

**TITLE 38, CHAPTER 5, ARTICLE 3**

**AND**

**RELATED STATUTES**

**ARIZONA REVISED STATUTES**

**AS AMENDED 2023**

**ELECTED OFFICIALS' RETIREMENT PLAN**

**STATE OF ARIZONA**

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

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THIS IS NOT AN OFFICIAL VERSION OF THE ARIZONA REVISED STATUTES. IF THERE ARE ANY DIFFERENCES OR DISCREPANCIES BETWEEN THIS VERSION AND THE OFFICIAL VERSION COMPILED BY THE ARIZONA SECRETARY OF STATE, THE OFFICIAL VERSION WILL PREVAIL.

**TITLE 38, CHAPTER 5, ARTICLE 3  
ARIZONA REVISED STATUTES AS AMENDED 2023**

**38-801.        Definitions**

In this article, unless the context otherwise requires:

1. "Accumulated contributions" means the sum of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A plus the amount transferred to the fund on behalf of the member plus the amount deposited in the fund pursuant to section 38-816.
2. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the board.
3. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.
4. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
5. "Average yearly salary" means the result obtained by dividing the total salary paid to an employee during a considered period by the number of years, including fractional years, in which the salary was received. The considered period shall be:
  - (a) For an elected official who becomes a member of the plan before January 1, 2012, the three consecutive years within the last ten completed years of credited service as an elected official that yield the highest average. If a member does not have three consecutive years of credited service as an elected official, the considered period is the member's last consecutive period of employment with a plan employer immediately before retirement.
  - (b) For an elected official who becomes a member of the plan on or after January 1, 2012, the five consecutive years within the last ten completed years of credited service as an elected official that yield the highest average. If a member does not have five consecutive years of credited service as an elected official, the considered period is the member's last consecutive period of employment with a plan employer immediately before retirement.
6. "Board" means the board of trustees of the system.
7. "Credited service" means the number of whole and fractional years of a member's service as an elected official after the elected official's effective date of participation for which member and employer contributions are on deposit with the fund, plus credited service transferred to the plan from another retirement system or plan for public employees of this state, plus service as an elected official before the elected official's effective date of participation that is being funded pursuant to a joinder agreement pursuant to section 38-815 or service that was redeemed pursuant to section 38-816. Credited service does not include periods of service for which an active member is uncompensated by the employer and for which no contributions to the plan are made.
8. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the plan issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.
9. "Determination" means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.
10. "Determination period" means the ninety-day period in which the plan must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the plan mails a notice of receipt to the participant and alternate payee.
11. "Direct rollover" means a payment by the plan to an eligible retirement plan that is specified by the distributee.
12. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under a plan approved domestic relations order.

13. "Domestic relations order" means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.
14. "Effective date of participation" means August 7, 1985, except with respect to employers and their elected officials whose contributions to the plan commence after that date, in which case the effective date of their participation in the plan is specified in the applicable joinder agreement.
15. "Elected official" means:
  - (a) Every elected official of this state who was a member of the plan on December 31, 2013.
  - (b) Every elected official of each county of this state who was a member of the plan on December 31, 2013.
  - (c) Every justice of the supreme court, every judge of the court of appeals, every judge of the superior court and every full-time superior court commissioner, except full-time superior court commissioners who failed to make a timely election of membership under the judges' retirement plan, repealed on August 7, 1985, who was a member of the plan on December 31, 2013.
  - (d) The administrator of the board if the administrator is a natural person but only if the administrator is employed by the board before January 1, 2012.
  - (e) Each elected official of an incorporated city or town whose employer has executed a proper joinder agreement for coverage of its elected officials and who was a member of the plan on December 31, 2013.
16. "Eligible child" means an unmarried child of a deceased active or retired member who meets one of the following qualifications:
  - (a) Is under eighteen years of age.
  - (b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.
  - (c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or guardian.
17. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:
  - (a) An individual retirement account described in section 408(a) of the internal revenue code.
  - (b) An individual retirement annuity described in section 408(b) of the internal revenue code.
  - (c) An annuity plan described in section 403(a) of the internal revenue code.
  - (d) A qualified trust described in section 401(a) of the internal revenue code.
  - (e) An annuity contract described in section 403(b) of the internal revenue code.
  - (f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from this plan.
  - (g) Effective January 1, 2008, a Roth individual retirement account that satisfies the requirements of section 408a of the Internal Revenue Code.
  - (h) For distributions made after December 18, 2015, a simple retirement account as defined in section 408(p) of the Internal Revenue Code.
18. "Eligible rollover distribution" means a payment to a distributee, but does not include any of the following:
  - (a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's beneficiary or for a specified period of ten years or more.
  - (b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.
  - (c) The portion of any distribution that may not be included 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.
19. "Employer" means a department, agency or political subdivision of this state that makes employer contributions to the plan pursuant to section 38-810 on behalf of an elected official who participates in the plan.
  20. "Fund" means the Elected Officials' Retirement Plan fund.
  21. "Notice of receipt" means a written document that is issued by the plan to a participant and alternate payee and that states that the plan has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.
  22. "Participant" means a member who is subject to a domestic relations order.
  23. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.
  24. "Pension" means a series of monthly payments to a person who is entitled to receive benefits under the plan.
  25. "Personal representative" means the personal representative of a deceased alternate payee.
  26. "Physician" means a physician who is licensed pursuant to title 32, chapter 13 or 17.
  27. "Plan" means the Elected Officials' Retirement Plan.
  28. "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.
  29. "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.
  30. "Retired member" means a person who is being paid a pension based on the person's credited service as a member of the plan.
  31. "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.
  32. "System" means the Public Safety Personnel Retirement System.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1987, Ch. 146, § 1; Laws 1994, Ch. 207, § 2; Laws 2000, Ch. 126, § 1; Law 2007, Ch. 87, § 1; Laws 2009, Ch. 35, § 1, effective September 30, 2009. Amended by Laws 2010, Ch. 30. Amended by Laws 2010, Ch. 200. Amended by Laws 2011, Ch. 357. Amended by Laws 2013, Ch. 111, Ch. 122 and Ch. 217. Amended by Laws 2015, Ch. 63. Amended by Laws 2022, Ch. 73, § 2.

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

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

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

**38-802.01 Employer responsibilities under the system**

An employer shall submit any reports, data, paperwork or other materials that are requested by the Board of Trustees for any reason, including eligibility determinations and proper administration of the plan.

Added by Laws 2021, Ch. 34, § 1, effective from and after December 31, 2021.



**38-803. Powers and duties of the board; reporting requirements**

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

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1997, Ch. 210, § 24, effective March 1, 1998; Laws 2005, Ch. 331, § 6. Amended by Laws 2008, Ch. 125, § 1, effective April 29, 2008. Amended by Laws 2016, Ch. 2, § 2. Amended by Laws 2018, Ch. 279, § 19. Amended by Laws 2019, Ch. 36, § 2. Amended by Laws 2021, Ch. 405, § 12. Amended by Laws 2022, Ch. 73, § 4.

**Sec. 3. Repeal**

Section 38-803, Arizona Revised Statutes, as amended by Laws 2021, chapter 405, section 12, is repealed.

Added by Laws 2022, Ch. 73, § 3.

**38-803.01. Qualified governmental excess benefit arrangement; definitions**

- A. The board may establish a qualified governmental excess benefit arrangement for the sole purpose of enabling the board to continue to apply the same formula for determining benefits payable to all employees covered by the plan whose benefits under the plan are limited by section 415 of the internal revenue code.
- B. The board shall administer the qualified governmental excess benefit arrangement. The board has full discretionary fiduciary authority to determine all questions arising in connection with the arrangement, including its interpretation and any factual questions arising under the arrangement.
- C. All members and retired members of the plan are eligible to participate in the qualified governmental excess benefit arrangement if their benefits under the plan would exceed the limitations imposed by section 415 of the internal revenue code.
- D. On or after the effective date of the qualified governmental excess benefit arrangement, the employer shall pay to each eligible member of the plan who retires on or after the effective date and to each retired member who retired before the effective date and that member's beneficiary, if required, a supplemental pension benefit equal to the amount by which the benefit that would have been payable under the plan, without regard to any provisions in the plan incorporating the limitation on benefits imposed by section 415 of the internal revenue code, exceeds the benefit actually payable taking into account the limitation imposed on the plan by section 415 of the internal revenue code. The board shall compute and pay the supplemental pension benefits under the same terms

and conditions and to the same person as the benefits payable to or on account of a retired member under the plan.

- E. The employer shall not fund benefits payable under the qualified governmental excess benefit arrangement. The employer shall pay benefits payable under the qualified governmental excess benefit arrangement out of the general assets of the employer. For administrative purposes, the employer may establish a grantor trust for the benefit of eligible members. The employer shall be treated as grantor of the trust for purposes of section 677 of the internal revenue code. The rights of any person to receive benefits under the qualified governmental excess benefit arrangement are limited to those of a general creditor of the employer.
- F. The terms and conditions contained in the plan, other than those relating to the benefit limitation imposed by section 415 of the internal revenue code, apply, unless the terms and conditions are inconsistent with the purpose of the qualified governmental excess benefit arrangement.
- G. For the purposes of this section:
  - 1. "Internal revenue code" has the same meaning prescribed in section 42-1001.
  - 2. "Qualified governmental excess benefit arrangement" means a portion of the plan if:
    - (a) The portion is maintained solely to provide to members of the plan that part of a member's annual benefit that is otherwise payable under the terms of the plan and that exceeds the limitations imposed by section 415 of the internal revenue code.
    - (b) Under that portion, a direct or indirect election to defer compensation is not provided at any time to the member.
    - (c) Excess benefits are not paid from a trust that is a part of the plan unless the trust is maintained solely for the purpose of providing excess benefits.

Added by Laws 1997, Ch. 239, § 1. Amended by Laws 1998, Ch. 1, § 111, effective January 1, 1999.

