive approximately the identical base salary less the amount of taxes the public safety employee was paying.
- B. If a public safety employee is accepted into the supplemental benefits plan, the public safety employee's employer shall continue to pay the employer portion of the health care benefits that was being paid to the public safety employee on the date of the employee's injury.
- C. If a public safety employee is accepted into the supplemental benefits plan, the public safety employee's employer shall pay the employee contribution to the public safety personnel retirement system or corrections officer retirement plan, as applicable, and shall continue to pay the employer contribution to the respective retirement system or plan. The public safety employee is entitled to accrue credited service for the period of time enrolled in the supplemental benefits plan.
- D. A public safety employee who is eligible for the supplemental benefits plan shall apply for benefits to this state or a political subdivision of this state. This state or a political subdivision of this state, on an individual basis, shall determine if the public safety employee is entitled to the benefits in the plan. This state or a political subdivision of this state may establish injury standards for eligibility into the plan that may include the exclusion of a public safety employee whose injury is a result of the public safety employee's gross negligence, or any other condition that this state or the political subdivision chooses to consider within the plan.
- E. A public safety employee who is accepted into the plan shall comply with all risk management requirements, including evaluation for light duty options and rehabilitation programs. If a public safety employee fails to comply with risk management decisions, the public safety employee's participation in the supplemental benefits plan will be terminated. The public safety employee who is accepted into the plan is responsible for the public safety employee's portion of the health care benefit costs the public safety employee was paying on the date of the injury. The public safety employee remains responsible for any elective health care plan deductions, health related optional deductions or optional life insurance deductions.
- F. If a public safety employee is accepted into the supplemental benefits plan, the public safety employee shall not accrue any additional sick or annual leave and any sick or annual leave amount on the public safety employee's account shall not be decreased while the public safety employee is participating in the plan.
- G. A public safety employee who is accepted into the supplemental benefits plan is not precluded from disciplinary action, including termination of employment, pursuant to chapter 8 of this title or any agreements that supplant, revise or otherwise alter the provisions of this title, including preexisting agreements between the employer and the public safety employee's lawful representative association.
- H. This section shall not supersede any plan or policy that provides a greater benefit being offered by this state or a political subdivision of this state to a public safety employee who is injured while on duty. This state or a political subdivision of this state shall offer the supplemental benefits plan for an initial six-month period. This state or the political subdivision may determine if the plan shall be extended, on an individual basis, an additional six months, for a maximum of one year.
- I. State employee appeals for denials for supplemental benefits are exempt from the hearing process set forth in title 41, chapter 6, article 10. For state employees exercising appeals for denial of supplemental benefits, the department of administration may establish an alternative appeal hearing process, including the requirement that parties agree to arbitration heard by the industrial commission pursuant to section 23-107, or an alternative procedure established by the Arizona department of administration. If the department of administration establishes an alternative hearing process for the denial of claims for supplemental benefits, the department may contract with

another government agency or with a third party to conduct hearings of appeals pursuant to section 38-961. The department may specify by rule or administrative policy the scope of the program and the alternative hearing procedures.

J. The department of administration shall report by March 1 each year on the overall claim, appeal and payment history for state employee claims and appeals made pursuant to this section during the prior year. The report shall include claims made and claims resolved.

K. For the purposes of this section:

1. "Member" includes a retired member of the public safety personnel retirement system who is a certified peace officer.
2. "Public safety employee" means:
 - (a) An individual who is a member of the public safety personnel retirement system or the corrections officer retirement plan.
 - (b) A probation officer, surveillance officer or juvenile detention officer who is employed by this state or a political subdivision of this state.

Added by Laws 2012, Ch. 287, § 1. Amended by Laws 2013, Ch. 203, § 13; Amended by Laws 2014, Ch. 190, § 11.

Sec. 2. Delayed repeal

Title 38, chapter 6, article 1, Arizona Revised Statutes, is repealed from and after September 30, 2025.

