Senate Engrossed House Bill

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KEN BENNETT
SECRETARY OF STATE

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CHAPTER 118

HOUSE BILL 2067

AN ACT

AMENDING SECTIONS 20-224, 38-841, 38-842, 38-843, 38-844, 38-846, 38-847, 38-848, 38-848.03, 38-849 AND 38-853.01, ARIZONA REVISED STATUTES; RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-224, Arizona Revised Statutes, is amended to read:

20-224. Premium tax

A. On or before March 1 of each year each authorized domestic insurer, each other insurer and each formerly authorized insurer referred to in section 20-206, subsection B shall file with the director a report in a form prescribed by the director showing total direct premium income including policy membership and other fees and all other considerations for insurance from all classes of business whether designated as a premium or otherwise received by it during the preceding calendar year on account of policies and contracts covering property, subjects or risks located, resident or to be performed in this state, after deducting from such total direct premium income applicable cancellations, returned premiums, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer and all policy dividends, refunds, savings coupons and other similar returns paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. No deduction shall be made of the cash surrender values of policies or contracts. Considerations received on annuity contracts, as well as the unabsorbed portion of any premium deposit, shall not be included in total direct premium income, and neither shall be subject to tax. The report shall separately indicate the total direct fire insurance premium income received from property located in the incorporated cities and towns certified by the state fire ~~marshall~~ MARSHAL pursuant to section 9-951, subsection B, as procuring the services of a private fire company.

B. Coincident with the filing of such tax report each insurer shall pay to the director for deposit, pursuant to sections 35-146 and 35-147, a tax of 2.0 per cent of such net premiums, except that the tax on fire insurance premiums on property located in an incorporated city or town certified by the state fire marshal pursuant to section 9-951, subsection B, as procuring the services of a private fire company is .66 per cent, the tax on all other fire insurance premiums is 2.2 per cent and the tax on health care service and disability insurance premiums is as prescribed under sections 20-837, 20-1010 and 20-1060. Any payments of tax pursuant to subsection E of this section shall be deducted from the tax payable pursuant to this subsection. Each insurer shall reflect the cost savings attributable to the lower tax in fire insurance premiums charged on property located in an incorporated city or town certified by the state fire marshal pursuant to section 9-951, subsection B, as procuring the services of a private fire company. No insurer shall be liable to the state or to any other person, or shall be subject to regulatory action, relating to the calculation or submittal of fire insurance premium taxes based in good faith upon the state fire marshal's certification.

C. Eighty-five per cent of the tax paid under this section by an insurer on account of premiums received for fire insurance shall be separately specified in the report and shall be apportioned in the manner provided by sections 9-951, 9-952 and 9-972, except that all of the tax so allocated to a fund of a municipality OR FIRE DISTRICT that has no volunteer fire fighters or pension obligations to volunteer fire fighters shall be appropriated to the account of the municipality OR FIRE DISTRICT in the public safety personnel retirement system and all of the tax so allocated to a fund of a municipality OR FIRE DISTRICT that has both full-time paid fire fighters and volunteer fire fighters or pension obligations to full-time paid fire fighters or volunteer fire fighters shall be appropriated to the account of the municipality OR FIRE DISTRICT in the public safety personnel retirement system where it shall be reallocated by actuarial procedures proportionately to the municipality OR FIRE DISTRICT for the account of the full-time paid fire fighters and to the municipality OR FIRE DISTRICT for the account of the volunteer fire fighters. A MUNICIPALITY OR FIRE DISTRICT SHALL PROVIDE TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM ALL INFORMATION THAT THE SYSTEM DEEMS NECESSARY TO PERFORM THE REALLOCATION PRESCRIBED BY THIS SECTION. A full accounting of such reallocation shall be forwarded to the municipality OR FIRE DISTRICT and ~~both~~ THEIR local boards.

D. This section shall not apply to title insurance, and such insurers shall be taxed as provided in section 20-1566.

E. Any insurer that paid or is required to pay a tax of two thousand dollars or more on net premiums received during the preceding calendar year, pursuant to subsection B of this section and sections 20-224.01, 20-837, 20-1010, 20-1060 and 20-1097.07, shall file on or before the fifteenth day of each month from March through August a report for that month, on a form prescribed by the director, accompanied by a payment in an amount equal to fifteen per cent of the amount paid or required to be paid during the preceding calendar year pursuant to subsection B of this section and sections 20-224.01, 20-837, 20-1010, 20-1060 and 20-1097.07. The payments are due and payable on or before the fifteenth day of each month and shall be made to the director for deposit, pursuant to sections 35-146 and 35-147.

F. Except for the tax paid on fire insurance premiums pursuant to subsections B and C of this section, an insurer may claim a premium tax credit if the insurer qualifies for a credit pursuant to section 20-224.03, 20-224.04, ~~or~~ 20-224.06 or 20-224.07.

G. ~~Upon~~ ON receipt of a properly documented claim, a refund shall be provided to an insurer from available funds for the excess amount of any fire insurance premium improperly paid by the insurer. The insurer shall reflect the refund in the fire insurance premiums charged on the property ~~which~~ THAT was charged the excessive amount.

Sec. 2. Section 38-841, Arizona Revised Statutes, is amended to read:

38-841. Purpose; vested benefits

A. ~~Prior to~~ BEFORE the establishment of the public safety personnel retirement system, municipal firemen and policemen, employees of the Arizona highway patrol~~,~~ and other public safety personnel in the state of Arizona were covered under various local, municipal~~,~~ and state retirement programs. These heterogeneous programs provided for wide and significant differentials in employee contribution rates, benefit eligibility provisions, types of benefit protection~~,~~ and benefit formulas.

B. In order to provide a uniform, consistent and equitable statewide program for public safety personnel who are regularly assigned hazardous duty in the employ of the state of Arizona or a political subdivision thereof, this retirement system was created effective as of July 1, 1968, as an amendment to and continuation of three prior systems. Groups of employees covered under the three prior systems as of June 30, 1968, and the assets and liabilities accumulated thereunder for such employees, are transferred with prior service credits to this retirement system as of the effective date, and both they and their employers shall be required to make stipulated contributions to support the system's benefit structure on a sound actuarial basis. Future employees in such groups shall commence participation in, and contributions to, the system immediately ~~upon~~ ON commencement of covered employment.

C. The provisions of this system shall not be construed to authorize the granting of any retirement benefits to persons who are retired as of the effective date of this article, except as described in sections 38-849 and 38-853.

D. Additional eligible groups of public safety personnel will participate in the system pursuant to election by their employer for such coverage under an appropriate joinder agreement.

E. THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM IS A JURAL ENTITY THAT MAY SUE AND BE SUED.

Sec. 3. Section 38-842, Arizona Revised Statutes, is amended to read:

38-842. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's job classification and that was incurred in the performance of the employee's duty.

2. "Accumulated contributions" means, for each member, the sum of the amount of the member's aggregate contributions made to the fund and the amount, if any, attributable to the employee's contributions before the member's effective date under another public retirement system, other than the federal social security act, and transferred to the fund minus the benefits paid to or on behalf of the member.

3. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the fund manager.

4. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.

5. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.

6. "Annuitant" means a person who is receiving a benefit pursuant to section 38-846.01.

7. "Average monthly benefit compensation" means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. The considered period shall be the three consecutive years within the last twenty completed years of credited service that yield the highest average. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee's job classification if the employee was not on industrial leave.

8. "Catastrophic disability" means a physical and not a psychological condition that the local board determines prevents the employee from totally and permanently engaging in any gainful employment and that results from a physical injury incurred in the performance of the employee's duty.

9. "Certified peace officer" means a peace officer certified by the Arizona peace officers standards and training board.

10. "Claimant" means any member or beneficiary who files an application for benefits pursuant to this article.