**38-804. Membership; termination; credited service; redemption; reemployment**

- A. Except as otherwise provided in this section, all elected officials are members of the plan, except that a state elected official who is subject to term limits may elect not to participate in the plan. The state elected official who is subject to term limits shall make the election in writing and file the election with the board within thirty days after the state elected official assumes office. The election is effective on the first day of the state elected official's eligibility for that term of office. The election not to participate is specific for that term of office. If a state elected official who is subject to term limits fails to make an election as provided in this subsection, the state elected official is deemed to have elected to participate in the plan. The election not to participate in the plan is irrevocable and constitutes a waiver of all benefits provided by the plan for the state elected official's entire term, except for any benefits accrued by the state elected official in the plan for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law. The state elected official who elects not to participate in the plan shall participate in the Arizona state retirement system unless the state elected official makes an irrevocable election not to participate in the Arizona State Retirement System as provided in section 38-727.
- B. All elected officials who are members of the plan on December 31, 2013 may remain members of the plan under the terms and limitations of this article.
- C. If a member who becomes a member of the plan before January 1, 2012 ceases to hold office for any reason other than death or retirement, within twenty days after filing a completed application with the board, the member is entitled to receive the following amounts, less any benefit payments the member has received and any amount the member may owe to the plan:
  - 1. If the member has less than five years of credited service with the plan, the member may withdraw the member's accumulated contributions from the plan.
  - 2. If the member has five or more years of credited service with the plan, the member may withdraw the member's accumulated contributions plus an amount equal to the amount determined as follows:
    - (a) 5.0 to 5.9 years of credited service, twenty-five percent of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A.
    - (b) 6.0 to 6.9 years of credited service, forty percent of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A.

- (c) 7.0 to 7.9 years of credited service, fifty-five percent of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A.
  - (d) 8.0 to 8.9 years of credited service, seventy percent of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A.
  - (e) 9.0 to 9.9 years of credited service, eighty-five percent of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A.
  - (f) 10.0 or more years of credited service, one hundred percent of all member contributions deducted from the member's salary pursuant to section 38-810, subsection A.
- D. If a member 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. If an elected official who becomes a member of the plan on or after January 1, 2012 ceases to hold office for any reason other than death or retirement, within twenty days after filing a completed application with the board, the member may withdraw the member's accumulated contributions from the plan and shall be paid the member's accumulated contributions plus interest at a rate determined by the board as of the date of termination, less any benefit payments the member has received and any amount the member may owe to the plan.
- F. If the amount prescribed in subsection C, D or E of this section includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the board. A member who receives the amount prescribed in subsection C, D or E of this section from the plan or who elects a transfer pursuant to this subsection forfeits the member's credited service, and all rights to benefits under the plan and membership in the plan terminate.
- 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 rollover 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. 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.
- K. If an elected official who has terminated the member's membership in the plan pursuant to subsection C of this section is subsequently elected, appointed or hired on or after January 1, 2014, the elected official is not eligible to become a member of the plan but is subject to article 3.1 of this chapter.
- L. Notwithstanding subsection K of this section, if an elected official files a written election form with the board within ninety days after the day of the member's reemployment as an elected official and repays the amount previously withdrawn pursuant to subsection C or D of this section within one year after the date of the member's reemployment as an elected official, with interest on that amount at the rate of nine percent for each year, compounded each year from the date of withdrawal to the date of repayment, credited service shall be restored. Credited service shall not be restored until complete repayment is made to the fund.
- M. An elected official who is elected, appointed or hired on or after January 1, 2014 and who was not a member of the plan on December 31, 2013 is not eligible to become a member of the plan but is subject to article 3.1 of this chapter.
- N. If a retired member subsequently becomes an elected official, contributions shall not be made by the retired member and credited service shall not accrue while the retired member is holding office.
- O. In addition to subsection N of this section, if a retired member subsequently becomes, by reason of election or reelection, an elected official of the same office from which the member retired within a time period following the member's retirement that is less than one full term for that office, the member shall not receive a pension. Any pension payments received by a member, who retired on or after July 1, 2009, while holding the same office from which the member retired within one full term after the date of retirement are considered overpayments pursuant to section 38-809, subsection A and are subject to repayment up to the maximum of only the amount received during that term. If the elected official ceases to hold the same office, the elected official is entitled to receive the same pension the elected official was receiving when the elected official's pension was discontinued pursuant to this subsection. This subsection does not prohibit a retired judge called by the Supreme Court to active duties of a judge pursuant to section 38-813 from receiving retirement benefits.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1990, Ch. 236, § 1, effective May 16, 1990; Laws 1994, Ch. 356, § 21; Laws 1995, Ch. 135, § 1; Laws 1997, Ch. 127, § 2; Laws 1999, Ch. 327, § 19; Laws 1999 Ch. 329, § 2; Laws 2001, Ch. 62, § 1, retroactively effective to September 1, 1999; Laws 2001, Ch. 280, § 4 and Ch. 380, § 9; Laws 2002, Ch. 335, § 1. Amended by Laws 2010, Ch. 30. Amended by Laws 2011, Ch. 357. Amended by Laws 2013, Ch. 217. Amended by Laws 2015, Ch. 63. Amended by Laws 2017, Ch. 269, § 2. Amended by Laws 2019, Ch. 302, § 2.

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

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

Added by Laws 2011, Ch. 357. Amended by Laws 2019, Ch. 36, § 3.

**38-805. Normal retirement and early retirement pensions**

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

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

**38-805.01 Resignation; time frame; normal retirement pension; reemployment; employer contributions**

- A. Notwithstanding any age and service requirement specified in section 38-805, an elected official who is a member of the Elected Officials' Retirement Plan and who gives an irrevocable notice of resignation on or before July 29, 2022 with a date of resignation and retirement of not later than September 30, 2022 may receive pension payments for normal retirement as specified in section 38-808 if the member meets either of the following:
  - 1. Has attained fifty-five years of age with ten years of credited service.
  - 2. Has attained fifty-nine and one-half years of age with five 16 years of credited service.
- B. Notwithstanding the reemployment provisions of section 38-804, a member who retires pursuant to this section and who subsequently becomes an elected official may not:
  - 1. Make contributions to the plan.
  - 2. Accrue credited service under the plan while the retired member is holding office.
  - 3. Participate in the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter.
- C. If a member retires pursuant to this section and subsequently becomes an elected official, regardless of when the retired member returns to work, the employer shall pay contributions at an alternate contribution rate as required and calculated pursuant to section 38-810.04.

Added by Laws 2022, Ch. 323, §1.

**Sec. 2. Appropriation; elected officials' retirement plan; exemption**

- A. The sum of \$60,000,000 is appropriated from the state general fund in fiscal year 2022-2023 to the Elected Officials' Retirement Plan fund established by section 38-802, Arizona Revised Statutes, for the Elected Officials' Retirement Plan's unfunded accrued liability.
- B. The board of trustees of the Public Safety Personnel Retirement System shall account for the appropriation made in subsection A of this section in the June 30, 2023 actuarial valuation of the Elected Officials' Retirement Plan.
- C. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Added by Laws 2022, Ch. 323, § 2, effective June 28, 2022.

**Sec. 3. 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.

**38-806. Disability retirement pensions**

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

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

**38-807. Survivor pensions**

- A. The surviving spouse of a deceased retired member shall be paid a surviving spouse's pension if the spouse was married to the member for a period of at least two consecutive years at the time of the member's death. Payment of a surviving spouse's pension commences as of the last day of the month following the retired member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs. For a member who becomes a member of the plan before January 1, 2012, the amount of pension paid a surviving spouse is equal to three-fourths of the amount of the deceased retired member's pension at the time of death. For a member who becomes a member of the plan on or after January 1, 2012, the amount of pension paid a surviving spouse is equal to one-half of the amount of the deceased retired member's pension at the time of death, except that at the time of retirement a member may elect an optional form of retirement benefit, as determined by the board, that provides for an actuarially reduced pension and an increased surviving spouse's benefit. The surviving spouse shall file a written application with the plan in order to receive the survivor benefit.

- B. The surviving spouse of a deceased active or inactive member shall be paid a surviving spouse's pension if the spouse was married to the member on the date of the member's death. Payment of a surviving spouse's pension commences as of the last day of the month following the member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs. For the purposes of this subsection, for a member who becomes a member of the plan before January 1, 2012, the surviving spouse's pension shall be three-fourths of the amount calculated in the same manner as a disability pension is calculated pursuant to section 38-806. For a member who becomes a member of the plan on or after January 1, 2012, the surviving spouse's pension shall be one-half of the amount calculated in the same manner as a disability pension is calculated pursuant to section 38-806. The surviving spouse shall file a written application with the plan in order to receive the survivor benefit.
- C. If the deceased retired or active or inactive member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each eligible child is entitled to receive a child's pension. A child's pension terminates if the child is adopted. In the case of a 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 surviving minor or child's with a disability pension shall be paid 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 so long as 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 so long as the child remains eligible for the pension payment.
- D. If a member dies and no pension is payable on account of the member's death, the deceased member's accumulated contributions shall be paid to the person or persons designated by the deceased member in writing and filed with the board. If the designated person or persons do not survive the deceased member, the accumulated contributions shall be paid to the estate of the deceased member.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1990, Ch. 236, § 2, effective May 16, 1990; Laws 1994, Ch. 356, § 22; Laws 1997, Ch. 239, § 2; Laws 1999, Ch. 50, § 1. Amended by Laws 2010, Ch. 30; Amended by Laws 2011, Ch. 357. Amended by Laws 2013, Ch. 111. Amended by Laws 2014, Ch. 215.

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

- A. Plan retirement commences on the first day of the month following the date of the member's retirement or death. Pension payments shall be received on or about the first day of the month next following the member's plan retirement. The last pension payment shall be made as of the last day of the month in which the death of the retired member or the surviving spouse or minor children occurs. Pension payments shall not be made in advance.
- B. For a member who becomes a member of the plan before January 1, 2012, the monthly pension shall be equal to one-twelfth of the following amount:
  - 1. Four percent of the member's average yearly salary multiplied by the member's credited service, not to exceed eighty percent of the member's average yearly salary. This amount shall be reduced if the member takes early retirement pursuant to section 38-805, subsection C. The amount of reduction is three-twelfths of one percent for each month the retired member's early retirement age precedes the member's normal retirement age pursuant to section 38-805, subsection A, except that the reduction shall not be more than thirty percent.