38-1114. Health insurance payments for spouse or dependents of law enforcement officer killed in the line of duty; applicability; definitions

- A. Notwithstanding any other law, the surviving spouse or a surviving dependent of a deceased law enforcement officer is entitled to receive payments for health insurance premiums from public monies of the employer of the law enforcement officer if the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty.
- B. The employer shall make payments if the surviving spouse or surviving dependent is enrolled or was enrolled at the time the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty in either:
1. The health insurance program of the employer.
 2. The health insurance program that is offered by the state retirement system or plan from which the surviving spouse or surviving dependent is receiving benefits.
- C. If a surviving spouse or surviving dependent was enrolled in either health insurance program described in subsection B of this section at the time the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty and is eligible pursuant to subsection D of this section to receive health insurance premium payments under this section but is no longer enrolled in either health insurance program described in subsection B of this section, the employer shall allow the surviving spouse and any surviving dependent to enroll in the employer's health insurance program to receive health insurance premium payments pursuant to this section.
- D. The health insurance premium amount payable by the employer of the deceased law enforcement officer is the amount the employer of the deceased law enforcement officer would pay for an active law enforcement officer for a family coverage premium or single coverage premium, whichever is applicable. Payments shall be discontinued pursuant to this section if:
1. The surviving spouse remarries.
 2. The surviving spouse becomes medicare eligible.
 3. The surviving spouse dies.
 4. For dependent coverage, the person is no longer considered a dependent.
- E. If the employer currently pays a greater portion of the health insurance premium for a surviving spouse or a surviving dependent than the required amount prescribed in subsection D of this section, the surviving spouse or surviving dependent shall receive the greater amount as payment toward the surviving spouse's or surviving dependent's health insurance premium.

- F. This section applies:
1. To a surviving spouse or a surviving dependent of a deceased law enforcement officer, as defined in subsection G, paragraph 2, subdivision (a), (b) or (c) of this section, who was killed in the line of duty or who died from injuries suffered in the line of duty on or after April 5, 1933.
 2. To a surviving spouse or a surviving dependent of a deceased law enforcement officer, as defined in subsection G, paragraph 2, subdivision (d) of this section, who was killed in the line of duty or who died from injuries suffered in the line of duty on or after April 5, 2013.
 3. For the surviving spouse or the surviving dependent who qualifies pursuant to paragraph 1 of this subsection, only to health insurance premiums paid on or after September 13, 2013.
- G. For the purposes of this section:
1. "Dependent" means an unmarried child of a deceased law enforcement officer 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 a guardian.
 2. "Law enforcement officer" means:
 - (a) A peace officer who is certified by the Arizona peace officer standards and training board.
 - (b) A detention officer or corrections officer who, other than a juvenile detention officer, is employed by this state or a political subdivision of this state.
 - (c) A firefighter who is employed by this state or a political subdivision of this state.
 - (d) A corrections officer or firefighter who works on behalf of this state or a political subdivision of this state through a contract with a private company.

Added by Laws 2010, Ch. 148, § 2, effective April 26, 2010, retroactively effective to January 1, 2010. Amended by Laws 2013, Ch. 54, § 1, effective April 5, 2013 and Ch. 211, § 6. Renumbered as § 38-1114 by Laws 2014, Ch. 240, § 6. Amended by Laws 2014, Ch. 240, § 15, effective January 1, 2015.

41-3024.09. Public safety personnel retirement system board of trustees; elected officials' retirement plan; public safety personnel retirement system; corrections officer retirement plan; termination July 1, 2024

- A. The public safety personnel retirement system board of trustees terminates on July 1, 2024.
- B. Title 38, chapter 5, article 3 is repealed on January 1, 2025.
- C. Title 38, chapter 5, article 4 is repealed on January 1, 2025.
- D. Title 38, chapter 5, article 6 is repealed on January 1, 2025.

Added by Laws 2016, Ch. 306, § 2.

Sec. 3. Purpose

Pursuant to section 41-2955, subsection B, Arizona Revised Statutes, the legislature continues the public safety personnel retirement system board of trustees in order to manage and invest employee and employer contributions and assets and distribute retirement benefits to retired members of the elected officials' retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.

Added by Laws 2016, Ch. 306.

Sec. 4. Retroactivity

Sections 1 and 2 of this act are effective retroactively to July 1, 2016.

Added by Laws 2016, Ch. 306.

