House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
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CHAPTER 264

SENATE BILL 1359

AN ACT

AMENDING SECTIONS 38-446, 38-718, 38-806, 38-809, 38-821, 38-842, 38-846, 38-848, 38-849, 38-850, 38-851 AND 38-853, ARIZONA REVISED STATUTES; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 335, SECTION 8; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 324, SECTION 1; AMENDING SECTIONS 38-886, 38-888, 38-897, 38-901, 38-902, 38-908 AND 38-922, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 38-923 AND 38-924; RELATING TO PUBLIC RETIREMENT PLANS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 38-446, Arizona Revised Statutes, is amended to read:

38-446. Acts based on written opinions; immunity

Notwithstanding any provision of law to the contrary, no public officer or employee is personally liable for acts done in his official capacity in good faith reliance on written opinions of the attorney general issued pursuant to section 41-193, ~~or~~ written opinions of a county attorney of the county, ~~or~~ written opinions of the city or town attorney of the city or town OR WRITTEN OPINIONS OF ANY AUTHORIZED PRIVATE ATTORNEY FOR ANY INDEPENDENT PUBLIC RETIREMENT TRUST FUND OR SYSTEM for which the officer or employee serves or is employed.

Sec. 2. Section 38-718, Arizona Revised Statutes, is amended to read:

38-718. Investment management; qualifications; term; removal; general powers and duties

A. The board shall 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 and not less than two hundred fifty million dollars currently under management. THIS PARAGRAPH IS SATISFIED IF INVESTMENT MANAGEMENT OR THE INDIVIDUAL RETAINED BY INVESTMENT MANAGEMENT MEETS 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, a pension fund or an investment adviser who is designated as a chartered financial analyst by the association for investment management and research.

B. A bank serving as investment management does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

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

D. Investment management:

1. Has the sole authority to invest and reinvest in the name of ASRS all ASRS monies assigned to investment management and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article.

2. Is responsible for making and executing all investment decisions.

3. Shall be multiple.

E. Investment management shall not directly or indirectly:

1. Have an interest in making an investment or purchasing annuities from a private insurer or in the gains or profits accruing from an investment or annuities.

2. As investment management or as agent or partner of others borrow monies, funds or deposits of ASRS or use monies, funds or deposits 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 section 38-719, the board may authorize the director to make investments that are designated by the board and that do not exceed fifty per cent of the assets of the investment account measured at cost.

G. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

Sec. 3. Section 38-806, Arizona Revised Statutes, is amended to read:

38-806. Disability retirement pensions

A. A member who becomes permanently mentally or physically incapacitated for the purpose of performing the duties of the member's office may receive disability retirement benefits if the fund manager finds that all of the following apply:

1. The member submits either personally or by a guardian an affidavit as to the nature of the member's incapacity.

2. The member is medically examined by a board of three physicians, one designated by the administrator of the fund, one designated by the member or the member's guardian and one designated by the governor.

3. A MAJORITY OF the board of physicians certifies to the fund manager that:

(a) The member is mentally or physically incapacitated for the purpose of performing the duties of the member's office. ~~;~~

(b) The member's incapacity OCCURRED DURING THE MEMBER'S TERM OF OFFICE AND is expected to be of an indefinite duration. ~~and~~

(c) The member should be retired.

B. On retirement by reason of disability under this section, a retired member shall receive a pension computed pursuant to section 38-808, subsection B, paragraph 2 until the member's death or until the member's pension is suspended, revoked or discontinued pursuant to this section.

C. If the fund manager has reason to believe that a member, retired pursuant to this section but not yet eligible for normal retirement, may no longer be mentally or physically incapacitated from performing the duties of the public office from which the member retired, the fund manager may require such retired member to be medically examined. The examination shall be

conducted by a board of three physicians, one designated by the administrator of the fund, one designated by the retired member or the member's guardian and one designated by the governor.