2. A member who meets the requirements for a disability retirement pension shall receive a disability pension equal to four percent of the member's average yearly salary multiplied by twenty years of credited service if the member has ten or more years of credited service, four percent of the member's average yearly salary multiplied by ten years of credited service if the member has five or more years of credited service but fewer than ten years of credited service or four percent of the member's average yearly salary multiplied by five years of credited service if the member has fewer than five years of credited service.
- C. The monthly pension of a member who becomes a member of the plan on or after January 1, 2012 shall be equal to one-twelfth of the following amount:
    1. Three percent of the member's average yearly salary multiplied by the member's credited service, not to exceed seventy-five percent of the member's average yearly salary.
    2. A member who meets the requirements for a disability retirement pension shall receive a disability pension equal to three percent of the member's average yearly salary multiplied by twenty-five years of credited service if the member has ten or more years of credited service, three percent of the member's average yearly salary multiplied by twelve and one-half years of credited service if the member has five or more years of credited service but fewer than ten years of credited service or three percent of the member's average yearly salary multiplied by 6.25 years of credited service if the member has fewer than five years of credited service.
  - D. The plan shall make payments pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section. Notwithstanding any other provision of this plan, beginning January 1, 1987 payment of benefits to a member shall commence not later than April 1 of the calendar year following the later of:
    1. The calendar year in which the member attains seventy-two years of age.
    2. The date the member terminates employment.
  - E. If all pension payments terminate before an amount equal to the member's accumulated contributions has been paid, the difference between the member's accumulated contributions and the aggregate amount of pension payments shall be paid to the person or persons and in such shares as designated by the retired member in writing and filed with the board. If the designated person or persons do not survive the retired member, the difference shall be paid to the estate of the retired member.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1987, Ch. 146, § 3; Laws 1988, Ch. 253, § 1, effective June 29, 1988; Laws 1990, Ch. 236, § 3, effective May 16, 1990; Laws 1991, Ch. 270, § 8; Laws 1994, Ch. 207, § 3; Laws 1999, Ch. 329, § 4; Laws 2009, Ch. 35, § 2, effective September 30, 2009. Amended by Laws 2011, Ch. 357. Amended by Laws 2021, Ch. 23, § 2.

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

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



- C. Nothing in this section exempts employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.
- D. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to a civil suit by the plan in the superior court in Maricopa County. On entry of an order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201, subsection A, until all amounts owed are paid to the plan.
- E. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member is subject to restitution and fines imposed by a court of competent jurisdiction. The court may order the restitution or fines to be paid from any payments otherwise payable to the member from the plan.
- F. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the plan with an intent to defraud the plan is guilty of a class 1 misdemeanor. If any change or error in the records results in any member or beneficiary receiving from the plan more or less than the member or beneficiary would have been entitled to receive had the records been correct, the plan shall correct the error, and as far as practicable shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled to receive shall be paid. If a member is convicted of a crime pursuant to this subsection, the member is entitled to receive a lump sum payment of the member's accumulated contributions but forfeits any future compensation and benefits that would otherwise accrue to the member or the member's estate under this article.
- G. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to an active or retired member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1994, Ch. 356, § 23. Amended by Laws 2006, Ch. 264, § 4; Amended by Laws 2010, Ch. 30, § 5. Amended by Laws 2010, Ch. 200, § 21, eff. April 28, 2010; Amended by Laws 2011, Ch. 99, § 10.

**38-810. Contributions; appropriations\***

- A. Each member shall contribute to the fund an amount equal to the amount prescribed in subsection G of this section. Contributions of members shall be made by payroll deductions. Every member is deemed to consent to these deductions. Payment of a member's compensation, less these payroll deductions, constitutes a full and complete discharge and satisfaction of all claims and demands by the member relating to remuneration for the member's services rendered during the period covered by the payment, except with respect to the benefits provided under the plan. A member may not, under any circumstance, 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.
- B. The board's office shall be credited monthly with monies collected pursuant to section 12-119.01, subsection B, paragraph 2, section 12-120.31, subsection D, paragraph 2, section 12-284.03, subsection A, paragraph 6, section 22-281, subsection C, paragraph 3 and section 41-178. The monies credited to the fund pursuant to this subsection shall be deposited in the fund on a monthly basis, and there shall be a complete accounting of the determination of these monies deposited in the fund.

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\* See Sec. 16A on page 78.

- C. Beginning on July 1, 2018, as determined by actuarial valuations performed by the plan's actuary each employer shall make contributions on a level percent of compensation basis for all employees of the employer who are either members under this article, article 3.1 of this chapter or article 2 of this chapter pursuant to section 38-727, subsection B sufficient under the actuarial valuation to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability over a closed period of at least twenty and not more than thirty years that is established by the board taking into account the recommendation of the plan's actuary and the employer's contribution under the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter and the employer's contribution under article 2 of this chapter for members who are eligible pursuant to section 38-727, subsection B. The employer also shall pay the amount required by section 38-797.05 for members under article 2 of this chapter who are eligible pursuant to section 38-727, subsection B and the amount required by article 3.2 of this chapter for members under article 3.1 of this chapter. The monies deposited in the fund pursuant to subsection B of this section shall be used to supplement the contributions required of all employers under the plan. The employer level percent compensation contribution that is paid pursuant to this subsection, less the amount contributed by the employer pursuant to section 38-833 and section 38-737 for members eligible pursuant to section 38-727, subsection B, shall not be used to pay for an increase in benefits that is otherwise payable to members but shall be used to meet the normal cost plus an amount to amortize the unfunded accrued liability.
- D. 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. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of the fund contains excess valuation assets and is more than one hundred 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 the fund has a valuation asset deficiency and an unfunded actuarial accrued liability, the board shall use any valuation assets in the stabilization reserve account, to the extent available, to limit the decline in the fund's funding ratio to not more than two percent.
- E. The department of administration and the treasurer of each county and participating city and town shall transfer to the board the contributions provided for in subsections A and C of this section within ten working days after each payroll date. The state, county treasurers and clerks of the superior court shall transfer the monies credited under subsection B of this section to the board on or before the fifteenth day of each calendar month that follows the month in which the court fees were collected. Contributions and monies credited under subsection B of this section and transferred after these dates shall include a penalty equal to ten percent a year, compounded annually, for each day that the contributions or monies credited under subsection B of this section are late. Delinquent payments due under this subsection, together with interest charges as provided in this subsection and court costs, may be recovered by action in a court of competent jurisdiction against the person or persons responsible for the payments or, at the request of the board, may be deducted from any other monies, including excise revenue taxes, payable to a political subdivision by any department or agency of this state. If requested by the board, the state, county treasurers or clerks of the superior court shall transfer the monies credited under subsection B of this section, in an amount determined by the board, directly to the qualified governmental excess benefit arrangement established pursuant to section 38-803.01.
- F. The employer shall pay the member contributions required of members on account of compensation earned after August 7, 1985. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the United States internal revenue code. The effective date of the employer payment shall not be before the date the retirement plan has received notification from the United States internal revenue service that pursuant to section 414(h) of the United States internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or pension payments. The employer shall pay the member contributions from monies established and available in the retirement deduction account, which monies would otherwise have been designated as member contributions and paid to the retirement plan. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before August 7, 1985.

- G. An elected official who became a member of the plan before July 20, 2011 shall contribute seven percent of the member's gross salary pursuant to subsection A of this section. The amount contributed pursuant to subsection A of this section by an elected official who became a member of the plan on or after July 20, 2011 is:
  - 1. For fiscal year 2011-2012, ten percent of the member's gross salary.
  - 2. For fiscal year 2012-2013, eleven and one-half percent of the member's gross salary.
  - 3. For fiscal year 2013-2014 and each fiscal year thereafter, thirteen percent of the member's gross salary.
- H. For fiscal year 2011-2012 and each fiscal year thereafter, the amount of the member's contribution that exceeds seven percent of the member's compensation shall not be used to reduce the employer's contributions that are calculated pursuant to subsection C of this section.
- I. In fiscal years 2013-2014 through 2042-2043, the sum of \$5,000,000 is appropriated in each fiscal year from the state general fund to the elected officials' retirement plan fund to supplement the normal cost plus an amount to amortize the unfunded accrued liability pursuant to subsection C of this section. Monies appropriated pursuant to this subsection shall not be used to pay for an increase in benefits that is otherwise payable to members and shall only be used as specified in this subsection. Monies appropriated pursuant to this subsection are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 1987, Ch. 146, § 4; Laws 1989, Ch. 297, § 2, effective June 28, 1989; Laws 1989, Ch. 310, § 6; Laws 1990, Ch. 365, § 25, effective October 1, 1990; Laws 1991, Ch. 109, § 5, effective October 1, 1991; Laws 1996, Ch. 145, § 15; Laws 1996, Ch. 201, § 7; Laws 1997, Ch. 79, § 34, effective January 1, 1998; Laws 1997, Ch. 239, § 3; Laws 1998, Ch. 138, § 2, effective September 1, 1998; Laws 2000, Ch. 126, § 2; Laws 2005, Ch. 208, § 1, effective April 25, 2005; Laws 2006, Ch. 251, § 1, effective May 2, 2006; Laws 2008, Ch. 80, §10, effective April 28, 2008; Laws 2008, Ch. 286, § 22. Amended by Laws 2011, Ch. 357. Amended by Laws 2013, Ch. 111 and Ch. 217, § 6. Amended by Laws 2018, Ch. 343 § 1, effective May 16, 2018. Amended by Laws 2019, Ch. 38, § 1.

**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.

**38-810.01. Internal revenue code qualification**

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

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

**38-810.02. Statutory construction**

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

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

Laws 2011, Ch. 357, § 55 (B)(1)(a) provides:

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.\*

**38-810.03. Compensation limitation; adjustments**

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

Added by Laws 2009, Ch. 35, § 3, effective September 30, 2009.