11. "Compensation" means, for the purpose of computing retirement benefits, base salary, overtime pay, shift differential pay, military differential wage pay and holiday pay paid to an employee by the employer on a regular monthly, semimonthly or biweekly payroll basis and longevity pay paid to an employee at least every six months for which contributions are made to the system pursuant to section 38-843, subsection D. Compensation does not include, for the purpose of computing retirement benefits, payment for unused sick leave, payment in lieu of vacation, payment for compensatory time or payment for any fringe benefits. In addition, compensation does not include, for the purpose of computing retirement benefits, payments made directly or indirectly by the employer to the employee for work performed for a third party on a contracted basis or any other type of agreement under which the third party pays or reimburses the employer for the work performed by the employee for that third party, except for third party contracts between public agencies for law enforcement, CRIMINAL, TRAFFIC AND CRIME SUPPRESSION ACTIVITIES training, wildfire ~~and~~, EMERGENCY MEDICAL OR emergency management activities OR WHERE THE EMPLOYER SUPERVISES THE EMPLOYEE'S PERFORMANCE OF LAW ENFORCEMENT, CRIMINAL, TRAFFIC AND CRIME SUPPRESSION

ACTIVITIES, TRAINING, FIRE, WILDFIRE, EMERGENCY MEDICAL OR EMERGENCY MANAGEMENT SERVICES. For the purposes of this paragraph, "base salary" means the amount of compensation each employee is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, longevity pay, fringe benefit pay and similar extra payments.

12. "Credited service" means the member's total period of service before the member's effective date of participation, plus those compensated periods of the member's service thereafter for which the member made contributions to the fund.

13. "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 system issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.

14. "Depository" means a bank in which all monies of the system are deposited and held and from which all expenditures for benefits, expenses and investments are disbursed.

15. "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.

16. "Determination period" means the ninety-day period in which the system 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 system mails a notice of receipt to the participant and alternate payee.

17. "Direct rollover" means a payment by the system to an eligible retirement plan that is specified by the distributee.

18. "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.

19. "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.

20. "Effective date of participation" means July 1, 1968, except with respect to employers and their covered employees whose contributions to the fund commence thereafter, the effective date of their participation in the system is as specified in the applicable joinder agreement.

21. "Effective date of vesting" means the date a member's rights to benefits vest pursuant to section 38-844.01.

22. "Eligible child" means ~~the~~ AN unmarried child of a deceased member OR RETIRED MEMBER who MEETS ONE OF THE FOLLOWING QUALIFICATIONS:

(a) Is under ~~the age of~~ eighteen YEARS OF AGE. ~~or~~

(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. ~~who is under the age of twenty-three or~~

(c) IS under a disability that began before the child attained ~~the age of~~ twenty-three YEARS OF AGE and ~~who~~ remains a dependent of the surviving spouse or guardian.

23. "Eligible groups" means only the following who are regularly assigned to hazardous duty:

(a) Municipal police officers who are certified peace officers.

(b) Municipal fire fighters.

(c) Paid full-time fire fighters employed directly by a fire district organized pursuant to section 48-803 or 48-804 with three or more full-time fire fighters, but not including fire fighters employed by a fire district pursuant to a contract with a corporation.

(d) State highway patrol officers who are certified peace officers.

(e) State fire fighters.

(f) County sheriffs and deputies who are certified peace officers.

(g) Game and fish wardens who are certified peace officers.

(h) Police officers who are certified peace officers and fire fighters of a nonprofit corporation operating a public airport pursuant to sections 28-8423 and 28-8424. A police officer shall be designated pursuant to section 28-8426 to aid and supplement state and local law enforcement agencies and a fire fighter's sole duty shall be to perform fire fighting services, including services required by federal regulations.

(i) Police officers who are certified peace officers and who are appointed by the Arizona board of regents.

(j) Police officers who are certified peace officers and who are appointed by a community college district governing board.

(k) State attorney general investigators who are certified peace officers.

(l) County attorney investigators who are certified peace officers.

(m) Police officers who are certified peace officers and who are employed by an Indian reservation police agency.

(n) Fire fighters who are employed by an Indian reservation fire fighting agency.

(o) Police officers who are certified peace officers and who are appointed by the department of administration.

(p) Department of liquor licenses and control investigators who are certified peace officers.

(q) Arizona department of agriculture officers who are certified peace officers.

(r) Arizona state parks board rangers and managers who are certified peace officers.

(s) County park rangers who are certified peace officers.

24. "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.

25. "Eligible rollover distribution" means a payment to a distributee, but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) The portion of any distribution that is not includable in gross income.

26. "Employee" means any person who is employed by a participating employer and who is a member of an eligible group but does not include any persons compensated on a contractual or fee basis. If an eligible group requires certified peace officer status and at the option of the local board, employee may include a person who is training to become a certified peace officer.

27. "Employers" means:

(a) Cities contributing to the fire fighters' relief and pension fund as provided in sections 9-951 through 9-971 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their full-time paid fire fighters.

(b) Cities contributing under the state police pension laws as provided in sections 9-911 through 9-934 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their municipal policemen.

(c) The state highway patrol covered under the state highway patrol retirement system.

(d) The state, or any political subdivision of this state, including towns, cities, fire districts, counties and nonprofit corporations operating public airports pursuant to sections 28-8423 and 28-8424, that has elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

(e) Indian tribes that have elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

28. "Fund" means the public safety personnel retirement fund, which is the fund established to receive and invest contributions accumulated under the system and from which benefits are paid.

29. "Fund manager" means the fund manager of the system, who are the persons appointed to invest and operate the fund.

30. "Local board" means the retirement board of the employer, who are the persons appointed to administer the system as it applies to their members in the system.

31. "Member" means any FULL-TIME employee who meets all of the following qualifications:

(a) Who is either a ~~full-time~~ paid municipal police officer, a ~~full-time~~ paid fire fighter, a law enforcement officer who is employed by this state including the director thereof, a state fire fighter who is primarily assigned to fire fighting duties, a fire fighter or police officer of a nonprofit corporation operating a public airport pursuant to sections 28-8423 and 28-8424, all ranks designated by the Arizona law enforcement merit system council, a state attorney general investigator who is a certified peace officer, a county attorney investigator who is a certified peace officer, a police officer who is appointed by the department of administration and who is a certified peace officer, a department of liquor licenses and control investigator who is a certified peace officer, an Arizona department of agriculture officer who is a certified peace officer, an Arizona state parks board ranger or manager who is a certified peace officer, a county park ranger who is a certified peace officer, a person who is a certified peace officer and who is employed by an Indian reservation police agency, a fire fighter who is employed by an Indian reservation fire fighting agency or an employee included in a group designated as eligible employees under a joinder agreement entered into by their employer after July 1, 1968 and who is or was regularly assigned to hazardous duty.

(b) Who, on or after the employee's effective date of participation, is receiving compensation for personal services rendered to an employer or would be receiving compensation except for an authorized leave of absence.

(c) Whose customary employment is at least forty hours per week ~~and for more than six months in a calendar year~~ OR, FOR THOSE EMPLOYEES WHO CUSTOMARILY WORK FLUCTUATING WORK WEEKS, WHOSE CUSTOMARY EMPLOYMENT AVERAGES AT LEAST FORTY HOURS PER WEEK.

(d) WHO IS ENGAGED TO WORK FOR MORE THAN SIX MONTHS IN A CALENDAR YEAR.

(e) WHO, IF ECONOMIC CONDITIONS EXIST, IS REQUIRED TO TAKE FURLOUGH DAYS OR REDUCE THE HOURS OF THEIR NORMAL WORK WEEK BELOW FORTY HOURS BUT NOT LESS THAN THIRTY HOURS PER PAY CYCLE, AND MAINTAIN THEIR ACTIVE MEMBER STATUS WITHIN THE SYSTEM AS LONG AS THE HOUR CHANGE DOES NOT EXTEND BEYOND TWELVE CONSECUTIVE MONTHS.

