

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 208

**SENATE BILL 1366**

AN ACT

AMENDING SECTIONS 38-810, 38-816, 38-843 AND 38-891, ARIZONA REVISED  
STATUTES; RELATING TO SOCIAL SECURITY AND RETIREMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-810, Arizona Revised Statutes, is amended to  
3 read:

4 38-810. Contributions

5 A. Each member shall contribute to the fund an amount equal to seven  
6 per cent of the member's gross salary. Contributions of members shall be  
7 made by payroll deductions. Every member is deemed to consent to these  
8 deductions. Payment of a member's compensation, less these payroll  
9 deductions, constitutes a full and complete discharge and satisfaction of all  
10 claims and demands by the member relating to remuneration for the member's  
11 services rendered during the period covered by the payment, except with  
12 respect to the benefits provided under the plan.

13 B. The fund manager's office shall be credited monthly with monies  
14 collected pursuant to section 12-119.01, subsection B, paragraph 2, section  
15 12-120.31, subsection D, paragraph 2 and section 12-284.03, subsection A,  
16 paragraph 6. The monies credited to the fund pursuant to this subsection  
17 shall be deposited in the fund on a monthly basis, and there shall be a  
18 complete accounting of the determination of these monies deposited in the  
19 fund.

20 C. As determined by actuarial valuations performed by the plan's  
21 actuary, each employer shall make level per cent compensation contributions  
22 sufficient under the actuarial valuation to meet both the normal cost plus  
23 the actuarially determined amount required to amortize the unfunded accrued  
24 liability over a rolling twenty year period beginning on July 1, 1997, except  
25 that, beginning with fiscal year ~~2001-2002~~ 2006-2007, the employer  
26 contribution rate shall not be less than ~~two~~ FIVE per cent of salary. The  
27 monies deposited in the fund pursuant to subsection B of this section shall  
28 be used to reduce the contributions required of state and county employers  
29 only. Employers that entered the system under a joinder agreement shall also  
30 contribute an amount equal to the unfunded accrued liability for that  
31 employer. The unfunded liability for each new employer shall be actuarially  
32 determined by the plan's actuary as of the effective date of participation of  
33 each employer and shall be payable on the effective date of participation.  
34 THE MINIMUM EMPLOYER CONTRIBUTION THAT IS PAID AND THAT IS IN EXCESS OF THE  
35 NORMAL COST PLUS THE ACTUARIALLY DETERMINED AMOUNT REQUIRED TO AMORTIZE THE  
36 UNFUNDED ACCRUED LIABILITY AS CALCULATED PURSUANT TO THIS SUBSECTION SHALL BE  
37 USED TO REDUCE FUTURE EMPLOYER CONTRIBUTION INCREASES AND SHALL NOT BE USED  
38 TO PAY FOR AN INCREASE IN BENEFITS THAT ARE OTHERWISE PAYABLE TO MEMBERS.  
39 THE FUND MANAGER SHALL SEPARATELY ACCOUNT FOR THESE MONIES IN THE FUND.

40 D. The department of administration and the treasurer of each county  
41 and participating city and town shall transfer to the fund manager the  
42 contributions provided for in subsections A and C of this section within ten  
43 working days after each payroll date. The state, county treasurers and  
44 clerks of the superior court shall transfer the monies credited under  
45 subsection B of this section to the fund manager on or before the fifteenth

1 day of each calendar month that follows the month in which the court fees  
2 were collected. Contributions and monies credited under subsection B of this  
3 section and transferred after these dates shall include a penalty equal to  
4 ten per cent per annum, compounded annually, for each day that the  
5 contributions or monies credited under subsection B of this section are  
6 late. Delinquent payments due under this subsection, together with interest  
7 charges as provided in this subsection and court costs, may be recovered by  
8 action in a court of competent jurisdiction against the person or persons  
9 responsible for the payments or, at the request of the fund manager, may be  
10 deducted from any other monies including excise revenue taxes payable to a  
11 political subdivision by any department or agency of this state. If  
12 requested by the fund manager, the state, county treasurers or clerks of the  
13 superior court shall transfer the monies credited under subsection B of this  
14 section, in an amount determined by the fund manager, directly to the  
15 qualified governmental excess benefit arrangement established pursuant to  
16 section 38-803.01.