43-1022. Subtractions from Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be subtracted from Arizona gross income:

1. The amount of exemptions allowed by section 43-1023.
2. Benefits, annuities and pensions in an amount totaling not more than \$2,500 received from one or more of the following:
 - (a) The United States government service retirement and disability fund, the United States foreign service retirement and disability system and any other retirement system or plan established by federal law. Except retired or retainer pay of the uniformed services of the United States that qualifies for a subtraction under paragraph 27 of this section.
 - (b) The Arizona State Retirement System, the Corrections Officer Retirement Plan, the Public Safety Personnel Retirement System, the elected officials' retirement plan, an optional retirement program established by the Arizona board of regents under section 15-1628, an optional retirement program established by a community college district board under section 15-1451 or a retirement plan established for employees of a county, city or town in this state.
3. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 decreases the beneficiary's Arizona gross income.
4. Interest income received on obligations of the United States, minus any interest on indebtedness, or other related expenses, and deducted in arriving at Arizona gross income, that were incurred or continued to purchase or carry such obligations.
5. The excess of a partner's share of income required to be included under section 702(a)(8) of the internal revenue code over the income required to be included under Chapter 14, Article 2 of this title.
6. The excess of a partner's share of partnership losses determined pursuant to Chapter 14, Article 2 of this title over the losses allowable under section 702(a)(8) of the internal revenue code.
7. The amount allowed by section 43-1025 for contributions during the taxable year of agricultural crops to charitable organizations.
8. The portion of any wages or salaries paid or incurred by the taxpayer for the taxable year that is equal to the amount of the federal work opportunity credit, the empowerment zone employment credit, the credit for employer paid social security taxes on employee cash tips and the Indian employment credit that the taxpayer received under sections 45A, 45B, 51(a) and 1396 of the internal revenue code.
9. The amount of exploration expenses that is determined pursuant to section 617 of the Internal Revenue Code, that has been deferred in a taxable year ending before January 1, 1990 and for which a subtraction has not previously been made. The subtraction shall be made on a ratable basis as the units of produced ores or minerals discovered or explored as a result of this exploration are sold.
10. The amount included in federal adjusted gross income pursuant to section 86 of the internal revenue code, relating to taxation of social security and railroad retirement benefits.
11. To the extent not already excluded from Arizona gross income under the internal revenue code, compensation received for active service as a member of the reserves, the National Guard or the armed forces of the United States, including compensation for service in a combat zone as determined under section 112 of the internal revenue code.
12. The amount of unreimbursed medical and hospital costs, adoption counseling, legal and agency fees and other nonrecurring costs of adoption not to exceed \$3,000. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife shall not exceed \$3,000. The subtraction under this paragraph may be taken for the costs that are described in this paragraph and that are incurred in prior years, but the subtraction may be taken only in the year during which the final adoption order is granted.
13. The amount authorized by section 43-1027 for the taxable year relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.

14. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code.
15. Any amount of qualified educational expenses that is distributed from a qualified state tuition program determined pursuant to section 529 of the internal revenue code and that is included in income in computing federal adjusted gross income.
16. Any item of income resulting from an installment sale that has been properly subjected to income tax in another state in a previous taxable year and that is included in Arizona gross income in the current taxable year.
17. The amount authorized by section 43-1030 relating to holocaust survivors.
18. For property placed in service:
 - (a) In taxable years beginning before December 31, 2012, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year computed as if the election described in section 168(k) of the internal revenue code had been made for each applicable class of property in the year the property was placed in service.
 - (b) In taxable years beginning from and after December 31, 2012 through December 31, 2013, an amount determined in the year the asset was placed in service based on the calculation in subdivision (a) of this paragraph. In the first taxable year beginning from and after December 31, 2013, the taxpayer may elect to subtract the amount necessary to make the depreciation claimed to date for the purposes of this title the same as it would have been if subdivision (c) of this paragraph had applied for the entire time the asset was in service. Subdivision (c) of this paragraph applies for the remainder of the asset's life. If the taxpayer does not make the election under this subdivision, subdivision (a) of this paragraph applies for the remainder of the asset's life.
 - (c) In taxable years beginning from and after December 31, 2013 through December 31, 2015, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been ten percent of the amount allowed pursuant to section 168(k) of the internal revenue code.
 - (d) In taxable years beginning from and after December 31, 2015 through December 31, 2016, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been fifty-five percent of the amount allowed pursuant to section 168(k) of the internal revenue code.
 - (e) In taxable years beginning from and after December 31, 2016, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been the full amount allowed pursuant to section 168(k) of the internal revenue code.
19. With respect to property that is sold or otherwise disposed of during the taxable year by a taxpayer that complied with section 43-1021, paragraph 12 with respect to that property, the amount of depreciation that has been allowed pursuant to section 167(a) of the internal revenue code to the extent that the amount has not already reduced Arizona taxable income in the current or prior taxable years.
20. The amount contributed during the taxable year to college savings plans established pursuant to section 529 of the internal revenue code to the extent that the contributions were not deducted in computing federal adjusted gross income. The amount subtracted shall not exceed:
 - (a) \$2,000 for a single individual or a head of household.
 - (b) \$4,000 for a married couple filing a joint return. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife shall not exceed \$4,000.