~~(d)~~ (f) Who has not attained age sixty-five before the employee's effective date of participation or who was over age sixty-five with twenty-five years or more of service prior to the employee's effective date of participation.

32. "Normal retirement date" means the first day of the calendar month immediately following an employee's completion of twenty years of service or the employee's sixty-second birthday and the employee's completion of fifteen years of service.

33. "Notice of receipt" means a written document that is issued by the system to a participant and alternate payee and that states that the system has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

34. "Ordinary disability" means a physical condition that the local board determines will prevent an employee totally and permanently from performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will prevent an employee totally and permanently from engaging in any substantial gainful activity.

35. "Participant" means a member who is subject to a domestic relations order.

36. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

37. "Pension" means a series of monthly amounts that are payable to a person who is entitled to receive benefits under the plan but does not include an annuity that is payable pursuant to section 38-846.01.

38. "Personal representative" means the personal representative of a deceased alternate payee.

39. "Plan approved domestic relations order" means a domestic relations order that the system approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.

40. "Regularly assigned to hazardous duty" means regularly assigned to duties of the type normally expected of municipal police officers, municipal or state fire fighters, eligible fire district fire fighters, state highway patrol officers, county sheriffs and deputies, fish and game wardens, fire

fighters and police officers of a nonprofit corporation operating a public airport pursuant to sections 28-8423 and 28-8424, police officers who are appointed by the Arizona board of regents or a community college district governing board, state attorney general investigators who are certified peace officers, county attorney investigators who are certified peace officers, police officers who are appointed by the department of administration and who are certified peace officers, department of liquor licenses and control investigators who are certified peace officers, Arizona department of agriculture officers who are certified peace officers, Arizona state parks board rangers and managers who are certified peace officers, county park rangers who are certified peace officers, police officers who are certified peace officers and who are employed by an Indian reservation police agency or fire fighters who are employed by an Indian reservation fire fighting agency. Those individuals who are assigned solely to support duties such as secretaries, stenographers, clerical personnel, clerks, cooks, maintenance personnel, mechanics and dispatchers are not assigned to hazardous duty regardless of their position classification title. Since the normal duties of those jobs described in this paragraph are constantly changing, questions as to whether a person is or was previously regularly assigned to hazardous duty shall be resolved by the local board on a case-by-case basis. Resolutions by local boards are subject to rehearing and appeal.

41. "Retirement" OR "RETIRED" means termination of employment after a member has fulfilled all requirements for a pension. Retirement shall be considered as commencing on the first day of the month immediately following a member's last day of employment or authorized leave of absence, if later.

42. "Segregated funds" means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the system, or a domestic relations order submitted to the system that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.

43. "Service" means the last period of continuous employment of an employee by the employers before the employee's retirement, except that if such period includes employment during which the employee would not have qualified as a member had the system then been effective, such as employment as a volunteer fire fighter, then only twenty-five per cent of such noncovered employment shall be considered as service. Any absence that is authorized by an employer shall not be considered as interrupting continuity of employment if the employee returns within the period of authorized absence. Transfers between employers also shall not be considered as interrupting continuity of employment. Any period during which a member is receiving sick leave payments or a temporary disability pension shall be considered as service. Notwithstanding any other provision of this paragraph, any period during which a person was employed as a full-time paid fire fighter for a corporation that contracted with an employer to provide

firefighting services on behalf of the employer shall be considered as service if the employer has elected at its option to treat part or all of the period the firefighter worked for the company as service in its applicable joinder agreement. Any reference in this system to the number of years of service of an employee shall be deemed to include fractional portions of a year.

44. "State" means the state of Arizona, including any department, office, board, commission, agency or other instrumentality of the state.

45. "System" means the public safety personnel retirement system established by this article.

46. "Temporary disability" means a physical or mental condition that the local board finds totally and temporarily prevents an employee from performing a reasonable range of duties within the employee's department and that was incurred in the performance of the employee's duty.

Sec. 4. Section 38-843, Arizona Revised Statutes, is amended to read:

38-843. Contributions

A. Each employer who participates in the system on behalf of a group of employees who were covered under a prior public retirement system, other than the federal social security act, shall transfer all securities and monies attributable to the taxes and contributions of the state other than the state contribution to social security, the employer and the employees for the covered group of employees under the other system, such transfer to be made to the fund subject to all existing liabilities and on or within sixty days following the employer's effective date. All monies and securities transferred to the fund shall be credited to the employer's account in the fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes.

B. As determined by actuarial valuations reported to the employer and the local board by the fund manager, each employer shall make level per cent of compensation contributions sufficient under such actuarial valuations to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability over, beginning July 1, 2005, a rolling period of at least twenty and not more than thirty years that is established by the fund manager taking into account the recommendation of the system's actuary, except that, beginning with fiscal year 2006-2007, except as otherwise provided, the employer contribution rate shall not be less than eight per cent of compensation. For any employer whose actual contribution rate is less than eight per cent of compensation for fiscal year 2006-2007, that employer's contribution rate is not subject to the eight per cent minimum but, for fiscal year 2006-2007 and each year thereafter, shall be at least five per cent and not more than the employer's actual contribution rate. An employer shall have the option of paying a higher level per cent of compensation thereby reducing its unfunded past service liability. An employer shall also have the option of increasing its contributions in order to reduce the contributions required from its members under subsection C,

1 except that if an employer elects this option the employer shall pay the same
2 higher level percentage contribution for all members of the eligible
3 group. During a period when an employee is on industrial leave and the
4 employee elects to continue contributions during the period of industrial
5 leave, the employer shall make the contributions based on the compensation
6 the employee would have received in the employee's job classification if the
7 employee was in normal employment status. All contributions made by the
8 employers and all state taxes allocated to the fund shall be irrevocable and
9 shall be used to pay benefits under the system or to pay expenses of the
10 system and fund. The minimum employer contribution that is paid and that is
11 in excess of the normal cost plus the actuarially determined amount required
12 to amortize the unfunded accrued liability as calculated pursuant to this
13 subsection shall be used to reduce future employer contribution increases and
14 shall not be used to pay for an increase in benefits that are otherwise
15 payable to members. The fund manager shall separately account for these
16 monies in the fund. Forfeitures arising because of severance of employment
17 before a member becomes eligible for a pension or any other reason shall be
18 applied to reduce the cost of the employer, not to increase the benefits
19 otherwise payable to members. After the close of any fiscal year, if the
20 system's actuary determines that the actuarial valuation of an employer's
21 account contains excess valuation assets other than excess valuation assets
22 that were in the employer's account as of fiscal year 2004-2005 and is more
23 than one hundred per cent funded, the fund manager shall account for fifty
24 per cent of the excess valuation assets in a stabilization reserve
25 account. After the close of any fiscal year, if the system's actuary
26 determines that the actuarial valuation of an employer's account has a
27 valuation asset deficiency and an unfunded actuarial accrued liability, the
28 fund manager shall use any valuation assets in the stabilization reserve
29 account for that employer, to the extent available, to limit the decline in
30 that employer's funding ratio to not more than two per cent.
31 C. Each member, throughout the member's period of service from the
32 member's effective date of participation, shall contribute to the fund an
33 amount equal to 7.65 per cent of the member's compensation, except as
34 provided in subsection B. During a period when an employee is on industrial
35 leave and the employee elects to continue contributions during the period of
36 industrial leave, the employee shall make the employee's contribution based
37 on the compensation the employee would have received in the employee's job
38 classification if the employee was in normal employment status.
39 Contributions of members shall be required as a condition of employment and
40 membership in the system and shall be made by payroll deductions. Every
41 employee shall be deemed to consent to such deductions. Payment of an
42 employee's compensation, less such payroll deductions, shall constitute a
43 full and complete discharge and satisfaction of all claims and demands by the
44 employee relating to remuneration for the employee's services rendered during