17 E. The employer shall pay the member contributions required of members  
18 on account of compensation earned after August 7, 1985. The paid  
19 contributions shall be treated as employer contributions for the purpose of  
20 determining tax treatment under the United States internal revenue code. The  
21 effective date of the employer payment shall not be before the date the  
22 retirement plan has received notification from the United States internal  
23 revenue service that pursuant to section 414(h) of the United States internal  
24 revenue code the member contributions paid will not be included in gross  
25 income for income tax purposes until the paid contributions are distributed  
26 by refund or pension payments. The employer shall pay the member  
27 contributions from monies established and available in the retirement  
28 deduction account, which monies would otherwise have been designated as  
29 member contributions and paid to the retirement plan. Member contributions  
30 paid pursuant to this subsection shall be treated for all other purposes, in  
31 the same manner and to the same extent, as member contributions made before  
32 August 7, 1985.

33 Sec. 2. Section 38-816, Arizona Revised Statutes, is amended to read:  
34 38-816. Redemption of prior service

35 A. Any present active elected official ~~who had previous~~ MAY ELECT TO  
36 REDEEM ANY PART OF THE FOLLOWING PRIOR SERVICE OR EMPLOYMENT BY PAYING INTO  
37 THE FUND THE AMOUNTS REQUIRED UNDER SUBSECTION B OF THIS SECTION IF THE PRIOR  
38 SERVICE OR EMPLOYMENT IS NOT ON ACCOUNT WITH ANY OTHER RETIREMENT SYSTEM OR  
39 PLAN:

40 1. PRIOR service in this state as an elected official with an employer  
41 now covered by the plan before the effective date of participation ~~and who~~ IF  
42 THE ELECTED OFFICIAL has received a refund from a prior retirement system or  
43 plan on termination of employment before the elected official's application  
44 for redemption of prior service. ~~or who~~

1           2. PRIOR SERVICE IN THIS STATE AS AN ELECTED OFFICIAL WITH AN EMPLOYER  
2 NOW COVERED BY THE PLAN BEFORE THE EFFECTIVE DATE OF PARTICIPATION IF THE  
3 ELECTED OFFICIAL was not covered by a retirement system or plan during the  
4 elected official's prior elected official service ~~may elect to redeem any~~  
5 ~~part of the prior service by paying into the fund any amounts required under~~  
6 ~~subsection B of this section.~~

7           3. ~~Any present active elected official who has previous~~ PRIOR service  
8 as an elected official of this state or a city, town or county of this state  
9 ~~and who~~ IF THE ELECTED OFFICIAL was not covered by a retirement system or  
10 plan during that service whether or not the city, town or county is an  
11 employer now covered by the plan ~~may elect to redeem any part of the prior~~  
12 ~~service by paying into the fund any amounts required under subsection B of~~  
13 ~~this section.~~

14           4. PRIOR EMPLOYMENT WITH THE UNITED STATES GOVERNMENT, A STATE OF THE  
15 UNITED STATES OR A POLITICAL SUBDIVISION OF A STATE OF THE UNITED STATES.

16           B. Any present active elected official who elects to redeem any part  
17 of the prior service OR EMPLOYMENT for which the elected official is deemed  
18 eligible by the fund manager under this section shall pay into the plan the  
19 amounts previously withdrawn by the elected official as a refund of the  
20 elected official's accumulated contributions, if any, plus the additional  
21 amount, if any, that is computed by the plan's actuary and that is necessary  
22 to equal the increase in the actuarial present value of projected benefits  
23 resulting from the redemption calculated using the actuarial methods and  
24 assumptions ~~adopted by the fund manager in accordance with section 38-803,~~  
25 ~~subsection A, paragraph 2~~ THAT ARE PRESCRIBED BY THE PLAN'S ACTUARY.