**38-810.04. 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 elected official of the employer. This section applies to a retired member who has been retired for more than one full term for that office.
- B. The alternate contribution rate shall be equal to that portion of the total required contribution that is applied to the amortization of the unfunded actuarial accrued liability for the fiscal year beginning July 1, based on the system's actuary's calculation of the total required contribution for the preceding fiscal year ended on June 30. The alternate contribution rate shall be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.
- C. The alternate contribution rate shall not be less than ten per cent in any fiscal year.
- D. All contributions made by the employer and allocated to the fund established by section 38-802 are irrevocable and shall be used as benefits under this article or to pay the expenses of the plan. Payments made pursuant to this section by employers become delinquent after the due date prescribed in section 38-810, subsection E, 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, § 20, effective July 20, 2011. Amended by Laws 2013, Ch. 217, § 7, effective September 13, 2013.

**38-810.05. 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.

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\*See entire text of Ch. 357, § 55 on page 81.

Added by Laws 2017, Ch. 269, § 3, effective August 9, 2017.

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

The legislature intends by this act:

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

Added by Laws 2011, Ch. 357, effective July 20, 2011. Amended by Laws 2013, Ch. 217.

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

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

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

**38-812. Maximum annual pension; limitations; definition**

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

Added by Laws 2009, Ch. 35, § 5, effective September 30, 2009.

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

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

Added by Laws 1985, Ch. 309, § 4.

**38-814. Termination of plan; adjustment and refund**

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

Added by Laws 1985, Ch. 309, § 4. Amended by Laws 2017, Ch. 269, § 4.

**38-815. Joinder agreement**

- A. Elected officials of an incorporated city or town may participate in the plan if the governing body of the city or town enters into a joinder agreement with the board on behalf of its elected officials and the employer unconditionally accepts the provisions of the plan and binds its elected officials thereto. All elected officials shall be designated for membership unless written consent to the contrary is obtained from the board. A member shall be qualified for participation in order to obtain written consent to the contrary from the board.
- B. The effective date of participation shall be specifically stipulated in the joinder agreement.
- C. Any city or town that is considering participation in the plan shall request a preliminary actuarial survey to determine the estimated cost of participation, the benefits to be derived and such other information as may be deemed appropriate. The cost of such survey shall be paid by the city or town requesting it.

- D. All assets under any existing public employee defined benefit retirement program, to the extent attributable to the city's or town's elected officials, shall be transferred from the program to this fund no later than sixty days after the city's or town's effective date of participation. That portion of the transferred assets that is attributable to the elected official's contributions, including interest credits thereon, shall be properly allocated to each affected elected official of the city or town and credited to the elected official's accumulated contributions, in accordance with a schedule furnished by the city or town to the board.

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

**38-816. Redemption of prior service\***

- A. Except as provided in subsection B of this section, an active elected official who has at least five years of credited service with the plan may elect to redeem up to sixty months of any part of the following prior service or employment by paying into the fund the amounts required under subsection C of this section if the prior service or employment is not on account with any other retirement system or plan:
1. Prior service in this state as an elected official with an employer now covered by the plan before the effective date of participation if the elected official has received a refund from a prior retirement system or plan on termination of employment before the elected official's application for redemption of prior service.
  2. Prior service in this state as an elected official with an employer now covered by the plan before the effective date of participation if the elected official was not covered by a retirement system or plan during the elected official's prior elected official service.
  3. Prior service as an elected official of this state or a city, town or county of this state if the elected official was not covered by a retirement system or plan during that service whether or not the city, town or county is an employer now covered by the plan.
  4. Prior employment with the United States government, a state of the United States or a political subdivision of a state of the United States.
- B. An active elected official 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 in the plan.
- C. An active elected official who elects to redeem any part of the prior service or employment for which the elected official is deemed eligible by the board under this section shall pay into the plan the amounts previously withdrawn by the elected official as a refund of the elected official's accumulated contributions, if any, plus the additional amount, if any, that is computed by the plan's actuary and that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions that are prescribed by the plan's actuary.
- D. On approval by the governing body of an incorporated city or town that executes a joinder agreement under section 38-815, the city or town may pay into the fund all or any part of the amount sufficient to provide retirement benefits for elected officials or former elected officials for the time of service as an elected official of the city or town before the joinder agreement if no retirement benefits were in effect for elected officials during the time of service being redeemed under this section.
- E. 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.

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\* See Section 16A on page 78.

Added by Laws 1987, Ch. 146 § 5. Amended by Laws 1999, Ch. 329, § 5; Laws 2005, Ch. 208, § 2, effective April 25, 2005; Laws 2009, Ch. 35, § 6, effective September 30, 2009. Amended by Laws 2011, Ch. 357. Amended by Laws 2012, Ch. 348 and Ch. 136. Amended by Laws 2016, Ch. 90, § 1. Amended by Laws 2019, Ch. 38, § 2.

**38-816.01. Purchase of service; payment**

- A. 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.
  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. 111.

**38-817. Group health and accident coverage for retired members; payment; applicability; 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 if the retired member had eight or more years of credited service under the plan. In order to qualify for payment pursuant to this subsection, the retired member or survivor shall elect single coverage and must have elected to participate in the coverage provided in section 38-651.01 or 38-782 or any other retiree health and accident insurance coverage provided or administered by an employer. The board shall pay up to:
1. One hundred fifty dollars per month for each retired member or survivor of the plan who is not eligible for Medicare.
  2. One hundred dollars per month for each retired member or survivor of the plan who is eligible for Medicare.
- B. 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 each month for a retired member or survivor who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. The board shall pay up to:
1. Two hundred sixty dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for Medicare.
  2. One hundred seventy dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for Medicare.
  3. Two hundred fifteen dollars per month if either:
    - (a) The retired member or survivor of the plan is not eligible for Medicare and one or more dependents are eligible for Medicare.
    - (b) The retired member or survivor of the plan is eligible for Medicare and one or more dependents are not eligible for Medicare.



- C. Each retired member or survivor of the plan with less than eight years of credited service and a dependent of such a retired member or survivor who participates in the coverage provided by section 38-651.01 or 38-782 or who participates in any other retiree health and accident insurance coverage provided or administered by an employer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:
  - 1. 7.0 to 7.9 years of credited service, ninety percent.
  - 2. 6.0 to 6.9 years of credited service, seventy-five percent.
  - 3. 5.0 to 5.9 years of credited service, sixty percent.
  - 4. Those with less than five years of credited service do not qualify for the benefit.
- D. The board shall not pay more than the amount prescribed in this section for a benefit recipient as a member or survivor of the plan.
- E. A retired member or survivor of the plan may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's former employer if that former employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the plan.
- F. This section does not apply to a retired member or survivor of the plan who becomes a retired member or survivor on or after September 13, 2013 and who is reemployed and participates in health care coverage provided by the member's or survivor's new employer.
- G. The board shall establish a separate account that consists of the benefits provided in 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. 236, § 4, effective May 16, 1990. Amended by Laws 1997, Ch. 127, § 3; Laws 1997, Ch. 239, § 6; Laws 2001, Ch. 376, § 2; Laws 2001, Ch. 383, § 2; Laws 2003, Ch. 247, § 2; Laws 2005, Ch. 297, § 2. Amended by Laws 2007, Ch. 253. Amended by Laws 2010, Ch. 30 (removed language that terminated June 30, 2009) and Ch. 200. Amended by Laws 2011, Ch. 347. Amended by Laws 2013, Ch. 111. Amended by Laws 2015, Ch. 63.

Sec. 2. Retroactivity

Section 38-817, subsections G and H, Arizona Revised Statutes, as added by Laws 2013, Chapter 111, Section 5, applies retroactively to from and after May 15, 1990.

Sec. 1. Repeal

Sections 38-818, 38-818.01, 38-818.02, 38-818.03 and 38-819, 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. 236, § 4, effective May 16, 1990. Amended by Laws 1994, Ch. 356, § 24; Laws 1996, Ch. 198, § 1, effective retroactively to July 1, 1996; Laws 1998, Ch. 264, § 1; Laws 1999, Ch. 50, § 2, retroactively effective to July 1, 1999. Amended by Laws 2011, Ch. 357.

**38-818.04. Cost-of-living adjustment**

- A. 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 actuary shall include the projected cost of providing 25 the cost-of-living adjustment specified in subsection B of this section in the calculation of normal cost and accrued liability.

Added by Laws 2018, Ch. 140, § 2.

**Sec. 4. Conditional enactment**

Sections 38-818, 38-818.01, 38-818.02, 38-818.03 and 38-819, Arizona Revised Statutes, as repealed by this act, and section 38-818.04, Arizona Revised Statutes, as added by this act, 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.

**38-820. Credit for military service\***

- A. Except as provided in 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. An elected official who became a member of the plan before January 1, 2012 may receive credited service for eligible prior active military service as specified in subsection A of this section without having to have accrued any minimum amount of credited service with the Plan.

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\* See Section 16A on page 78.

- 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.
- 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 38-810 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, § 9, effective September 30, 2009. Amended by Laws 2011, Ch. 357. Amended by Laws 2015, Ch. 63. Amended by Laws 2016, Ch. 90, § 2. Amended by Laws 2019, Ch. 36, § 4 and Ch. 38, § 3.

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

- A. A member of a charter city retirement system who is an elected official may apply for a transfer of service credits from the charter city retirement system to the Elected Officials' Retirement Plan pursuant to this section if all of the following conditions are met:
  - 1. The member initiates the transfer by making written application to the Elected Officials' Retirement Plan.
  - 2. The charter city retirement system and the Elected Officials' Retirement Plan agree regarding the terms of the transfer.
  - 3. The transfer does not cause either the charter city retirement system or the Elected Officials' Retirement Plan to incur any unfunded accrued liabilities as a result of the transfer.
- B. Service credits qualified in accordance with subsection A may be transferred or redeemed in accordance with the following:
  - 1. If a member's contributions remain on deposit with the charter city retirement system, the following shall be calculated:
    - (a) The charter city retirement system shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the charter city retirement system as calculated by the system's actuary using the actuarial method and assumptions recommended by the system's actuary and based on the transferring member's service credits at the time of transfer.
    - (b) The Elected Officials' Retirement Plan shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by the plan's actuary using the actuarial method and assumptions recommended by the plan's actuary and based on the transferring member's service credits at the time of transfer.
  - 2. If a member decides to transfer:
    - (a) If the amount calculated in paragraph 1, subdivision (b) of this subsection is greater than the amount calculated in paragraph 1, subdivision (a) of this subsection:
      - (i) The charter city retirement system shall transfer to the Elected Officials' Retirement Plan the greater of the amount calculated in paragraph 1, subdivision (a) of this subsection or the member's accumulated contribution account balance.