D. The fund manager shall discontinue pension payments to a member retired pursuant to this section, if the board of physicians certifies that the member is mentally and physically capable of performing the duties of the public office from which the member retired.

E. If the retired member refuses to submit to the medical examination, the administrator of the fund may suspend payment of the member's pension until the member submits to the medical examination. If the retired member refuses for one year or more to submit to medical examination, the fund manager shall revoke the pension of a member retired under this section.

Sec. 4. Section 38-809, Arizona Revised Statutes, is amended to read:

38-809. Correction of pension payment errors; assignments prohibited; liability

A. If the plan has made pension payments based on incorrect information and a person or an estate has been paid more or less than ~~he~~ THE PERSON OR ESTATE would have been paid if the information had been correct, the fund manager shall adjust future payments so that the proper amount is paid. The adjustment may be made in such a manner that the equivalent actuarial present value of the benefit to which the person or estate is correctly entitled is paid.

B. Notwithstanding any other statute, benefits, member contributions or court fees including interest earnings and all other credits payable under the plan are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by the person entitled to the benefit, contribution, earning or credit under the terms of the plan, and any attempt to dispose of any right under the terms of the plan as proscribed in this subsection is void. The fund is not liable for or subject to the debts, contracts, liabilities, enlargements or torts of any person entitled to a benefit, contribution, earning or credit under the terms of the plan.

C. Nothing in this section exempts employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

D. A PERSON WHO DEFRAUDS THE PLAN OR WHO TAKES, CONVERTS, STEALS OR EMBEZZLES MONIES OWNED BY OR FROM THE PLAN AND WHO FAILS OR REFUSES TO RETURN THE MONIES TO THE PLAN ON THE FUND MANAGER'S WRITTEN REQUEST IS SUBJECT TO A CIVIL SUIT BY THE PLAN IN THE SUPERIOR COURT OF MARICOPA COUNTY. ON ENTRY OF AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED, STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY

TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.

E. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE FUND MANAGER MAY OFFSET AGAINST ANY BENEFITS OTHERWISE PAYABLE BY THE PLAN TO AN ACTIVE OR RETIRED MEMBER OR SURVIVOR ANY COURT ORDERED AMOUNTS AWARDED TO THE FUND MANAGER AND PLAN AND ASSESSED AGAINST THE MEMBER OR SURVIVOR.

Sec. 5. Section 38-821, Arizona Revised Statutes, is amended to read:

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

A. A member of a charter city retirement system who is an elected official may apply for a transfer of service credits from the charter city retirement system to the elected officials' retirement plan pursuant to this section if all of the following conditions are met:

1. The member initiates the transfer by making written application to the elected officials' retirement plan.

2. The charter city retirement system and the elected officials' retirement plan agree regarding the terms of the transfer.

3. The transfer does not cause either the charter city retirement system or the elected officials' retirement plan to incur any unfunded accrued liabilities as a result of the transfer.

B. Service credits qualified in accordance with subsection A may be transferred or redeemed in accordance with the following:

1. If a member's contributions remain on deposit with the charter city retirement system, the following shall be calculated:

(a) The charter city retirement system shall calculate the amount equal to the actuarial present value of a member's projected benefits TO THE EXTENT FUNDED ON A MARKET VALUE BASIS AS OF THE MOST RECENT ACTUARIAL VALUATION under the charter city retirement system as calculated by the system's actuary using the actuarial method and assumptions recommended by the system's actuary and based on the transferring member's service credits at the time of transfer.

(b) The elected officials' retirement plan shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by the plan's actuary using the actuarial method and assumptions recommended by the plan's actuary and based on the transferring member's service credits at the time of transfer.

2. If a member decides to transfer:

(a) If the amount calculated in paragraph 1, subdivision (b) of this subsection is greater than the amount calculated in paragraph 1, subdivision (a) of this subsection:

(i) The charter city retirement system shall transfer to the elected officials' retirement plan the greater of the amount calculated in paragraph 1, subdivision (a) of this subsection or the member's accumulated contribution account balance.