1 the period covered by the payment, except with respect to the benefits
2 provided under the system.
3 D. Each employer shall transfer to the fund manager the employer and
4 employee contributions provided for in subsections B and C within ten working
5 days after each payroll date. Contributions transferred after that date
6 shall include a penalty of ten per cent per annum, compounded annually, for
7 each day the contributions are late, such penalty to be paid by the
8 employer. Delinquent payments due under this subsection, together with
9 interest charges as provided in this subsection, may be recovered by action
10 in a court of competent jurisdiction against an employer liable for the
11 payments or, at the request of the fund manager, may be deducted from any
12 other monies, including excise revenue taxes payable, to such employer by any
13 department or agency of this state.
14 E. IN NO CASE SHALL MORE THAN TWELVE MONTHS OF CREDITED SERVICE BE
15 CREDITED ON ACCOUNT OF ALL SERVICE RENDERED BY A MEMBER IN ANY ONE YEAR.
16 Sec. 5. Section 38-844, Arizona Revised Statutes, is amended to read:
17 38-844. Requirements for retirement benefits and disability
18 pensions
19 A. A member shall be eligible for a normal pension on retirement on or
20 after the member's normal retirement date. Payment of a normal pension shall
21 commence as of the first day of the month following the date of retirement,
22 and the last payment shall be made as of the last day of the month in which
23 the death of the retired member occurs.
24 B. A member is eligible for an accidental disability pension if the
25 member's employment is terminated by reason of accidental disability. A
26 member is eligible for an ordinary disability pension if the member's
27 employment is terminated before the member's normal retirement date by reason
28 of ordinary disability. A member shall file an application for a disability
29 pension after the disabling incident or within one year after the date the
30 member ceases to be an employee. Timely application for an accidental,
31 catastrophic or ordinary disability pension is a prerequisite to receipt of
32 the pension. Payment of an accidental, catastrophic or ordinary disability
33 pension shall commence as of the first day of the month following the date of
34 retirement or the expiration of a period during which the member is receiving
35 sick leave payments or a temporary disability pension, whichever is later.
36 The last payment shall be made as of the last day of the month in which the
37 death of the retired member occurs, or if disability ceases before the
38 member's normal retirement date, the first day of the month in which
39 disability ceases.
40 C. A member is eligible for a catastrophic disability pension if the
41 member's employment is terminated by reason of catastrophic disability. If
42 more than the allowable catastrophic disability pensions are approved by the
43 local boards in a calendar year, from and after December 31 of the following
44 calendar year a member of the system is not eligible to apply for a
45 catastrophic disability pension. On or before January 31, the fund manager

shall report to the president of the senate and the speaker of the house of representatives the number of catastrophic disability pensions that were approved by the local boards in the preceding calendar year. For the purposes of this subsection, "allowable catastrophic disability pensions" means for calendar year 2004, ten, and for subsequent calendar years the number of allowable catastrophic disability pensions allowed in the prior calendar year minus the number of catastrophic disability pensions approved by the local boards in the prior calendar year plus four.

D. Notwithstanding any other provision of this section, no member shall qualify for an accidental, catastrophic or ordinary disability pension if the local board determines that the member's disability results from the following:

1. An injury suffered while engaged in a felonious criminal act or enterprise.

2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.

3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the system.

E. Accidental or ordinary disability shall be considered to have ceased and an accidental or ordinary disability pension terminates if the member:

1. Has sufficiently recovered, in the opinion of the local board, based on a medical examination by a physician or clinic appointed by the local board, to be able to engage in a reasonable range of duties within the member's department and the member refuses an offer of employment by an employer in the system.

2. Refuses to undergo any medical examination requested by the board, provided that a medical examination shall not be required more frequently than once in any calendar year.

F. Sixty months after the award of a catastrophic disability pension, the local board shall reevaluate the member. If the member still qualifies for the catastrophic disability pension, the member is entitled to continue to receive the pension at the reduced amount prescribed in section 38-845, subsection E. A catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a physician or a clinic appointed by the local board. After the sixty month review, the catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a physician or a clinic appointed by the local board, except that the medical examination shall not be required more frequently than once in a calendar year. The medical review after the sixty month period does not apply after the date the catastrophic disability

pensioner would have attained twenty-five years of service assuming the pensioner remained a member of the system. The local board shall also terminate a catastrophic disability pension if the member refuses to undergo any medical examination requested by the board. A member whose catastrophic disability pension is terminated may apply for and if eligible is entitled to receive an accidental disability pension as provided in this section.

G. Subsection E of this section does not apply after a disability pensioner's normal retirement date. The amount of a disability pension shall not be recomputed at a disability pensioner's normal retirement date.

~~H. An ordinary disability pension shall be reduced in the period before the member's normal retirement date if the member engages in any employment and if the member's income from this employment is greater than the member's pension unreduced by this subsection. The amount of the reduction shall be equal to the difference between the member's income from employment and the member's unreduced pension. The local board shall have the right to suspend payments of an ordinary disability pension if the disabled member fails to report earned income. Such suspension shall be for the period there is no satisfactory report with restoration of benefits on acceptance of such report or until the member's normal retirement date, whichever occurs earlier. If, in the opinion of the local board, the reduction provided in this subsection is insufficient to recover monies previously paid to a member, each local board, in its sole discretion, may bring an action to recover any outstanding balance due, notwithstanding any other rights the local board possesses.~~

~~I.~~ H. If accidental or ordinary disability ceases before a retired member attains the member's normal retirement date and the member is reemployed by an employer, the pension payable on the member's subsequent retirement shall be determined as provided in section 38-849, subsection D.

~~J.~~ I. A member shall be eligible for a temporary disability pension if the member's employment is terminated before the member's normal retirement date by reason of temporary disability. Payment of a temporary disability pension shall commence as of the first day of the month following the date of disability or the expiration of a period during which the member is receiving compensation and sick leave payments, whichever is later. The last payment shall be made as of the first day of the month in which either the death of the member occurs or the local board deems the member is no longer under temporary disability, whichever first occurs, provided that no more than twelve monthly temporary disability payments shall be made in total to the member.

~~K.~~ J. If on the expiration of a temporary disability pension the local board finds on application that the member has an accidental or ordinary disability, the member shall be eligible for an accidental or ordinary disability pension, as provided in this section.

~~L.~~ K. The system shall make payments pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that

section. Notwithstanding any other provision of the system, beginning January 1, 1987 payment of benefits to a member shall commence no later than April 1 of the calendar year following the later of:

1. The calendar year in which the member attains seventy and one-half years of age.

2. The date the member terminates employment.

Sec. 6. Section 38-846, Arizona Revised Statutes, is amended to read:

38-846. Death benefits

A. ~~If the spouse of a member or retired member is surviving at such member's death, the spouse shall be eligible for a surviving spouse's pension, provided that such spouse had been married to the decedent either for a period of at least two years prior to such member's date of death or during such member's service.~~ 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 shall commence as of the last day of the month following the ~~member's or~~ 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.