- (ii) If the amount transferred is less than the amount calculated under paragraph 1, subdivision (b) of this subsection, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under paragraph 1, subdivision (a) of this subsection multiplied by the ratio of the amount calculated under paragraph 1, subdivision (a) of this subsection to the amount calculated under paragraph 1, subdivision (b) of this subsection.
    - (b) If the amount calculated in paragraph 1, subdivision (b) of this subsection is less than or equal to the amount calculated in paragraph 1, subdivision (a) of this subsection, the charter city retirement system shall transfer to the Elected Officials' Retirement Plan the greater of the amount calculated in paragraph 1, subdivision (b) of this subsection or the member's accumulated contribution account balance.
  - 3. If an applicant has withdrawn member contributions from the charter city retirement system, the applicant shall pay into the Elected Officials' Retirement Plan an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. The actuary of the Elected Officials' Retirement Plan shall perform this calculation using the actuarial method and assumptions the actuary recommends.
- C. Service credits shall not be applied to the applicant's account until complete payment is made to the Elected Officials' Retirement Plan. On completion of the transfer provided for in this section, the member's rights in the charter city retirement system are extinguished.

Added by Laws 1999, Ch. 327, § 20.

**38-822. Domestic relations orders; procedures; payments**

- A. Notwithstanding any other law, in a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the plan that would otherwise be payable to that participant shall instead be paid by the plan to an alternate payee. The value of a participant's benefit shall be the value on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.
- 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 of this section 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 of this section. 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 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 of this section, until the alternate payee is located. At that time the participant shall pay the alternate payee's portion directly to the alternate payee.

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

Added by Laws 2007, Ch. 87, § 2. Amended by Laws 2010, Ch. 231. Amended by Laws 2012, Ch. 136. Amended by Laws 2023, Ch. 34 § 2.

**38-823. 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 38-816, subsection C.
  - 2. Section 38-820, subsection A or B.
  - 3. Section 38-821.
  - 4. Sections 38-921, 38-922, 38-923 and 38-924.
- B. The discount rate is an amount equal to the assumed rate of return that is prescribed by the board.

Added by Laws 2016, Ch. 90, § 3. Amended by Laws 2019, Ch. 38, § 4.

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\* See Sections 15 and 16B on page 78.

**TITLE 38, CHAPTER 5, ARTICLE 3.1  
ELECTED OFFICIALS' DEFINED CONTRIBUTION RETIREMENT SYSTEM  
(38-831 THROUGH 38-834)**

**38-831.        Definitions**

In this article, unless the context otherwise requires:

1. "Annuity account" means an account that is established for each member to record the deposit of member contributions, employer contributions and interest, dividends or other accumulations credited on behalf of the member.
2. "Board" means the board of trustees of the Public Safety Personnel Retirement System established by section 38-848.
3. "Defined contribution system" means the elected officials' defined contribution retirement system established pursuant to this article.
4. "Elected official" means:
  - (a) Every elected official of this state who was elected or appointed on or after January 1, 2014 and who was not an active, an inactive, a disabled or a retired member of the plan on December 31, 2013.
  - (b) Every elected official of each county of this state who was elected or appointed on or after January 1, 2014 and who was not an active, an inactive, a disabled or a retired member of the plan on December 31, 2013.
  - (c) Every justice of the supreme court who was appointed on or after January 1, 2014 and who was not an active, an inactive, a disabled or a retired member of the plan on December 31, 2013.
  - (d) Every judge of the court of appeals who was appointed on or after January 1, 2014 and who was not an active, an inactive, a disabled or a retired member of the plan on December 31, 2013.
  - (e) Every judge of the superior court who was elected or appointed on or after January 1, 2014 and who was not an active, an inactive, a disabled or a retired member of the plan on December 31, 2013.
  - (f) Every full-time superior court commissioner, except full-time superior court commissioners who failed to make a timely election of membership under the judges' retirement plan, repealed on August 7, 1985, who was hired on or after January 1, 2014 and who was not an active, an inactive, a disabled or a retired member of the plan on December 31, 2013.
  - (g) Each elected official of an incorporated city or town whose employer has executed a proper joinder agreement with the plan for coverage of its elected officials, who was elected or appointed on or after January 1, 2014 and who was not an active, an inactive, a disabled or a retired member of the plan on December 31, 2013.
5. "Employer" means a department or political subdivision of this state that makes employer contributions to the defined contribution system on behalf of a member.
6. "Employer contribution" means an amount deposited by an employer, from the employer's own monies, in the member's annuity account on a periodic basis coinciding with the member's regular pay period.
7. "Member" means an elected official under the defined contribution system.
8. "Plan" means the elected officials' retirement plan established BY article 3 of this chapter.

Added by Laws 2013, Ch. 217. Amended by Laws 2014, Ch. 131.

**38-832.        Defined contribution system; annual report; quarterly statements**

- A. The board shall establish, design and administer a defined contribution system to provide for the retirement of elected officials.
- B. The purpose of this article is to provide a defined contribution system that is fully funded on a current basis from employer and member contributions.



- C. The legislature intends that the defined contribution system for members under this article be designed to be a qualified government 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 provisions to the defined contribution system that are necessary to fulfill this intent. On or before December 31, 2013, the board shall submit to the internal revenue service a request for a determination letter that the defined contribution system is a plan qualified under section 401(a) of the internal revenue code and a private letter ruling that all member contributions that are picked up by the employer as provided in section 38-833 shall be treated as employer contributions pursuant to section 414(h) of the internal revenue code.
- D. The board may:
  - 1. Employ the services of the third-party administrator that is contracted on September 13, 2013 to administer the supplemental defined contribution plan pursuant to article 8 of this chapter to also administer the defined contribution system.
  - 2. Employ other services it deems necessary, including legal services, for the operation and administration of the defined contribution system.
  - 3. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the system.
- E. The board shall adopt policies regarding the defined contribution system, including the administration of the member and employer contributions, investment options, termination in the defined contribution system, the administration of the payout options under the defined contribution system and the administration of the member distributions.
- F. On receipt of the determination letter and private letter ruling from the internal revenue service, 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 system established under this section.
- G. Any contract for a third-party administrator of the defined contribution system shall include competitive fees, quarterly meetings with the Public Safety Personnel Retirement System, annual updates to the board on the status of the defined contribution system and quarterly statements to each member. On or before December 1 of each year, the board shall report the status of the defined contribution system to the governor, the president of the senate, the speaker of the House of Representatives and the joint legislative budget committee.

Added by Laws 2013, Ch. 217. Amended by Laws 2018, Ch. 279, § 20. Amended by Laws 2019, Ch. 36, § 5. Amended by Laws 2021, Ch. 405, § 13. Amended by Laws 2022, Ch. 73, § 6.

Sec. 5. Repeal

Section 38-832, Arizona Revised Statutes, as amended by Laws 2021, chapter 405, section 13, is repealed.

Added by Laws 2022, Ch. 73, § 5.

**38-833. Member and employer contributions; disability**

- A. Beginning January 1, 2014, the defined contribution system is the retirement program for elected officials, unless the elected official is described in section 38-727, subsection B. Elected officials shall be enrolled in the defined contribution plan established by the board pursuant to this article.
- B. Each elected official who is a member of the defined contribution system shall contribute eight per cent of the member's gross compensation by salary reduction that shall be deposited in the member's annuity account. Each member shall also contribute to the elected officials' defined contribution retirement system disability program pursuant to article 3.2 of this chapter.
- C. Although designated as employee contributions, all member contributions made to the defined contribution system 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 member's compensation. A member participating in the defined contribution system does not have the option of choosing to receive the contributed amounts directly instead of the employer paying the amounts to the defined contribution system. All member 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 members' gross income for federal and state income tax purposes and are includable in the gross income of the members or the members' beneficiaries only in the taxable year in which they are distributed.

- D. Each employer shall annually make a contribution equal to six per cent of each member's gross compensation. The pro rata share of this amount shall be paid on each date that a member contribution is made and shall be credited to the member's annuity account. Each employer shall also contribute to the elected officials' defined contribution retirement system disability program pursuant to article 3.2 of this chapter.
- E. Member and employer contributions and earnings on those contributions are immediately vested. A member may receive benefits pursuant to article 3.2 of this chapter if the member develops a total disability.

Added by Laws 2013, Ch. 217. Amended by Laws 2014, Ch. 131. Amended by Laws 2014, Ch. 215.

**38-834. Credit for military service**

- 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 38-833 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 disability in accordance with article 3.2 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 January 1, 2014, 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 January 1, 2014, 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 January 1, 2014, 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, § 6.

Sec. 21. Retroactivity

Section 38-834, Arizona Revised Statutes, as added by this act, applies retroactively to from and after December 31, 2013.

**TITLE 38, CHAPTER 5, ARTICLE 3.2.**  
**ELECTED OFFICIALS' DEFINED CONTRIBUTION RETIREMENT SYSTEM DISABILITY PROGRAM**  
**(38-840 THROUGH 38-840.13)**

**38-840.           Definitions**

In this article, unless the context otherwise requires:

1.       "Assets" means the accumulated resources of the EODC disability program.
2.       "Board" means the board of trustees established pursuant to section 38-848.
3.       "Depository" means a bank in which the monies of the EODC disability program are deposited and collateralized as provided by law.
4.       "Employer" has the same meaning prescribed in section 38-831.
5.       "Employer contributions" means all amounts paid into the EODC disability program by an employer.
6.       "EODC disability program" or "program" means the elected officials' defined contribution retirement system disability program established by this article.
7.       "Member" has the same meaning prescribed in section 38-831.
8.       "State" has the same meaning prescribed in section 38-842.
9.       "System" means the Public Safety Personnel Retirement System established by article 4 of this chapter.