(ii) If the amount transferred is less than the amount calculated under paragraph 1, subdivision (b) of this subsection, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under paragraph 1, subdivision (a) of this subsection multiplied by the ratio of the amount calculated under paragraph 1, subdivision (a) of this subsection to the amount calculated under paragraph 1, subdivision (b) of this subsection.

(b) If the amount calculated in paragraph 1, subdivision (b) of this subsection is less than or equal to the amount calculated in paragraph 1, subdivision (a) of this subsection, the charter city retirement system shall transfer to the elected officials' retirement plan the greater of the amount calculated in paragraph 1, subdivision (b) of this subsection or the member's accumulated contribution account balance.

3. If an applicant has withdrawn member contributions from the charter city retirement system, the applicant shall pay into the elected officials' retirement plan an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. The actuary of the elected officials' retirement plan shall perform this calculation using the actuarial method and assumptions the actuary recommends.

C. Service credits shall not be applied to the applicant's account until complete payment is made to the elected officials' retirement plan. On completion of the transfer provided for in this section, the member's rights in the charter city retirement system are extinguished.

Sec. 6. 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 which the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's job classification and 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 prior to 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. The fund manager may from time to time change the mortality and interest assumptions.

4. "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 which 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.

5. "Catastrophic disability" means a physical AND NOT A PSYCHOLOGICAL condition ~~that is not an accidental disability,~~ that the local board determines prevents the employee from totally and permanently engaging in any gainful employment and that results from a ~~catastrophic~~ physical injury incurred in the performance of the employee's duty.

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

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

8. "Compensation" means, for the purpose of computing retirement benefits, base salary, overtime pay, shift differential 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 ~~or~~ any ~~other payment for~~ fringe benefits. 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.

9. "Credited service" means the member's total period of service prior to 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.

10. "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.

11. "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.

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

13. "Eligible child" means the unmarried child of a deceased member who is under the age of eighteen or a full-time student who is under the age of twenty-three or under a disability which began before the child attained the age of twenty-three and who remains a dependent of the surviving spouse or guardian.

14. "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) Fish and game 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.

15. "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.

16. "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 thereof, including but not limited to towns, cities, fire districts, counties and nonprofit corporations operating public airports pursuant to sections 28-8423 and 28-8424, which 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 which 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.

17. "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.

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

19. "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.

20. "Member" means any 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 the 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 employment with an employer commenced prior to attainment of age fifty.

(d) Whose customary employment is at least forty hours per week and for more than six months in a calendar year.

(e) Who has not attained age sixty-five prior to 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.

21. "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.

22. "Ordinary disability" means a physical condition which 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 which the local board determines will prevent an employee totally and permanently from engaging in any substantial gainful activity.

23. "Pension" means a series of monthly amounts which are payable to a person who is entitled to receive benefits under the plan.

24. "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 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 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 are employed by an Indian reservation police agency and fire fighters who are employed by an Indian reservation fire fighting agency 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.

25. "Retirement" 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.

26. "Service" means the last period of continuous employment of an employee by the employers prior to the employee's retirement or the employee's sixty-fifth birthday, whichever first occurs, 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 which 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. Any period during which a person was employed as a full-time paid fire fighter by a fire district pursuant to a contract with a corporation within that fire district shall be considered as service if it is part of the person's last period of continuous employment with that corporation in that fire district and the fire district has elected to treat the period 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.

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

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

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

Sec. 7. 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. 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 retired member shall receive a monthly amount equal to four-fifths of the monthly amount of pension which 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.

C. 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. 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.

D. 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 the decedent's death.

E. Each eligible child is entitled to a monthly amount equal to one-tenth of the monthly amount of pension which the deceased member or retired member would have received immediately prior to death. 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. 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.

G. 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. 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 the state and the agencies, instrumentalities and subdivisions thereof. 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 the state. The fund is subject to the sole management of the fund manager for the purpose of this article.