B. THE SURVIVING SPOUSE OF A DECEASED 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.

~~B.~~ C. The surviving spouse of a deceased retired member ~~shall~~ IS ENTITLED TO receive a monthly amount equal to four-fifths of the monthly amount of pension ~~which~~ THAT the decedent would have received immediately before death. ~~The surviving spouse of a deceased member who was not killed in the line of duty or did not die from injuries suffered in the line of duty shall receive a monthly amount computed as for the surviving spouse of a deceased retired member, under the assumption that the member had retired for reason of accidental disability immediately before death. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly benefit compensation less any amount payable for an eligible child under this section. A member who was eligible for or receiving a temporary disability pension at the time of the member's death is not deemed to be retired for the purposes of this subsection. For the purposes of this subsection, "killed in the line of duty" means the decedent's death was the direct and proximate result of the performance of the decedent's public safety duties and does not include suicide.~~

D. THE SURVIVING SPOUSE OF A DECEASED MEMBER WHO WAS NOT KILLED IN THE LINE OF DUTY OR DID NOT DIE FROM INJURIES SUFFERED IN THE LINE OF DUTY IS

ENTITLED TO RECEIVE A MONTHLY AMOUNT CALCULATED IN THE SAME MANNER AS AN ACCIDENTAL DISABILITY PENSION IS CALCULATED PURSUANT TO SECTION 38-845, SUBSECTION B. THE SURVIVING SPOUSE OF A DECEASED MEMBER WHO IS KILLED IN THE LINE OF DUTY OR DIES FROM INJURIES SUFFERED IN THE LINE OF DUTY IS ENTITLED TO RECEIVE A MONTHLY AMOUNT EQUAL TO THE DECEASED MEMBER'S AVERAGE MONTHLY BENEFIT COMPENSATION LESS ANY AMOUNT PAYABLE FOR AN ELIGIBLE CHILD UNDER THIS SECTION. A MEMBER WHO WAS ELIGIBLE FOR OR RECEIVING A TEMPORARY DISABILITY PENSION AT THE TIME OF THE MEMBER'S DEATH IS NOT DEEMED TO BE RETIRED FOR THE PURPOSES OF THIS SUBSECTION. FOR THE PURPOSES OF THIS SUBSECTION, "KILLED IN THE LINE OF DUTY" MEANS THE DECEDENT'S DEATH WAS THE DIRECT AND PROXIMATE RESULT OF THE PERFORMANCE OF THE DECEDENT'S PUBLIC SAFETY DUTIES AND DOES NOT INCLUDE SUICIDE.

E. A SURVIVING SPOUSE SHALL FILE A WRITTEN APPLICATION WITH THE SYSTEM IN ORDER TO RECEIVE A SURVIVOR BENEFIT.

~~C.~~ F. If at least one eligible child is surviving at the death of a member or retired member, but no surviving spouse's pension then becomes payable, a guardian's or conservator's pension shall be payable to the person who is serving, or who is deemed by the local board to be serving, as the legally appointed guardian or custodian of the eligible child. If an eligible child of a member or retired member is surviving at the member's or retired member's death, the eligible child is entitled to receive a child's pension payable to the person who is serving or who is deemed by the local board to be serving as the legally appointed guardian or custodian of the eligible child. A CHILD'S PENSION OR A GUARDIAN'S OR CONSERVATOR'S PENSION TERMINATES IF THE CHILD IS ADOPTED. IN THE CASE OF A DISABLED CHILD, THE CHILD'S PENSION OR THE GUARDIAN'S OR CONSERVATOR'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 member may also direct by designation to the local board that the guardian or conservator pension or child's pension be paid to the trustee of a trust created for the benefit of the eligible child. A guardian's or conservator's pension shall also become payable if at least one eligible child is surviving when a surviving spouse's pension terminates. THE GUARDIAN OR CONSERVATOR SHALL FILE A WRITTEN APPLICATION WITH THE SYSTEM IN ORDER TO RECEIVE THE GUARDIAN'S OR CONSERVATOR'S PENSION AND CHILD'S PENSION.

~~D.~~ G. The fund manager shall pay a guardian's or conservator's pension during the same period in which a pension is payable to at least one eligible child. The guardian, conservator or designated trustee is entitled to receive the same monthly amount as would have been payable to the decedent's surviving spouse had a surviving spouse's pension become payable ~~upon~~ ON the decedent's death.

~~E.~~ H. Each eligible child is entitled to a monthly amount equal to one-tenth of the monthly amount of pension ~~which~~ THAT the deceased member or retired member would have received immediately ~~prior to~~ BEFORE death. THE PENSION FOR A CHILD OF A DECEASED MEMBER SHALL BE CALCULATED IN THE SAME

MANNER AS AN ACCIDENTAL DISABILITY IS CALCULATED PURSUANT TO SECTION 38-845, SUBSECTION B. A deceased member shall be assumed to be retired for reasons of accidental disability immediately before the member's death. If there are three or more children eligible for a child's pension, a maximum of two shares of the child's pension shall be payable, the aggregate of such shares to be apportioned in equal measure to each eligible child.

~~F.~~ I. If a member has accumulated contributions remaining in the system at the date of death of the last beneficiary, a lump sum refund of such accumulated contributions shall be payable to the person whom the member has designated as the member's refund beneficiary, or if the member's refund beneficiary is not then surviving, to the designated contingent refund beneficiary, or if the designated contingent refund beneficiary is not then surviving, to such person nearest of kin as selected by the local board. The amount of the lump sum refund shall be the remaining accumulated contributions. THE BENEFICIARY OR PERSON WHO IS SELECTED AS NEAREST OF KIN SHALL FILE A WRITTEN APPLICATION IN ORDER TO RECEIVE THE REFUND.

~~G.~~ J. In calculating the right to and the amount of the surviving spouse's pension, the law in effect on the date of the death of the member or retired member controls, unless the law under which the member retired provides for a greater benefit amount for a surviving spouse.

Sec. 7. Section 38-847, Arizona Revised Statutes, is amended to read:

38-847. Local boards

A. The administration of the system and responsibility for making the provisions of the system effective for each employer are vested in a local board. The department of public safety, the Arizona game and fish department, the department of emergency and military affairs, the university of Arizona, Arizona state university, northern Arizona university, each county sheriff's office, each county attorney's office, each county parks department, each municipal fire department, each eligible fire district, each community college district, each municipal police department, the department of law, the department of administration, the department of liquor licenses and control, the Arizona department of agriculture, the Arizona state parks board, each Indian reservation police agency and each Indian reservation fire fighting agency shall have a local board. A nonprofit corporation operating pursuant to sections 28-8423 and 28-8424 shall have one board for all of its members. Each local board shall be constituted as follows:

1. For political subdivisions or Indian tribes, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system, OR THE HEAD'S DESIGNEE FROM AMONG THE OTHER MEMBERS OF THE MERIT SYSTEM, if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the governing body of the city or the governing body of the employer. The appointed two citizens shall serve on both local boards in

a city or Indian tribes where both fire and police department employees are members.

2. For state agencies and nonprofit corporations operating pursuant to sections 28-8423 and 28-8424, two members elected by secret ballot by members employed by the appropriate employer and three citizens appointed by the governor. Each state agency local board shall elect a chairman.

3. For fire districts organized pursuant to section 48-804, the secretary-treasurer as chairman, two members elected by secret ballot by members employed by the fire district and two citizens appointed by the secretary-treasurer, one of whom is a resident of the fire district and one of whom has experience in personnel administration but who is not required to be a resident of the fire district.

B. ~~Upon~~ ON the taking effect of this system for an employer, the appointments and elections of board members shall take place with one elective and appointive board member serving a term ending two years after the effective date of participation for the employer and other local board members serving a term ending four years after the effective date. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as previously provided.