Added by Laws 2013, Ch. 217.

**38-840.01.       EODC disability program; administration; power and duties of the board; hearing; annual report**

- A.       The elected officials' defined contribution retirement system disability program is established for members of the elected officials' defined contribution retirement system. The board shall administer the EODC disability program.
- B.       The board may delegate authority to administer the program as it deems necessary and prudent to the administrator employed pursuant to section 38-848.
- C.       The board, in the administration, management and operation of the program, shall:
  1.       Account for the operation, administration and investment expenses and allocate them against investment income.
  2.       Contract on a fee basis with an actuary to make an actuarial valuation of the program based on the valuation method and valuation assumptions recommended by the actuary and approved by the board. The actuary shall be a member of the American academy of actuaries.
  3.       Contract on a fee basis with an independent auditing firm to make an annual audit of the accounting records of the EODC Disability Program Trust fund and file a copy of the audit with the auditor general.
  4.       Invest the monies in the EODC Disability Program Trust fund as provided in article 4 of this chapter.
  5.       On or before December 1 of each year, submit to the governor, the speaker of the House of Representatives and the president of the senate a detailed report of the operation and the investment performance of the program that includes the contribution rate for the ensuing fiscal year.
- D.       The board, in the administration, management and operation of the program, may:
  1.       Employ services as it deems necessary.
  2.       Either keep invested monies separate or commingle invested monies as it deems appropriate.
  3.       Do all acts, whether expressly authorized, that may be deemed necessary or proper for the protection of the EODC Disability Program Trust fund.
  4.       Determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of the person's rights, benefits or obligations under this article with a hearing on the determination.

Added by Laws 2013, Ch. 217. Amended by Laws 2018, Ch. 279, § 21. Amended by Laws 2019, Ch. 36, § 7. Amended by Laws 2021, Ch. 405, § 14. Amended by Laws 2022, Ch. 73, § 8.

Sec. 7. Repeal

Section 38-840.01, Arizona Revised Statutes, as amended by Laws 2021, chapter 405, section 14, is repealed.

Added by Laws 2022, Ch. 73, § 7.

**38-840.02. EODC disability program trust fund**

- A. The EODC disability program trust fund is established for the purpose of paying benefits under and costs of administering the EODC disability program. The trust fund shall be administered by the board.
- B. The EODC disability program trust fund consists of all monies paid into the trust fund pursuant to this article, whether in the form of cash, securities or other assets, and all monies received from any other source. Except as provided in subsection C, paragraph 1 of this section, the EODC disability program trust fund is exempt from Title 44, chapter 3.
- C. Abandoned monies shall revert to the EODC disability program trust fund under the following conditions:
  - 1. Monies in the trust fund are presumed abandoned if the system has taken the required action described in this subsection to identify and locate the apparent owner and the apparent owner as defined in section 44-301 has not communicated in writing with the system and has not otherwise indicated an interest in the monies for the three-year period following the required beginning date of distributions.
  - 2. Before monies are presumed abandoned, the system shall attempt to contact the apparent owner in writing. If this notice is returned by the postal authority as undeliverable, then each year for three years from the date that distributions should have begun, the system shall make a good faith attempt to locate the apparent owner, including contacting any known beneficiary on record with the system, searching public databases to identify the address of the apparent owner or using the services of a third-party address verification service. If the good faith attempt to locate the apparent owner fails, monies are presumed abandoned pursuant to this subsection.
  - 3. At the time monies are presumed abandoned pursuant to this subsection, any other property right accrued or accruing to the owner as a result of the interest in those monies, and not previously presumed abandoned, is also presumed abandoned.
  - 4. Interest ceases to accrue on the monies on the date the monies are presumed abandoned.
- D. The custody, management and investment of the EODC disability program trust fund are as prescribed by this article and article 4 of this chapter.

Added by Laws 2013, Ch. 217.

**38-840.03. Eligibility**

All members are subject to this article and shall participate in the EODC disability program.

Added by Laws 2013, Ch. 217.

**38-840.04. Employer and member contributions**

- A. Beginning January 1, 2014, employers shall contribute the percentage of the gross compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the EODC disability program.
- B. Beginning January 1, 2014, a member shall contribute a percentage of the member's gross compensation equal to the employer contribution for the member required pursuant to subsection A of this section.
- C. The employer shall pay the member contributions required of members on account of gross compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the EODC disability program trust fund and shall place the contributions in the EODC disability program's depository.

- D. Each employer shall certify on each payroll the amount to be contributed to the EODC disability program and shall remit that amount to the board.
- E. The department of administration and the treasurer of each county and participating city and town shall transfer to the board the contributions provided for in subsections A and B of this section within ten working days after each payroll date. Contributions transferred after these dates shall include a penalty equal to ten per cent per annum, compounded daily, for each day that the contributions are late. Delinquent payments due under this subsection, together with interest charges as provided in this subsection and court costs, may be recovered by action in a court of competent jurisdiction against the person or persons responsible for the payments or, at the request of the board, may be deducted from any other monies, including excise revenue taxes, payable to a political subdivision by any department or agency of this state.
- F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.
- G. Member contributions are not refundable.

Added by Laws 2013, Ch. 217

**38-840.05. Contribution rate**

- A. Employer contributions shall be a percentage of gross compensation for each member, as the system actuary determines pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.
- B. All contributions made by the employer and allocated to the EODC disability program trust fund established by section 38-840.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the EODC disability program.

Added by Laws 2013, Ch. 217.

**38-840.06. EODC disability program benefits**

- A. In determining eligibility for and continuation of a disability benefit and computing the amount available to a member, the board shall follow the same procedures and methods as prescribed in section 38-806, except that an elected official who no longer holds office must apply within one year after terminating office and the credited service used to compute the benefit shall be only the time earned while a member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter. Payment of the disability benefit will be made retroactive only to the date the board receives application for the disability.
- B. A member who meets the requirements for a disability pension as prescribed in section 38-806 shall receive a monthly disability benefit equal to a monthly disability pension that would be provided to a member who was elected, appointed or hired on or after January 1, 2012 and before January 1, 2014, reduced by an amount equal to the monthly annuitized value of the member's annuity account under article 3.1 of this chapter that does not include a cost-of-living adjustment, as determined by the board. In determining the monthly annuitized offset value of the member's annuity account under article 3.1 of this chapter to be used in reducing the disability benefit paid pursuant to this subsection, the board shall instruct the actuary for the elected officials' retirement plan to calculate the monthly payment that would be paid to the member assuming the member had elected a straight life annuity commencing on the member's date of disability, using the mortality and interest factors then used by the actuary in determining the valuation of the elected officials' retirement plan.

Added by Laws 2013, Ch. 217. Amended by Laws 2014, Ch. 131. Amended by Laws 2017, Ch. 269, § 5.

**38-840.07. Errors; benefit recomputation**

If any change or error in the records results in any member receiving from the EODC disability program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member was overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by the EODC disability program to a member with a disability.

Added by Laws 2013, Ch. 217. Added by Laws 2014, Ch. 215.

**38-840.08. Facility of payment**

In the case of incapacity of a member receiving EODC disability program benefits, or in the case of any other emergency as determined by the board, the board may make EODC disability program benefit payments on behalf of the member to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the member and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or the EODC disability program, or both, under or in connection with the EODC disability program.

Added by Laws 2013, Ch. 217.

**38-840.09. Assurances and liabilities**

- A. This article does not establish:
  - 1. A contract of employment between an employer and any employee.
  - 2. A right of any member to continue in the employment of an employer.
  - 3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.
- B. A member does not have any right to, or interest in, any EODC disability program assets on termination of the member's employment or otherwise, except as provided in this article, and then only to the extent of the benefits payable to the member out of EODC disability program assets. All payments of benefits shall be made solely out of EODC disability program assets, and the employers, the board and members of the board are not liable for payment of benefits in any manner.
- C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The EODC disability program trust fund is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.
- D. The employers, the board and members of the board do not guarantee the EODC disability program trust fund established by section 38-840.02 in any manner against loss or depreciation and are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. The board and members of the board are not responsible for any act or failure to act of any employer.
- E. This section does not exempt benefits under the program 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.

Added by Laws 2013, Ch. 217.

**38-840.10. Exemption from execution and attachment; taxation**

- A. The employer and member contributions and the securities in the EODC disability program trust fund established by section 38-840.02 are not subject to execution or attachment and are nonassignable. The employer and member contributions and the securities in the EODC disability program trust fund established by section 38-840.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the EODC disability program are subject to tax pursuant to Title 43.
- B. Interest, earnings and all other credits on monies in the EODC disability program trust fund are not subject to execution or attachment and are nonassignable.

Added by Laws 2013, Ch. 217.

**38-840.11. Violation; classification**

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the EODC disability program with an intent to defraud the EODC disability program is guilty of a class 6 felony.

Added by Laws 2013, Ch. 217.

**38-840.12. Reservation to legislature**

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

Added by Laws 2013, Ch. 217.

**38-840.13. Liquidation of the EODC disability program**

If the legislature determines that the EODC disability program is no longer to be operated for the purposes set forth in this article, any monies remaining in the EODC disability program trust fund after paying all liabilities of the program or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the EODC disability program at the time the legislature terminates the EODC disability program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the EODC disability program.

Added by Laws 2013, Ch. 217.



**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 or board of trustees governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board or board of trustees governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
  2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
  3. The member initiates the transfer by making written application to the governing board or board of trustees of the retirement system or plan to which the member is contributing or has contributed.
- 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 as § 38-951 by Laws 1989, Ch.310, § 16. Renumbered as § 38-921. Amended by Laws 1995, Ch. 32, § 19, eff. March 30, 1995. Amended by Laws 2001, Ch. 123 §1. Amended by Laws 2010, Ch. 200, § 74, eff. April 28, 2010. Amended by Laws 2022, Ch. 145, § 23.