C. All contributions under this system shall be forwarded to the fund manager and shall be held, invested and reinvested by the fund manager. All property and funds of the fund, including income from investments and from all other sources, shall be retained for the exclusive benefit of members, as provided in the system, 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.

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. The fund manager may delegate the authority ~~it~~ THE FUND MANAGER deems necessary and prudent 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 if the administrator ~~follows~~ AND ANY ASSISTANT ADMINISTRATORS FOLLOW the investment ~~guidelines, statement of investment policy and fund objectives~~ POLICIES THAT ARE promulgated by the fund manager. The fund manager may commingle

securities and monies of the fund subject to the crediting of receipts and earnings and charging of payments to the account of the appropriate employer. In making every investment, the fund manager shall exercise the judgment and care under the circumstances then prevailing which ~~men~~ 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 seventy per cent of the pension fund 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 pension fund shall be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of and fully guaranteed by the United States government.

3. That not more than five per cent of the voting stock of any one corporation shall be owned.

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, ~~and~~ 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 ten per cent of the pension fund shall be invested in foreign equity securities on these exchanges, 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 SECTION 80a-1) 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, 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 A FINANCIAL INTEREST, WHETHER THE ENTITY IS CLOSELY HELD OR PUBLICLY TRADED AND THAT, IN TURN, MAY BE ENGAGED IN ANY LAWFUL ACTIVITY, INCLUDING 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 which 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 funds of the system shall be invested subject to all of the conditions, limitations and restrictions imposed by law.

H. Except as provided in subsection D of this section, the fund manager may:

1. Invest and reinvest the principal and income of the pension fund without distinction between principal and income.

2. Sell, exchange, convey, transfer or otherwise dispose of any investments of the fund held in the name of the system by private contract or at public auction.

3. Also:

(a) Vote upon any stocks, bonds or other securities.

(b) Give general or special proxies or powers of attorney with or without power of substitution.

(c) Exercise any conversion privileges, subscription rights or other options and make any payments incidental to the exercise of the conversion privileges, subscription rights or other options.

(d) Consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities, delegate discretionary powers and pay any assessments or charges in connection therewith.

(e) Generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other investments held in the fund.

4. Make, execute, acknowledge and deliver any other instruments that may be necessary or appropriate to carry out the powers granted in this section.

5. Register any investment held in the fund in the name of the fund or in the name of a nominee.

6. At the expense of the system, enter into an agreement with any bank or banks for the safekeeping and handling of securities and other investments coming into the possession of the fund manager. The agreement shall be entered into under terms and conditions that secure the proper safeguarding, inventory, withdrawal and handling of the securities and other investments. No access to and no deposit or withdrawal of the securities from any place of deposit selected by the fund manager shall be permitted or made except as the terms of the agreement may provide.

7. Appear before local boards and the courts of this state and political subdivisions of this state through counsel or appointed representative to protect the fund. The fund manager is not responsible for the actions or omissions of the local boards under this system but may seek review or rehearing of actions or omissions of local boards. The fund manager does not have a duty to review actions of the local boards but may do so in its discretion in order to protect the fund.

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 in accordance with 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.

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 an annual statement on the operation of the system 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. A list of investments owned.

6. The total rate of return, yield on cost, and per cent of cost to market value of the fund.

7. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of the system and the results of its operations. A synopsis of the annual report shall be published for the information of members of the system.

K. The fund manager shall:

1. Maintain the accounts of the system 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 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, be the technical adviser of the fund manager on matters regarding the operation of the funds created by the provisions of the system 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 as the fund manager deems necessary and prudent as provided in subsections D and H of this section and subject to the investment ~~guidelines, statement of investment policy~~ POLICIES and fund objectives promulgated by the fund manager.