26           C. Upon approval by the governing body of an incorporated city or town  
27 which executes a joinder agreement under section 38-815, the city or town may  
28 pay into the fund all or any part of the amount sufficient to provide  
29 retirement benefits for elected officials or former elected officials for the  
30 time of service as an elected official of the city or town prior to the  
31 joinder agreement if no retirement benefits were in effect for elected  
32 officials during the time of service being redeemed under this section.

33           Sec. 3. Section 38-843, Arizona Revised Statutes, is amended to read:  
34           38-843. Contributions

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

1           B. As determined by actuarial valuations reported to the employer and  
2 the local board by the fund manager, each employer shall make level per cent  
3 of compensation contributions sufficient under such actuarial valuations to  
4 meet both the normal cost plus the actuarially determined amount required to  
5 amortize the unfunded accrued liability over a rolling twenty year period  
6 commencing on July 1, 1997, except that, beginning with fiscal year ~~2001-2002~~  
7 2006-2007, the employer contribution rate shall not be less than ~~two~~ FIVE per  
8 cent of compensation. An employer shall have the option of paying a higher  
9 level per cent of compensation thereby reducing its unfunded past service  
10 liability. An employer shall also have the option of increasing its  
11 contributions in order to reduce the contributions required from its members  
12 under subsection C, except that if an employer elects this option the  
13 employer shall pay the same higher level percentage contribution for all  
14 members of the eligible group. During a period when an employee is on  
15 industrial leave and the employee elects to continue contributions during the  
16 period of industrial leave, the employer shall make the contributions based  
17 on the compensation the employee would have received in the employee's job  
18 classification if the employee was in normal employment status. All  
19 contributions made by the employers and all state taxes allocated to the fund  
20 shall be irrevocable and shall be used to pay benefits under the system or to  
21 pay expenses of the system and fund. THE MINIMUM EMPLOYER CONTRIBUTION THAT  
22 IS PAID AND THAT IS IN EXCESS OF THE NORMAL COST PLUS THE ACTUARIALLY  
23 DETERMINED AMOUNT REQUIRED TO AMORTIZE THE UNFUNDED ACCRUED LIABILITY AS  
24 CALCULATED PURSUANT TO THIS SUBSECTION SHALL BE USED TO REDUCE FUTURE  
25 EMPLOYER CONTRIBUTION INCREASES AND SHALL NOT BE USED TO PAY FOR AN INCREASE  
26 IN BENEFITS THAT ARE OTHERWISE PAYABLE TO MEMBERS. THE FUND MANAGER SHALL  
27 SEPARATELY ACCOUNT FOR THESE MONIES IN THE FUND. Forfeitures arising because  
28 of severance of employment before a member becomes eligible for a pension or  
29 any other reason shall be applied to reduce the cost of the employer, not to  
30 increase the benefits otherwise payable to members.

31           C. Each member ~~shall~~, throughout the member's period of service from  
32 the 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  
37 based on the compensation the employee would have received in the employee's  
38 job 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 employer.  
8 Delinquent payments due under this subsection, together with interest charges  
9 as provided in this subsection, may be recovered by action in a court of  
10 competent jurisdiction against an employer liable for the payments or may, at  
11 the request of the fund manager, MAY be deducted from any other monies  
12 including excise revenue taxes payable to such employer by any department or  
13 agency of this state.