21. The portion of the net operating loss carry forward that would have been allowed as a deduction in the current year pursuant to section 172 of the internal revenue code if the election described in section 172(b)(1)(H) of the internal revenue code had not been made in the year of the loss that exceeds the actual net operating loss carry forward that was deducted in arriving at federal adjusted gross income. This subtraction only applies to taxpayers who made an election under section 172(b)(1)(H) of the internal revenue code as amended by section 1211 of the American recovery and reinvestment act of 2009 (P.L. 111-5) or as amended by section 13 of the worker, homeownership, and business assistance act of 2009 (P.L. 111-92).
22. For taxable years beginning from and after December 31, 2013, the amount of any net capital gain included in federal adjusted gross income for the taxable year derived from investment in a qualified small business as determined by the Arizona commerce authority pursuant to section 41-1518.
23. An amount of any net long-term capital gain included in federal adjusted gross income for the taxable year that is derived from an investment in an asset acquired after December 31, 2011, as follows:
- (a) For taxable years beginning from and after December 31, 2012 through December 31, 2013, ten percent of the net long-term capital gain included in federal adjusted gross income.
 - (b) For taxable years beginning from and after December 31, 2013 through December 31, 2014, twenty percent of the net long-term capital gain included in federal adjusted gross income.
 - (c) For taxable years beginning from and after December 31, 2014, twenty-five percent of the net long-term capital gain included in federal adjusted gross income.
- For the purposes of this paragraph, a transferee that receives an asset by gift or at the death of a transferor is considered to have acquired the asset when the asset was acquired by the transferor. If the date an asset is acquired cannot be verified, a subtraction under this paragraph is not allowed.
24. If an individual is not claiming itemized deductions pursuant to section 43-1042, the amount of premium costs for long-term care insurance, as defined in section 20-1691.
25. The amount of eligible access expenditures paid or incurred during the taxable year to comply with the requirements of the Americans with Disabilities Act of 1990 (P.L. 101-336) or Title 41, Chapter 9, Article 8 as provided by section 43-1024.
26. For taxable years beginning from and after December 31, 2017, the amount of any net capital gain included in Arizona gross income for the taxable year that is derived from the exchange of one kind of legal tender for another kind of legal tender. For the purposes of this paragraph:
- (a) "Legal tender" means a medium of exchange, including specie that is authorized by the United States constitution or congress to pay debts, public charges, taxes and dues.
 - (b) "Specie" means coins having precious metal content.
27. Benefits, annuities and pensions received as retired or retainer pay of the uniformed services of the United States in amounts as follows:
- (a) For taxable years through December 31, 2018, an amount totaling not more than \$2,500.
 - (b) For taxable years beginning from and after December 31, 2018, an amount totaling not more than \$3,500.

Amended by Laws 2012, Ch. 3 § 43; Ch. 343, § 9; Ch. 170 § 53; Ch. 351, § 1; Ch. 297 § 20; Ch. 143 § 2. Amended by Laws 2013, Ch. 114, Ch. 236 and Ch. 256. Amended by Laws 2014, Ch. 245. Amended by Laws 2016, Ch. 118, § 1 and Ch. 214, § 4. Amended by Laws 2017, Ch. 178, § 15. Ch. 278, § 2, Ch. 299, § 9 and 316, § 2. Amended by Laws 2018, Ch. 104, § 30, Ch. 283, § 4 and Ch. 338, § 47. Amended by Laws 2019, Ch. 203, § 13 and Ch. 273, § 19. Amended by Laws 2020, Ch. 43, § 15.