C. EACH LOCAL BOARD SHALL BE FULLY CONSTITUTED PURSUANT TO SUBSECTION A OF THIS SECTION WITHIN SIXTY DAYS AFTER THE EMPLOYER'S EFFECTIVE DATE OF PARTICIPATION IN THE SYSTEM. IF THE DEADLINE IS NOT MET, ON THE WRITTEN REQUEST OF ANY MEMBER WHO IS COVERED BY THE LOCAL BOARD OR THE EMPLOYER TO THE FUND MANAGER, THE FUND MANAGER MAY APPOINT ALL VACANCIES OF THE LOCAL BOARD PURSUANT TO SUBSECTION A OF THIS SECTION AND DESIGNATE WHETHER EACH APPOINTIVE POSITION IS FOR A TWO YEAR OR FOUR YEAR TERM. IF THE FUND MANAGER CANNOT FIND INDIVIDUALS TO SERVE ON THE LOCAL BOARD WHO MEET THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION, THE FUND MANAGER MAY APPOINT INDIVIDUALS TO SERVE AS INTERIM LOCAL BOARD MEMBERS UNTIL QUALIFIED INDIVIDUALS ARE APPOINTED OR ELECTED. EACH LOCAL BOARD SHALL MEET AT LEAST TWICE A YEAR. Each member of a local board, within ten days after the member's appointment or election, shall take an oath of office that, so far as it devolves ~~upon~~ ON the member, the member shall diligently and honestly administer the affairs of the local board and that the member shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system.

D. Except as limited by subsection E of this section, a local board shall have such powers as may be necessary to discharge the following duties:

1. To decide all questions of eligibility and service credits, and determine the amount, manner and time of payment of any benefits under the system.

2. To prescribe procedures to be followed by claimants in filing applications for benefits.

3. To make a determination as to the right of any claimant to a benefit and to afford any claimant or the fund manager, or both, a right to a

rehearing on the original determination. Unless all parties involved in a matter presented to the local board for determination otherwise agree, the local board shall commence a hearing on the matter within ninety days after the date the matter is presented to the local board for determination. If a local board fails to commence a hearing as provided in this paragraph, on a matter presented to the board for determination, the relief demanded by the party petitioning the board is deemed granted and approved by the board. The granting and approval of this relief is considered final and binding unless a timely request for rehearing or appeal is made as provided in this article, UNLESS THE FUND MANAGER DETERMINES THAT GRANTING THE RELIEF REQUESTED WOULD VIOLATE THE INTERNAL REVENUE CODE OR THREATEN TO IMPAIR THE SYSTEM'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE. IF THE FUND MANAGER DETERMINES THAT GRANTING THE REQUESTED RELIEF WOULD VIOLATE THE INTERNAL REVENUE CODE OR THREATEN TO IMPAIR THE SYSTEM'S STATUS AS A QUALIFIED PLAN, THE FUND MANAGER MAY REFUSE TO GRANT THE RELIEF BY ISSUING A WRITTEN DETERMINATION TO THE LOCAL BOARD AND THE PARTY PETITIONING THE LOCAL BOARD FOR RELIEF. THE DECISION BY THE FUND MANAGER IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

4. To request and receive from the employers and from members such information as is necessary for the proper administration of the system and action on claims for benefits and to forward such information to the fund manager.

5. To distribute, in such manner as the local board determines to be appropriate, information explaining the system received from the fund manager.

6. To furnish the employer, the fund manager, and the legislature, ~~upon~~ ON request, with such annual reports with respect to the administration of the system as are reasonable and appropriate.

7. To receive and review the actuarial valuation of the system for its group of members.

8. To receive and review reports of the financial condition and of the receipts and disbursements of the fund from the fund manager.

9. To appoint medical boards as provided in section 38-859.

10. To sue and be sued to effectuate the duties and responsibilities set forth in this article.

E. A local board shall have no power to add to, subtract from, modify or waive any of the terms of the system, change or add to any benefits provided by the system or waive or fail to apply any requirement of eligibility for membership or benefits under the system. NOTWITHSTANDING ANY LIMITATIONS PERIODS IMPOSED IN THIS ARTICLE, INCLUDING SUBSECTION D, PARAGRAPH 3 AND SUBSECTIONS G AND H OF THIS SECTION, IF THE FUND MANAGER DETERMINES A LOCAL BOARD DECISION VIOLATES THE INTERNAL REVENUE CODE OR THREATENS TO IMPAIR THE SYSTEM'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE, THE LOCAL BOARD'S DECISION IS NOT FINAL AND BINDING

AND THE FUND MANAGER MAY REFRAIN FROM IMPLEMENTING OR COMPLYING WITH THE LOCAL BOARD DECISION.

F. A local board, from time to time, shall establish and adopt such rules as it deems necessary or desirable for its administration. All rules and decisions of a board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the fund manager's fiduciary counsel to adjudicate the claim or dispute.

G. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, any action by a majority vote of the members of a local board ~~which~~ THAT is not inconsistent with the provisions of the system AND THE INTERNAL REVENUE CODE shall be final, conclusive and binding ~~upon~~ ON all persons affected by it unless a timely application for a rehearing or appeal is filed as provided in this article. NO LATER THAN TWENTY BUSINESS DAYS AFTER TAKING ACTION, THE LOCAL BOARD SHALL SUBMIT TO THE FUND MANAGER THE NAME OF THE MEMBER AFFECTED BY ITS DECISION, A DESCRIPTION OF THE ACTION TAKEN AND AN EXPLANATION OF THE REASONS SUPPORTING THE LOCAL BOARD'S ACTION. THE FUND MANAGER MAY NOT IMPLEMENT AND COMPLY WITH ANY LOCAL BOARD ACTION THAT DOES NOT COMPLY WITH THE INTERNAL REVENUE CODE OR THAT THREATENS TO JEOPARDIZE THE SYSTEM'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE.

H. A claimant or the fund manager may apply for a rehearing before the local board within the time ~~period~~ PERIODS prescribed in this subsection, EXCEPT THAT IF A DECISION OF A LOCAL BOARD VIOLATES THE INTERNAL REVENUE CODE OR THREATENS TO JEOPARDIZE THE SYSTEM'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE, NO LIMITATION PERIOD FOR THE FUND MANAGER TO SEEK A REHEARING OF A LOCAL BOARD DECISION APPLIES. An application for a rehearing shall be filed in writing with a member of the local board or its secretary within sixty days after:

1. The applicant-claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the system pursuant to the local board's original action, whichever occurs first.

2. The applicant-fund manager receives notification of the local board's original action AS PRESCRIBED BY SUBSECTION G OF THIS SECTION by certified mail ~~or by receipt of written directions from the local board pursuant to its original action, whichever occurs first~~.

I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.

J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.

K. When making a ruling, determination or calculation, the local board shall be entitled to rely ~~upon~~ ON information furnished by the employer, the fund manager, independent legal counsel or the actuary for the system.

L. Each member of a local board is entitled to one vote. A majority ~~of the appointed and elected members~~ is necessary for a decision by the members of a local board at any meeting of the local board.

M. The local board shall adopt such bylaws as it deems desirable. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings, forward the minutes to the fund manager within forty-five days after each meeting and forward all necessary communications to the fund manager.

N. The fees of the medical board and of the local board's independent legal counsel and all other expenses of the local board necessary for the administration of the system shall be paid by the employer AND NOT THE FUND MANAGER OR SYSTEM at such rates and in such amounts as the local board shall approve. Legal counsel that is employed by the local board is independent of the employer and any employee organization or member and owes its duty of loyalty only to the local board in connection with its representation of the local board.

O. The local board shall issue directions to the fund manager concerning all benefits ~~which~~ THAT are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in such manner as it may deem convenient or proper, all reports from the fund manager and the actuary.

P. The local board and the individual members of the local board shall be indemnified from the assets of the ~~employer's account in the fund against any and all liabilities arising by reason of~~ EMPLOYER FOR ANY JUDGMENT AGAINST THE LOCAL BOARD OR ITS MEMBERS, INCLUDING ATTORNEY FEES AND COSTS, ARISING FROM any act, or failure to act, made in good faith pursuant to the provisions of the system, including expenses reasonably incurred in the defense of any claim relating to the act or failure to act.