3. Establish and maintain an adequate system of accounts and records for the system which shall be integrated with the accounts, records and procedures of the employers so that the system 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~~, articles 5 and~~ 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 shall make a special valuation of the assets and liabilities of the funds of the system. Taking into account the results of the investigation and special valuation, the fund manager shall adopt for the system such 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 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.

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 38-849, Arizona Revised Statutes, is amended to read:

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

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 which would otherwise accrue to the member or the member's estate under this article.

C. If a member who received a severance refund upon 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. Upon satisfaction of this obligation the member's prior service credits shall be reinstated.

D. 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 such reemployment. ~~In addition,~~ 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. FOR THE PURPOSES OF THIS SUBSECTION, "SAME POSITION" MEANS THE MEMBER IS IN A POSITION WHERE THE MEMBER PERFORMS DUTIES AND EXERCISES AUTHORITY THAT ARE THE SAME DUTIES THAT WERE PERFORMED AND THE SAME AUTHORITY THAT WAS EXERCISED BY THE MEMBER BEFORE THE MEMBER'S 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 OF 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. 10. Section 38-850, Arizona Revised Statutes, is amended to read:

38-850. Assurances and liabilities; fund manager discretion; overpayments; underpayments

A. Nothing contained in the system shall be construed as a contract of employment between an employer and any employee, or as a right of any employee to be continued in the employment of an employer, or as a limitation

of the rights of an employer to discharge any of its employees, with or without cause.

B. No employee shall have any right to, or interest in, any assets of the fund upon termination of his employment or otherwise, except as provided from time to time under the system, and then only to the extent of the benefits payable to such employee out of the assets of the fund. All payments of benefits as provided for in the system shall be made solely out of the assets of the fund and neither the employers, the fund manager, nor any member of the board shall be liable therefor in any manner.

C. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this system shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit, contribution, earning or credit, under the terms of the system, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any such right hereunder shall be void. The fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to such rights hereunder. This subsection does not preclude arrangements for the withholding of taxes from benefit payments, arrangements for the recovery of benefit overpayments, arrangements for the transfer of benefit rights to another plan or arrangements for direct deposit of benefit payments in an account in a bank, savings and loan association or credit union if the arrangement is not part of an arrangement constituting an assignment or alienation.

D. Neither the employers, the fund manager, ~~nor~~ THE FUND MANAGER'S ADMINISTRATOR, ASSISTANT ADMINISTRATORS AND EMPLOYEES OR any member of a local board guarantees the fund in any manner against loss or depreciation, and none of them shall be liable for any act or failure to act, which is made in good faith pursuant to the provisions of the system. The employers shall not be responsible for any act or failure to act of a local board or any of its members or for any act or failure to act of the fund manager. A local board and the individual members ~~thereof~~ OF A LOCAL BOARD shall not be responsible for any act or failure to act of any employer or the fund manager.

E. The fund manager ~~may~~, in its discretion, MAY make payment to a person entitled to any payment under the system who is under a legal disability in any one or more of the following ways:

1. Directly to such person.

2. To his legal guardian or conservator.

3. To his spouse or to any other person charged with his support to be expended for his benefit.

F. If, through misstatement or computation error, benefits are underpaid or overpaid, there is no liability for any more than the correct

benefit sums under the system. Overpayments may be deducted from future payments under the system, and underpayments may be added to future payments under the system. A member or other benefit recipient may elect to repay in a lump sum any overpayment in lieu of receiving reduced benefits under the system.

G. Nothing in this section exempts employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record which are the result of a judgment taken for arrearages for child support or for a child support debt or restitution or fines imposed in accordance with section 38-849, subsection A.