14 Sec. 4. Section 38-891, Arizona Revised Statutes, is amended to read:  
15 38-891. Employer and member contributions

16 A. As determined by actuarial valuations reported to the employers and  
17 the local boards by the fund manager, each employer shall make level per cent  
18 of salary contributions sufficient under the actuarial valuations to meet  
19 both the normal cost plus the actuarially determined amount required to  
20 amortize the unfunded accrued liability over a rolling twenty year period  
21 commencing on July 1, 1997, except that, beginning with fiscal year ~~2005-2006~~  
22 2006-2007, the employer contribution rate shall not be less than ~~four~~ FIVE  
23 per cent of salary. An employer may pay a higher level per cent of salary  
24 thereby reducing its unfunded past service liability. All contributions made  
25 by the employers and all state taxes allocated to the fund shall be  
26 irrevocable and shall be used to pay benefits under the plan or to pay  
27 expenses of the plan and fund. THE MINIMUM EMPLOYER CONTRIBUTION THAT IS  
28 PAID AND THAT IS IN EXCESS OF THE NORMAL COST PLUS THE ACTUARIALLY DETERMINED  
29 AMOUNT REQUIRED TO AMORTIZE THE UNFUNDED ACCRUED LIABILITY AS CALCULATED  
30 PURSUANT TO THIS SUBSECTION SHALL BE USED TO REDUCE FUTURE EMPLOYER  
31 CONTRIBUTION INCREASES AND SHALL NOT BE USED TO PAY FOR AN INCREASE IN  
32 BENEFITS THAT ARE OTHERWISE PAYABLE TO MEMBERS. THE FUND MANAGER SHALL  
33 SEPARATELY ACCOUNT FOR THESE MONIES IN THE FUND. Forfeitures arising because  
34 of severance of employment before a member becomes eligible for a pension or  
35 for any other reason shall be applied to reduce the cost to the employer, not  
36 to increase the benefits otherwise payable to members.

37 B. Each member shall contribute eight and one-half per cent of the  
38 member's salary to the retirement plan. Member contributions shall be made  
39 by payroll deduction. Continuation of employment by the member constitutes  
40 consent and agreement to the deduction of the applicable member  
41 contribution. Payment of the member's salary less the deducted contributions  
42 constitutes full and complete discharge and satisfaction of all claims and  
43 demands of the member relating to salary for services rendered during the  
44 period covered by the payment.

1 C. Each participating employer shall cause the member contributions to  
2 be deducted from the salary of each member. The deducted member  
3 contributions shall be paid to the retirement plan within five working days  
4 and shall be credited to the member's individual account.

5 D. During a period when an employee is on industrial leave and the  
6 employee elects to continue contributions during the period of industrial  
7 leave, the employer and employee shall make contributions based on the salary  
8 the employee would have received in the employee's job classification if the  
9 employee was in normal employment status.

10 E. The local board of the state department of corrections or the local  
11 board of the department of juvenile corrections may specify a position within  
12 that department as a designated position if the position is filled by an  
13 employee who has at least five years of credited service under the plan, who  
14 is transferred to temporarily fill the position and who makes a written  
15 request to the local board to specify the position as a designated position  
16 within ninety days of being transferred. On the employee leaving the  
17 position, the position is no longer a designated position.

18 F. The local board of the state department of corrections or the local  
19 board of the department of juvenile corrections may specify a designated  
20 position within the department as a nondesignated position if the position is  
21 filled by an employee who has at least five years of credited service under  
22 the Arizona state retirement system and who makes a written request to the  
23 local board to specify the position as a nondesignated position within ninety  
24 days of accepting the position. On the employee leaving the position, the  
25 position reverts to a designated position.

26 G. If the aggregate computed employer contribution rate that is  
27 calculated pursuant to subsection A is less than ~~four~~ FIVE per cent of  
28 salary, beginning on July 1 of the following fiscal year the member  
29 contribution rate prescribed in subsection B is permanently reduced by an  
30 amount that is equal to the difference between ~~four~~ FIVE per cent and the  
31 aggregate computed employer contribution rate. Notwithstanding this  
32 subsection, the member contribution rate shall not be less than 7.65 per cent  
33 of the member's salary.

34 Sec. 5. Emergency

35 This act is an emergency measure that is necessary to preserve the  
36 public peace, health or safety and is operative immediately as provided by  
37 law.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

Passed the House April 14, 2005

by the following vote: 53 Ayes,

3 Nays, 4 Not Voting  
*With Emergency*

*[Signature]*  
Speaker of the House

*[Signature]*  
Chief Clerk of the House

Passed the Senate March 2, 2005

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

*[Signature]*  
President of the Senate

*[Signature]*  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

**S.B. 1366**

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 19, 2005,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

[Signature]  
President of the Senate  
[Signature]  
Secretary of the Senate  
*with Emergency*

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 3:41 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9:50 o'clock A. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005,

at 4:33 o'clock P. M.

[Signature]  
Secretary of State

S.B. 1366