Sec. 8. Section 38-848, Arizona Revised Statutes, is amended to read:

38-848. Fund manager

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

1. One elected member from a local board to represent the employees.
2. One member to represent this state as an employer of public safety personnel. This member shall have the qualifications prescribed in subsection R of this section.
3. One member to represent the cities as employers of public safety personnel.
4. An elected county or state official or a judge of the superior court, court of appeals or supreme court.
5. One public member. This member shall have the qualifications prescribed in subsection R of this section.

B. All monies in the fund shall be deposited and held in a public safety personnel retirement system depository. Monies in the fund shall be disbursed from the depository separate and apart from all monies or funds of this state and the agencies, instrumentalities and subdivisions of this state, except that the fund manager may commingle the assets of the fund and the assets of all other plans entrusted to its management IN ONE OR MORE GROUP TRUSTS, subject to the crediting of receipts and earnings and charging of payments to the appropriate employer, system or plan. The monies shall be secured by the depository in which they are deposited and held to the same extent and in the same manner as required by the general depository law of this state. For purposes of making the decision to invest in securities owned by the fund or any plan administered by the fund manager, the fund and assets of the plans are subject to the sole management of the fund manager for the purpose of this article except that, on the fund manager'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 fund manager. The fund manager may invest in portfolios of securities chosen and managed by a third party. The fund manager's decision to invest in securities such as mutual funds, commingled investment funds, exchange traded funds, private equity or venture capital limited partnerships, real estate limited partnerships or limited liability companies and real estate investment trusts whose assets are chosen and managed by third parties does not constitute an improper delegation of the fund manager's investment authority.

C. All contributions under this system and other retirement plans that the fund manager administers shall be forwarded to the fund manager and shall be held, invested and reinvested by the fund manager as provided in this article. All property and monies of the fund and other retirement plans that the fund manager 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 fund manager 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 fund manager administers.

D. The fund manager shall have the full power in its sole discretion to invest and reinvest, alter and change the monies accumulated under the system and other retirement plans that the fund manager administers as provided in this article. In addition to its power to make investments managed by others, the fund manager may delegate the authority the fund manager deems necessary and prudent to investment management pursuant to section 38-848.03, as well as to the administrator, employed by the fund manager pursuant to subsection K, paragraph 6 of this section, and any assistant administrators to invest the monies of the system and other retirement plans that the fund manager administers if the administrator, investment management and any assistant administrators follow the investment policies that are promulgated by the fund manager. The fund manager 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 fund manager shall exercise the judgment and care under the circumstances then prevailing which persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income from their funds as well as the probable safety of their capital, provided:

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

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

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

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

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

(b) Designated or approved on notice of issuance for designation on the national market system of a national securities association registered

under the securities exchange act of 1934, as amended (15 United States Code sections 78a through 78ll).

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

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

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

E. Notwithstanding any other law, the fund manager shall not be required to invest in any type of investment that is dictated or required by any entity of the federal government and that is intended to fund economic development projects, public works or social programs, but may consider such economically targeted investments pursuant to its fiduciary responsibility. The fund manager, on behalf of the system AND ALL OTHER PLANS OR TRUSTS THE FUND MANAGER 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 ~~has~~ AND PLANS OR TRUSTS HAVE a financial interest, whether the entity is closely held or publicly traded and that, in turn, may be engaged in any lawful activity, including venture capital, private equity, the ownership, development, management, improvement or operation of real property and any improvements or businesses on real property or the lending of monies.

F. Conference call meetings of the fund manager of the public safety personnel retirement system that are held for investment purposes only are not subject to chapter 3, article 3.1 of this title, except that the fund manager shall maintain minutes of these conference call meetings and make them available for public inspection within twenty-four hours after the meeting. The fund manager 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 fund manager.

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

1 H. Except as provided in subsection D of this section, the fund
2 manager may:
3 1. Invest and reinvest the principal and income of all assets that the
4 fund manager manages without distinction between principal and income.
5 2. Sell, exchange, convey, transfer or otherwise dispose of any
6 investments made on behalf of the system or other plans the fund manager
7 administers in the name of the system or plans by private contract or at
8 public auction.
9 3. Also:
10 (a) Vote on any stocks, bonds or other securities.
11 (b) Give general or special proxies or powers of attorney with or
12 without power of substitution.
13 (c) Exercise any conversion privileges, subscription rights or other
14 options and make any payments incidental to the exercise of the conversion
15 privileges, subscription rights or other options.
16 (d) Consent to or otherwise participate in corporate reorganizations
17 or other changes affecting corporate securities, delegate discretionary
18 powers and pay any assessments or charges in connection therewith.
19 (e) Generally exercise any of the powers of an owner with respect to
20 stocks, bonds, securities or other investments held in or owned by the system
21 or other plans whose assets the fund manager administers.
22 4. Make, execute, acknowledge and deliver any other instruments that
23 may be necessary or appropriate to carry out the powers granted in this
24 section.
25 5. Register any investment held by the system or other plans whose
26 assets the fund manager administers in the name of the system or plan or in
27 the name of a nominee OR TRUST.
28 6. At the expense of the system or other plans that the fund manager
29 administers, enter into an agreement with any bank or banks for the
30 safekeeping and handling of securities and other investments coming into the
31 possession of the fund manager. The agreement shall be entered into under
32 terms and conditions that secure the proper safeguarding, inventory,
33 withdrawal and handling of the securities and other investments. No access
34 to and no deposit or withdrawal of the securities from any place of deposit
35 selected by the fund manager shall be permitted or made except as the terms
36 of the agreement may provide.
37 7. Appear before local boards and the courts of this state and
38 political subdivisions of this state through counsel or appointed
39 representative to protect the fund or the assets of other plans that the fund
40 manager administers. The fund manager is not responsible for the actions or
41 omissions of the local boards under this system but may seek review or
42 rehearing of actions or omissions of local boards. The fund manager does not
43 have a duty to review actions of the local boards but may do so in its
44 discretion in order to protect the fund. NO LIMITATIONS PERIOD PRECLUDES THE
45 FUND MANAGER OR ADMINISTRATOR FROM CONTESTING, OR REQUIRES THE FUND MANAGER

OR ADMINISTRATOR TO IMPLEMENT OR COMPLY WITH, A LOCAL BOARD DECISION THAT VIOLATES THE INTERNAL REVENUE CODE OR THAT THREATENS TO IMPAIR THE TAX QUALIFIED STATUS OF THE SYSTEM OR ANY PLAN ADMINISTERED BY THE FUND MANAGER OR ADMINISTRATOR.

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

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 fund manager administers.

10. SETTLE THREATENED OR ACTUAL LITIGATION AGAINST ANY SYSTEM OR PLAN THAT THE FUND MANAGER ADMINISTERS.

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

J. The fund manager, 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 fund manager administers containing, among other things:

1. A balance sheet.

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

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

~~4. A detailed statement of the investments acquired and disposed of during the year.~~

~~5.~~ 4. A list of investments owned.

~~6.~~ 5. The total rate of return, yield on cost, and per cent of cost to market value of the fund and the assets of other plans that the fund manager administers.

~~7.~~ 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 fund manager administers and the results of their operations. A synopsis of the annual report shall be published for the information of members of the system, the elected officials' retirement plan or the corrections officer retirement plan.

K. The fund manager shall:

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

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

3. Contract on a fee basis with an independent investment counsel to advise the fund manager in the investment management of the fund and assets

of other plans that the fund manager administers and with an independent auditing firm to audit the fund manager's accounting.