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

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

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

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

**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 or board governing the retirement system or plan from which the service credits are being transferred and the board or 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 or 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 or board governing the retirement system or plan from which the service credits are being transferred and with the board or 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 or 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 by Laws 2006, Ch. 264, § 22. Added 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**  
**(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**

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.

Added by Laws 2020, Ch. 79 § 3. Amended by Laws 2023, Ch. 6 § 5.

**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 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 trustees of the Public Safety Personnel Retirement System shall each adopt a policy, and submit a copy of the policy to the president of the Senate and the speaker of the House of Representatives, regarding the countries identified as those countries currently designated by the United States Department of State as state sponsors of terrorism. The policy shall include:
  - 1.        The procedure to identify United States companies that are in violation of section 6(j) of the Export Administration Act.
  - 2.        The process for communicating with the companies and appropriate federal officials, including this state's congressional delegation, in regard to its findings pursuant to this section.
  - 3.        The process for divestment from the companies that are identified pursuant to paragraph 1.
- B.        The state treasurer, the Arizona State Retirement System and the board of trustees of the Public Safety Personnel Retirement System shall divest from those companies, based on public information, identified pursuant to subsection A, paragraph 1.
- C.        The state treasurer, the Arizona State Retirement System and the board of trustees shall notify the governor, the president of the Senate, the speaker of the House of Representatives, the director of the Department of Administration and each other of any divestments and the reasons for the divestments.
- D.        Within fourteen days after receipt of the notice pursuant to subsection C, the director of the Department of Administration shall send notice to the company indicating that this state and its political subdivisions are prohibited from purchasing any product or service from the company until the company is no longer identified pursuant to subsection A, paragraph 1.
- E.        The prohibition in subsection D does not apply to any existing contract but does apply to any renewal of a contract.
- F.        This Section applies to all affiliated companies and subsidiaries of the company.

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

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

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

**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":
  - (a) 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.
  - (b) Includes the universities under the jurisdiction of the Arizona Board of Regents and community college districts as defined in section 15-1401.
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 38.

Added by Laws 2016, Ch. 46, § 1. Amended by Laws 2019, Ch. 94, § 1. Amended by Laws 2022, Ch. 39, § 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 and 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, the retirement systems and each public entity.
- 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 and each public entity 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 the lists of restricted companies are prepared pursuant to subsection A of this section. On or before August 1 of each year, the state treasurer, each retirement system and each public entity 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, each public entity and any person acting on behalf of the state treasurer, the retirement system or the public entity:
  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. Amended by Laws 2022, Ch. 39, § 2.

**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

### 12-119.01. Supreme court fees; distribution

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

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

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

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

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

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

### 12-120.31. Fees and costs; distribution

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

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

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

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

1. 19.42 percent in the judicial collection enhancement fund established by section 12-113.
2. 26.00 percent with the state treasurer for transmission to the Elected Officials' Retirement Plan fund established by section 38-802. The monies shall be transmitted by the state treasurer to the fund pursuant to section 38-810.
3. 46.22 percent in the state general fund.

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

**12-284.03. Distribution of fees**

- A. Excluding the monies that are kept by the court pursuant to subsection B of this section, the county treasurer shall transmit, distribute or deposit all monies received from the clerk of the superior court pursuant to section 12-284, subsection K as follows:
1. 1.20 percent to the state treasurer for deposit in the resource center fund established by and for the purposes of section 41-2402, subsection G.
  2. 8.18 percent to the state treasurer for deposit in the domestic violence services fund established by section 36-3002.
  3. 1.78 percent to the state treasurer for deposit in the child abuse prevention fund established by section 8-550.01.
  4. In the county law library fund established pursuant to section 12-305, either:
    - (a) 7.02 percent if the county treasurer is serving in a county with a population of more than five hundred thousand persons.
    - (b) 14.09 percent if the county treasurer is serving in a county with a population of five hundred thousand persons or less.
  5. 0.32 percent to the state treasurer for deposit in the alternative dispute resolution fund established by section 12-135.
  6. To the Elected Officials' Retirement Plan fund established by section 38-802, either of the following percentages, which shall be distributed to the fund pursuant to section 38-810.
    - (a) 21.91 percent if the county treasurer is serving in a county with a population of more than five hundred thousand persons.
    - (b) 14.09 percent if the county treasurer is serving in a county with a population of five hundred thousand persons or less.
  7. 17.62 percent to the state treasurer for deposit in the judicial collection enhancement fund established by section 12-113.
  8. 0.24 percent to the state treasurer for deposit in the confidential intermediary and fiduciary fund established by section 8-135.
  9. In the county general fund, the following percentages:
    - (a) 28.81 percent if the county treasurer is serving in a county with a population of more than five hundred thousand persons.
    - (b) 29.56 percent if the county treasurer is serving in a county with a population of five hundred thousand persons or less.
  10. 6.00 percent to the elected officials' retirement plan fund established by section 38-802 for the purpose of funding a portion of the employers' contributions required pursuant to section 38-810.
- B. 6.92 percent of the monies transmitted, distributed or deposited pursuant to subsection A of this section shall be kept and used by the court collecting the fees in the same manner as the seven dollars of the time payment fee prescribed by section 12-116, subsection B.

Amended by Laws 1999, Ch. 346, § 9, effective August 6, 1999, retroactively effective July 1, 1999; Laws 2000, Ch. 312, § 2; Laws 2002, Ch. 267, § 2. Amended by Laws 2016, Ch. 94, § 2 and Ch. 119, § 1. Amended by Laws 2017, Ch. 303, § 2. Amended by Laws 2018, Ch. 317, § 2.

**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.

**22-281. Fees and deposits**

A. Justices of the peace shall receive fees established and classified as follows in civil actions:

Class	Description	Fee
A	Initial case filing fee	
	Civil filing fees	\$73.00
B	Subsequent case filing fee	
	Civil filing fees - defendant	\$40.00
C	Initial case filing fee	
	Forcible entry and detainer filings	\$35.00
	Small claims filing	\$25.00
D	Subsequent case filing fee	
	Small claims answer	\$15.00
E	Minimum clerk fee	
	Document and transcript transfer on appeal	\$28.00
	Certification of any documents	\$28.00
	Issuance of writs	\$28.00
	Filing any paper or performing any act for which a fee is not specifically prescribed	\$28.00
	Subpoena (civil)	\$28.00
	Research in locating a document	\$28.00
	Seal a court file	\$28.00
	Reopen a sealed court file	\$28.00
	Record duplication	\$28.00
F	Per page fee	
	Copies of any documents per page	\$ 0.50
G	Special fees	
	Small claims service by mail	\$ 8.00

B. This section does not deprive the parties to the action of the privilege of depositing amounts with the justice, in addition to those set forth in this section, for use in connection with the payment of constable's and sheriff's fees for service of process, levying of writs and other services for which fees are otherwise provided by law.

C. Excluding the monies that are kept by the court pursuant to subsection D of this section, justices of the peace shall transmit monthly to the county treasurer all monies collected pursuant to subsection A of this section. The county treasurer shall distribute or deposit all of the monies received pursuant to this subsection as follows:

1. To the state treasurer for deposit in the judicial collection enhancement fund established by section 12-113, in the following percentages:
  - (a) 14.80 percent if the county treasurer is serving in a county with a population of more than five hundred thousand persons.
  - (b) 16.23 percent if the county treasurer is serving in a county with a population of five hundred thousand persons or less.
2. To the state treasurer for deposit in the alternative dispute resolution fund established by section 12-135, in the following percentages:
  - (a) 1.69 percent if the county treasurer is serving in a county with a population of more than five hundred thousand persons.
  - (b) 1.89 percent if the county treasurer is serving in a county with a population of five hundred thousand persons or less.
3. To the elected officials' retirement plan fund established by section 38-802, either of the following percentages, which shall be distributed to the fund pursuant to section 38-810:
  - (a) 21.91 percent if the county treasurer is serving in a county with a population of more than five hundred thousand persons.
  - (b) 14.09 percent if the county treasurer is serving in a county with a population of five hundred thousand persons or less.

4. To the county general fund, in the following percentages:
  - (a) 49.95 percent if the county treasurer is serving in a county with a population of more than five hundred thousand persons.
  - (b) 55.51 percent if the county treasurer is serving in a county with a population of five hundred thousand persons or less.
5. 6.00 percent to the Elected Officials' Retirement Plan fund established by section 38-802 for the purpose of funding a portion of the employers' contributions required pursuant to section 38-810.
- D. In counties with a population of more than five hundred thousand persons, 5.65 percent of the monies transmitted pursuant to subsection C of this section shall be kept and used by the court collecting the fees in the same manner as the \$7 of the time payment fee prescribed by section 12-116, subsection B.
- E. In counties with a population of five hundred thousand persons or less, 6.28 percent of the monies transmitted pursuant to subsection C of this section shall be kept and used by the court collecting the fees in the same manner as the \$7 of the time payment fee prescribed by section 12-116, subsection B.
- F. The supreme court may increase the fees prescribed in subsection A of this section in an amount not to exceed the percent of change in the average consumer price index as published by the United States department of labor, bureau of labor statistics between that figure for the latest calendar year and the calendar year in which the last fee increase occurred.

Added by Laws 1973, Ch. 143, § 1. Amended by Laws 1981, Ch. 143, § 5; Amended by Laws 1990, Ch. 365, § 19, eff. Oct. 1, 1990; Amended by Laws 1991, Ch. 110, § 4, eff. October 1, 1991; Amended by Laws 1991, Ch. 233, § 5; Amended by Laws 1992, Ch. 8, § 3, eff. Jan. 1, 1993; Amended by Laws 1996, Ch. 218, § 5; Amended by Laws 1997, Ch. 79, § 20, eff. Jan. 1, 1998; Amended by Laws 1998, Ch. 294, § 7; Amended by Laws 2001, Ch. 255, § 5; Amended by Laws 2002, Ch. 291, § 11; Amended by Laws 2002, Ch. 309, § 3; Amended by Laws 2004, Ch. 314, § 6; Amended by Laws 2008, Ch. 286, § 11; Amended by Laws 2017, Ch. 303, § 3; Amended by Laws 2018, Ch. 317, § 3, eff. May 16, 2018. Amended by Laws 2022, Ch. 97, § 1.