Laws 2019, Ch. 38, § 15 provides:

Sec. 15. Board of trustees for the Public Safety Personnel Retirement System; interest payments
On or before June 30, 2019, the board of trustees for the Public Safety Personnel Retirement System may choose to require interest to be paid on monies returned to members of a retirement plan or system under the jurisdiction of the board consistent with sections 38-823, 38-844.05, 38-844.06, 38-844.08, 38-862 and 38-913, Arizona Revised Statutes, as amended by this act, for the period of time between the transaction under the applicable section until a date to be determined by the board, but not later than the effective date of this act.

Laws 2019, Ch. 38, § 16 provides:

- Sec. 16. Retroactivity
- A. Sections 38-810, 38-816, 38-820, 38-844.03, 38-844.05, 38-844.06, 38-844.08, 38-853.01, 38-858, 38-907 and 38-909, Arizona Revised Statutes, as amended by this act, apply retroactively to from and after July 19, 2011.
 - B. Sections 38-823, 38-862 and 38-913, Arizona Revised Statutes, as amended by this act, apply retroactively to from and after June 30, 2017.

Laws 2019, Ch. 38, § 17 provides:

Sec. 17. 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.

Laws 2016, Ch. 2 provides:

- Sec. 18. Study; risk pooling; local board consolidation and structure; recommendations
- A. Within fifteen days after the effective date of this act, the public safety personnel retirement system shall commence a study to determine various methods in which risk pooling may be structured and local board consolidation and structure may be accomplished and to determine which methods, if any, are in the best interests of the public safety personnel retirement system's fund, members, beneficiaries and employers.
 - B. The study shall be presented to the board of trustees of the public safety personnel retirement system on or before January 15, 2017. The board shall consider the study and report its recommendations for legislation to the President of the Senate, the Speaker of the House of Representatives and the Governor on or before February 15, 2017.

- Sec. 19. Initial appointments of the board of trustees of the public safety personnel retirement system; initial terms
- A. For the initial appointments to the board of trustees of the public safety personnel retirement system, on or before August 1, 2016, associations representing public safety personnel, cities and towns in this state and counties in this state shall establish a list of nominees who are qualified pursuant to section 38-848, Arizona Revised Statutes, and willing to serve on the board. The list shall include at least three nominees for each position on the board, which will be forwarded to the appointing elected officials.
 - B. Each member of the board of trustees of the public safety personnel retirement system shall be selected from the list of nominees presented to the appointing elected officials for each position on the board. The following elected officials shall make the following appointments:

1. The Governor shall appoint:
 - (a) One member representing law enforcement in this state.
 - (b) One member representing firefighters in this state.
 - (c) One member representing cities and towns in this state.
 - (d) One member representing counties in this state.
 - (e) One member as specified in section 38-848, subsection A, paragraph 5, Arizona Revised Statutes.
2. The president of the senate shall appoint:
 - (a) One member representing law enforcement in this state.
 - (b) One member representing cities and towns in this state.
3. The speaker of the House of Representatives shall appoint:
 - (a) One member representing firefighters in this state.
 - (b) One member representing cities and towns in this state.
- C. The appointments shall be made in the following order:
 1. On or before November 1, 2016, the Governor shall make one appointment to the board from the list of nominees followed by one appointment made in turn from the president of the senate and the speaker of the House of Representatives until eight members are appointed to the board.
 2. The eight members initially appointed to the board pursuant to paragraph 1 of this subsection shall elect a chairperson who shall appoint the advisory committee pursuant to section 38-848, subsection X, Arizona Revised Statutes. The advisory committee shall forward to the newly appointed board of trustees of the Public Safety Personnel Retirement System at least five nominees who are qualified pursuant to section 38-848, Arizona Revised Statutes, and willing to serve on the board for the appointment of the ninth member of the board. From that list of nominees, the newly appointed board of trustees of the public safety personnel retirement system shall forward to the Governor at least three nominees for the appointment of the ninth member of the board, which shall be made on or before December 1, 2016.
- D. If the board members specified in subsection B of this section, except the board member specified in section 38-848, subsection A, paragraph 5, Arizona Revised Statutes, are not appointed by November 1, 2016, the elected official who fails to make an appointment forfeits the appointment and the appointment will be made within fifteen days by the next elected official in the rotation specified in subsection C, paragraph 1 of this section. This rotation shall continue until the eight board members are appointed.
- E. Notwithstanding section 38-848, Arizona Revised Statutes, the initial terms of the public safety personnel retirement system board members are:
 1. Four terms ending on January 1, 2019 that include:
 - (a) One member representing law enforcement who is appointed by the Governor.
 - (b) One member representing firefighters who is appointed by the Governor.
 - (c) Two members representing cities and towns in this state, one of whom is appointed by the Speaker of the House of Representatives and one of whom is appointed by the President of the Senate.
 2. Five terms ending on January 1, 2021 that include:
 - (a) One member representing law enforcement who is appointed by the president of the senate.
 - (b) One member representing firefighters who is appointed by the speaker of the House of Representatives.
 - (c) One member representing cities and towns in this state who is appointed by the Governor.
 - (d) One member representing counties in this state who is appointed by the Governor.
 - (e) The member specified in section 38-848, subsection A, paragraph 5, Arizona Revised Statutes.
- F. The subsequent appointments shall be made as prescribed in section 38-848, Arizona Revised Statutes.

Sec. 20. Annual compensation adjustment; employers; public safety wage index

Notwithstanding section 38-843.04, subsection D, Arizona Revised Statutes, as added by this act, beginning July 1, 2017, the employers for the purposes of the public safety wage index are the central Yavapai fire district, department of public safety, Drexel heights fire district, Flagstaff fire department, Flagstaff police department, Arizona game and fish department, Gilbert police department, Glendale police department, Golder ranch fire district, Kingman fire department, Kingman police department, Maricopa county sheriff's department, Mesa police department, Nogales fire department, Nogales police department, Northwest fire district, Phoenix fire department, Phoenix police department, Pima county sheriff's department, Pinal county sheriff's department, Prescott fire department, Prescott police department, Scottsdale police department, Tempe fire department, Tucson fire department and Tucson police department.

Sec. 21. Legislative findings and intent

- A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.
- B. The legislature further finds:
1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.
 2. That the current structure of the public safety personnel retirement system, which 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 a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.
 3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.
 4. 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 program in future years.
 5. 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 this retirement program and return the program to fiscal solvency.
- C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system.

Sec. 22. Conditional enactment

- A. Sections 38-856, 38-856.01, 38-856.02, 38-856.03 and 38-856.04, Arizona Revised Statutes, as repealed by this act, section 38-844.05, Arizona Revised Statutes, as amended by this act, and sections 38-856.05, 38-865.01 and 38-868, Arizona Revised Statutes, as added by this act, do not become effective unless the Constitution of Arizona is amended as prescribed in Senate concurrent resolution 1019, fifty-second legislature, second regular session, by vote of the people at the special election conducted on May 17, 2016.
- B. The enactment of any provision of this act conditioned on the results of the election does not constitute a submission of any provision of this act to the voters under the power of referendum.

Sec. 23. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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.

CONSTITUTION OF ARIZONA

Article 29, Section 1

1. 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 standards.
- 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.
- D. Public retirement system benefits shall not be diminished or impaired, except that:
 1. Certain adjustments to the public safety personnel retirement system may be made as provided in senate bill 1428, as enacted by the fifty-second legislature, second regular session.
 2. Certain adjustments to the corrections officer retirement plan may be made as provided in senate bill 1442, as enacted by the fifty-third legislature, first regular session.
 3. Certain adjustments to the elected officials' retirement plan may be made as provided in house bill 2545, as enacted by the fifty-third legislature, second regular session.
- E. This section preserves the authority vested in the legislature pursuant to this constitution and does not restrict the legislature's ability to modify public retirement system benefits for prospective members of public retirement systems.