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

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

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

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

L. The administrator, under the direction of the fund manager, shall:

1. Administer this article.

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

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

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

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

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

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

M. The system is an independent trust fund and the fund manager, the administrator, the assistant administrators and all persons employed by them are not under the jurisdiction of the department of administration or any

other agency, department or instrumentality of this state or subject to section 38-611 or title 41, chapter 4 or 6. The salaries of the administrator, assistant administrators and other employees of the fund manager are the sole determination of the fund manager. Contracts for goods and services approved by the fund manager 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 fund manager are not subject to the restrictions prescribed in section 35-154 or article IX, sections 5 and 8, Constitution of Arizona.

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

O. At least once in each five-year period after the effective date, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the system and other plans that the fund manager 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 fund manager shall adopt for the system and other plans that the fund manager administers those mortality, service and other tables deemed necessary.

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

Q. Neither the fund manager nor any member or employee of the fund manager shall directly or indirectly, for himself or as an agent, in any manner use the monies or deposits of the fund except to make current and necessary payments, nor shall the fund manager 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 fund manager administers.

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

1. A portfolio manager acting in a fiduciary capacity.
2. A securities analyst.
3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.
4. A chartered financial analyst in good standing as determined by the association for investment management and research.
5. A professor at the university level teaching economics or investment related subjects.
6. An economist.
7. Any other professional engaged in the field of public or private finances.

S. Financial or commercial information that is provided to the fund manager, employees of the fund manager and attorneys of the fund manager in connection with investments in which the fund manager has invested or investments the fund manager 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.

Sec. 9. Section 38-848.03, Arizona Revised Statutes, is amended to read:

38-848.03. Appointed investment management

A. The fund manager 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 fund manager are deposited.

C. The fund manager shall appoint investment management for a term of one year and may appoint the investment management to succeeding terms. The fund manager may remove investment management for not complying with this article or for failure to comply with or adhere to the fund manager's investment goals, objectives or policies.

D. Investment management appointed by the fund manager:

1. May purchase and sell in the name of the system and other plans that the fund manager administers any of the securities and investments held by the system or plans.

2. Subject to any restrictions imposed by the fund manager, ~~are~~ IS responsible for making all investment decisions relating to the investments the fund manager 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 fund manager to investment management or as otherwise agreed by the fund manager, have any interest in the investments being managed by investment management for the fund manager.

2. Borrow monies, funds or deposits of the system or other plans that the fund manager 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 fund manager may authorize the administrator, ~~any assistant administrators~~ CHIEF INVESTMENT OFFICER and other in-house investment professionals employed by the fund manager to make DISCRETIONARY investments for the system and other plans OR TRUSTS that the fund manager 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 ~~section~~ ARTICLE, the fund manager 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.

Sec. 10. Section 38-849, Arizona Revised Statutes, is amended to read:

38-849. <u>Limitations on receiving pension; violation; classification; reemployment after severance; reinstatement of service credits; reemployment of retired or disabled member</u>

A. 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 shall be 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 retirement system.

B. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the system with an intent to defraud the system is guilty of a class 6 felony. If any change or error in the records results in any member or beneficiary receiving from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct such error, and as far as practicable shall adjust the payments in such manner that the

actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime specified in this subsection the member shall be 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.

C. If a member who received a severance refund on termination of employment, as provided in section 38-846.02, is subsequently reemployed by an employer, the member's prior service credits shall be cancelled and service shall be credited only from the date the member's most recent reemployment period commenced. However, if the former member's reemployment with the same employer occurred within two years after the former member's termination date, and, within ninety days after reemployment the former member signs a written election consenting to reimburse the fund within one year, the former member shall be required to redeposit the amount withdrawn at the time of the former member's separation from service, with interest thereon at the rate of nine per cent for each year compounded each year from the date of withdrawal to the date of repayment. On satisfaction of this obligation the member's prior service credits shall be reinstated.

D. If a retired member becomes employed in any capacity by the employer from which the member retired before sixty consecutive days after the member's date of retirement, the system shall not make pension payments to the retired member during the period of reemployment. If a retired member is reemployed by an employer, no contributions shall be made on the retired member's account, nor any service credited, during the period of the reemployment. ~~The fund manager shall review all reemployment determinations.~~ Notwithstanding this subsection, if a retired member subsequently becomes employed in the same position by the employer from which the member retired, the system shall not make pension payments to the retired member during the period of reemployment. On subsequent termination of employment by the retired member, the retired member is entitled to receive a pension based on the member's service and compensation before the date of the member's reemployment. If a member who retired under disability is reemployed by an employer as an employee, that member shall be treated as if the member had been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system. WITHIN TEN DAYS AFTER A RETIRED MEMBER IS REEMPLOYED BY THE EMPLOYER FROM WHICH THE MEMBER RETIRED, THE EMPLOYER SHALL ADVISE THE FUND MANAGER IN WRITING AS TO WHETHER THE RETIRED MEMBER HAS BEEN REEMPLOYED IN THE SAME POSITION FROM WHICH THE MEMBER RETIRED. THE FUND MANAGER SHALL REVIEW ALL REEMPLOYMENT DETERMINATIONS. IF THE FUND MANAGER IS NOT PROVIDED THE NECESSARY INFORMATION TO MAKE A REEMPLOYMENT DETERMINATION, THE FUND MANAGER SHALL SUSPEND PENSION PAYMENTS UNTIL INFORMATION IS RECEIVED AND A DETERMINATION IS MADE THAT THE REEMPLOYMENT MEETS THE REQUIREMENTS OF THIS SUBSECTION. For the purposes of this subsection, "same position" means the

member is in a position where the member performs substantially similar duties that were performed and exercises substantially similar authority that was exercised by the retired member before retirement.

E. A person who defrauds the system or who takes, converts, steals or embezzles monies owned by or from the system and who fails or refuses to return the monies to the system on the fund manager's written request is subject to civil suit by the system in the superior court in Maricopa county. On entry of an order finding the person has defrauded the system or taken, converted, stolen or embezzled monies owned by or from the system, the court shall enter an order against that person and for the system awarding the system 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 system 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 system, plus interest at the rate prescribed by section 44-1201, subsection A, until all amounts owed are paid to the system.

F. Notwithstanding any other provision of this article, the fund manager may offset against any benefits otherwise payable by the system to an active or retired member or survivor any court ordered amounts awarded to the fund manager and system and assessed against the member or survivor.

Sec. 11. Section 38-853.01, Arizona Revised Statutes, is amended to read:

38-853.01. Redemption of prior service

A. Each present active member of the system may elect to redeem any part of the following prior service or employment by paying into the system any amounts required under subsection B if the prior service or employment is not on account with any other retirement system:

1. Prior service in this state as an employee with an employer now covered by the system or prior service with an agency of the United States government, a state of the United States or a political subdivision OF THIS STATE OR of a state of the United States as a full-time paid firefighter or full-time paid certified peace officer.

2. Subject to any limitations prescribed by federal law, prior employment as an employee ~~with~~ OF a corporation that contracted with an employer now covered by the system to provide firefighting services on behalf of that employer as a full-time paid firefighter OR THAT PROVIDED FIREFIGHTING SERVICES FOR A POLITICAL SUBDIVISION OF THIS STATE.

B. Any present active member who elects to redeem any part of the prior service or employment for which the employee is deemed eligible by the fund manager under this section shall pay into the system the amounts previously withdrawn by the member, if any, as a refund of the member's accumulated contributions plus accumulated interest as determined by the fund manager and the additional amount, if any, computed by the system's actuary that is necessary to equal the increase in the actuarial present value of

1 projected benefits resulting from the redemption calculated using the
2 actuarial methods and assumptions prescribed by the system's actuary.
3 C. A member electing to redeem service pursuant to this section may
4 pay for service being redeemed in the form of a lump sum payment to the
5 system, a trustee-to-trustee transfer or a direct rollover of an eligible
6 distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or
7 (vi) of the internal revenue code or a rollover of an eligible distribution
8 from an individual retirement account or annuity described in section 408(a)
9 or (b) of the internal revenue code.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.