Sec. 4            Requirements for enactment; two-thirds vote

Pursuant to article IX, section 22, Constitution of Arizona, this act is effective only on the affirmative vote of at least two-thirds of the members of each house of the legislature and is effective immediately on the signature of the Governor or, if the Governor vetoes this act, on the subsequent affirmative vote of at least three-fourths of the members of each house of the legislature.

**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 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 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 trustee of the permanent state land funds and manage the assets of the funds consistent with the requirements of article X, section 7, Constitution of Arizona.
  4. Serve as trustee of any endowments established pursuant to section 35-314.03.
  5. Serve as trustee of AZ529, Arizona's education savings plan established by title 15, chapter 14, article 7.

- 6. Serve as trustee 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. Amended by Laws 2021, Ch. 188, § 9.

**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.

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

- A. The department of administration, by rule, shall adopt standards to establish group health and accident coverage for former employees who worked for this state and who opt on retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for this state, 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 that 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 that provide that on the death of a state employee who at the time of death was eligible for normal retirement pursuant to section 38-757 under the Arizona State Retirement System, 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, by rule, may 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 that provide that on 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 that are sufficient to pay for the premium and state administrative expense of

providing 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 this state and its departments and agencies or their dependents as necessary to obtain health and accident coverage at favorable rates.

- C. The Arizona 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 coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing 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 on retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for this state 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 that 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 coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing 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 coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing 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 the administrative expense of providing 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 insurance 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.
- 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. A retired participant that makes an election pursuant to section 38-869 may be eligible for group health benefits as specified in section 38-869.

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, Ch. 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. Added by Laws 2013, Ch. 217. Amended by Laws 2014, Ch. 215. Amended by Laws 2016, Ch. 2, § 1. Amended by Laws 2021, Ch. 330, § 1, effective from and after June 30, 2022.

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

- A. The department of administration may expend public funds appropriated for such purpose to procure group life insurance of at least five thousand dollars in coverage and group accidental death and dismemberment insurance of at least five thousand dollars in coverage for full-time officers and employees of the state and its departments and agencies. The department of administration by rule shall adopt standards for and designate qualifying plans and eligibility of officers and employees to participate in such plans. Any group life insurance and group accidental death and dismemberment insurance plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees.
- B. The department of administration may by rule offer on a cost basis additional group life and group accidental death and dismemberment insurance to such officers and employees and the dependents of such officers and employees in amounts of not to exceed:
  - 1. For the officer or employee, three times the annual salary of such officer or employee.
  - 2. For the dependents of such officers or employees, an amount prescribed by the department of administration.

- C. The department of administration, by rule, may adopt standards to establish group life insurance coverage for former elected officials of this state and their dependents and to establish eligibility for the former elected officials to participate in the coverage. The department of administration may promulgate rules which provide that if the former elected official dies before an insured surviving spouse the surviving spouse is eligible to participate in the coverage. The standards may provide that all or any group of the former elected officials, their dependents or a surviving spouse may be grouped with officers and employees of this state or their dependents as necessary to obtain life insurance coverage at favorable rates. No public monies may be expended to pay the premium for insurance coverage pursuant to this subsection.

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

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

- A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents 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 provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 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 used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member 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 Public Safety Personnel Defined Contribution Retirement Plan established pursuant to Article 4.1 of this chapter, 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 Public Safety Personnel Defined Contribution Retirement Plan established pursuant to Article 4.1 of this chapter, 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 Public Safety Personnel Defined Contribution Retirement Plan established pursuant to Article 4.1 of this chapter, 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 members, surviving dependents 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 members, surviving dependents 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 member, surviving dependent 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. Amended by Laws 2021, Ch. 14, § 1.

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

- A. 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. 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.

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\* See Sec. 19 on page 79.

- 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 to obtain 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.
  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 any deputy or 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 78ll).
    - (b) Designated or approved on notice of issuance for designation on the national market system of a national securities association registered under the securities exchange act of 1934, as amended (15 United States Code sections 78a through 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 require a review or rehearing of actions or omissions of local boards. 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 percentage 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.
    - (d) 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 and other alternative investments, including management fees and performance fees and carried interest.
- 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. Allow the auditor general to make an annual audit and the results shall be transmitted to the governor and the legislature.
  5. Contract on a fee basis with an actuary who shall make actuarial valuations of the system and other plans that the board administers, be the technical adviser of the board on matters regarding the operation of the funds created by the provisions of the system, the Elected Officials' Retirement Plan, the Corrections Officer Retirement Plan and the 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.
  8. Issue a request for proposals every five years for an external auditor. The board is not required to change its auditor after issuing the request for proposals.
  9. Develop a policy regarding routine stress testing of the retirement systems and plans administered by the board at the employer level and system level. The stress test shall use industry standards, such as the inclusion of assumptions regarding investment returns, inflation, population growth, payroll growth and employer contributions. For the purposes of this paragraph, "stress test" means an assessment of the risk exposure of the retirement system or plan, including scenario analysis, simulation analysis and sensitivity analysis.
- 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 funds 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 funds of this state, the system and the board are not subject to the restrictions prescribed in section 35-154 or Article

- IX, Sections 5 and 8, Constitution of Arizona. 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 1 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 the board, the member or the employee 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 President of the Senate and the Speaker of the House of Representatives shall each appoint to the committee one member. The remaining members of 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 members appointed by the chairperson of the board 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. Amended by Laws 2021, Ch. 34, § 4, effective from and after December 31, 2021. Amended by Laws 2021, Ch. 251, Ch. 251, § 2. Amended by Laws 2021, Ch. 405, § 15. Amended by Laws 2022, Ch. 72, § 2 and Ch. 73, § 11.

Laws 2010, Ch. 200, § 53 provides: Notwithstanding section 38-848, A.R.S., as amended by this act, all persons serving as members of the board of trustees on the effective date of this act may continue to serve until the expiration date of their normal terms. The term of the new public member who is appointed by the governor pursuant to this act expires on the third Monday in January, 2013. The term of the new member who is an elected member from a local board and who is appointed by the governor to this act expires on the third Monday in January, 2016. The governor shall make all subsequent appointments as prescribed by statute. The board of trustees established by section 38-848, A.R.S., shall not use former members of the board as special advisors to assist the board in fulfilling its statutorily prescribed duties.

Sec. 1. Repeal

Section 38-848, Arizona Revised Statutes, as amended by Laws 2021, chapter 405, section 15, is repealed.

Added by Laws 2022, Ch. 72, § 1.

Sec. 10. Repeal

Section 38-848, Arizona Revised Statutes, as amended by Laws 2021, chapter 405, section 15, is repealed.

Added by Laws 2022, Ch. 73, § 10

**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 1 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. Amended by Laws 2021, Ch. 405, § 16. Amended by Laws 2022, Ch. 73, § 13.

**Sec. 12. Repeal**

Section 38-848.02, Arizona Revised Statutes, as amended by Laws 2021, chapter 405, section 16, is repealed.

Added as Laws 2022, Ch. 73, § 12.

**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.

**41-3024.27. Public Safety Personnel Retirement System board of trustees; elected officials' retirement plan; Public Safety Personnel Retirement System; correction 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. 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.
- 18. 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.
- 19. 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.
- 20. 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).
- 21. 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.
- 22. 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.
- 23. 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.

24. 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.
25. 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.
26. 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.
27. For taxable years beginning from and after December 31, 2020, the amount contributed during the taxable year to an achieving a better life experience account established pursuant to section 529A of the internal revenue code on behalf of the designated beneficiary to the extent that the contributions were not deducted in computing federal adjusted gross income. The amount subtracted may not exceed:
  - (a) \$2,000 per beneficiary for a single individual or a head of household.
  - (b) \$4,000 per beneficiary 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 may not exceed \$4,000 per beneficiary.
28. For taxable years beginning from and after December 31, 2020, Arizona small business gross income but only if an individual taxpayer has elected to separately report and pay tax on the taxpayer's Arizona small business adjusted gross income on the Arizona small business income tax return.
29. To the extent not already excluded from Arizona gross income under the internal revenue code, the value of virtual currency and non-fungible tokens the taxpayer received pursuant to an airdrop at the time of the airdrop. This paragraph may not be interpreted as providing a subtraction for any appreciation in value that occurs from holding the virtual currency after the initial receipt of the airdrop. For the purposes of this paragraph:
  - (a) "airdrop" means the receipt of virtual currency through a means of distribution of virtual currency to the distributed ledger addresses of multiple taxpayers.
  - (b) "non-fungible token" has the same meaning prescribed in section 43-1028.
  - (c) "virtual currency" has the same meaning prescribed in section 43-1028.
30. The amount allowed as a subtraction by section 43-1028 for gas fees not already included in the taxpayer's virtual currency or non-fungible token basis.

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. Amended by Laws 2021, Ch. 436, § 6. Amended by Laws 2022, Ch. 235, § 11 and Ch. 369, § 1.

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

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

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

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

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

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.

- 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. 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. 54. 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 6, Section 39

#### 39. Retirement of justices and judges; vacancies

##### Section 39.

On attaining the age of seventy years a justice or judge of a court of record shall retire and his judicial office shall be vacant, except as otherwise provided in section 35 of this article. In addition to becoming vacant as provided in this section, the office of a justice or judge of any court of record becomes vacant upon his death or his voluntary retirement pursuant to statute or his voluntary resignation, and also, as provided in section 38 of this article, upon the expiration of his term next following a general election at which a majority of those voting on the question of his retention vote in the negative or for which general election he is required, but fails, to file a declaration of his desire to be retained in office.

This section is alternative to and cumulative with the methods of removal of judges and justices provided in parts 1 and 2 of article 8 and article 6.1 of this Constitution.

### 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.