Sec. 11. Section 38-851, Arizona Revised Statutes, is amended to read:

38-851. Participation of new employers

A. This state, any municipality, county or other political subdivision of the state, any Indian tribe or any public or quasi-public organization created wholly or partly by, or deriving its powers from, the legislature, may request to become a participating employer in the system on behalf of a designated eligible employee group. Such a request shall be made by the state departmental director or after a proper resolution has been adopted by the governing body of the political subdivision, Indian tribe or public organization, and after such resolution has been approved by any other party or officer required by law to approve the resolution. A certified copy of such resolution shall be filed with the fund manager. This state or the political subdivision, Indian tribe or public organization shall be considered as a participating employer upon proper execution of a joinder agreement in which the employer unconditionally accepts the provisions of the system and binds the employer's designated eligible employees to those provisions. All members of an eligible group shall be designated for membership, unless written consent to the contrary is obtained from the fund manager. A member shall be qualified for participation in order to obtain written consent to the contrary from the fund manager.

B. The effective date of participation in the system by this state or a political subdivision, Indian tribe or public organization shall be the July 1 next succeeding the approval of its participation, unless the fund manager consents to another date, as shall be specifically stipulated in the joinder agreement.

C. The new employer shall designate the departments, groups or other classifications of public safety employees which shall be eligible to participate in the system and shall agree to make contributions each year which shall be sufficient to meet both the normal cost on a level cost method attributable to inclusion of its employees and the prescribed interest on the past service cost for its employees.

D. This state or any political subdivision, Indian tribe or public organization which is contemplating participation in the system shall request a preliminary actuarial survey to determine the estimated cost of participation, the benefits to be derived and such other information as may

be deemed appropriate. The cost of such a survey shall be paid by this state or the political subdivision, Indian tribe or public organization requesting it.

E. As a condition to participation in the system an Indian tribe employer, by resolution of the governing body, shall:

1. Agree that all disputes involving interpretation of state statutes involving the system, and any amendments to such statutes, will be resolved through the court system of this state.

2. Agree to be bound by state statutes and laws which regulate and interpret the provisions of the system, including eligibility to membership in the system, service credits and the rights of any claimant to benefits and the amount of such benefits.

3. Agree to meet any requirement which the fund manager may prescribe to ensure timely payment of member and employer contributions and any other amounts due from the employer to the system.

4. Include in the joinder agreement any other provision deemed necessary by the fund manager for the administration or enforcement of the agreement.

F. Assets under any existing public employee defined benefit retirement program, except a military retirement program, necessary to equal the actuarial present value of projected benefits TO THE EXTENT FUNDED ON A MARKET VALUE BASIS AS OF THE MOST RECENT ACTUARIAL VALUATION attributable to the employer's designated employee group, calculated using the actuarial methods and assumptions adopted by the existing public employee retirement program, shall be transferred from such program to this fund no later than sixty days after the employer's effective date. That portion of the transferred assets which is attributable to employee contributions, including interest credits thereon, shall be properly allocated to each affected employee of the employer and credited to the employee's initial accumulated contributions, in accordance with a schedule furnished by the employer to the fund manager.

Sec. 12. Section 38-853, Arizona Revised Statutes, is amended to read:

38-853. Transfer of credited service

A. A member who terminates employment with an employer and accepts, within two years, a position with the same or another employer participating in the system shall have the member's credited service transferred to the member's record with the new employer provided the member leaves the member's accumulated contributions on deposit with the fund. The termination of employment shall not constitute a break in service. However, the period not employed shall not be considered as service.

B. The new employer's account shall be credited with the member's accumulated contributions plus the amount, if any, necessary to equal the increase in the actuarial present value of projected benefits TO THE EXTENT FUNDED ON A MARKET VALUE BASIS AS OF THE MOST RECENT ACTUARIAL

VALUATION resulting from the transfer as calculated by the system's actuary using the actuarial methods and assumptions adopted by the fund manager.

Sec. 13. Section 38-881, Arizona Revised Statutes, as amended by Laws 2002, chapter 335, section 8, is amended to read:

38-881. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:

(a) Physical contact with inmates, prisoners, parolees or persons on probation.

(b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.

(c) A job related motor vehicle accident while on official business for the employee's employer. A job related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job related motor vehicle accident do not meet the conditions for accidental disability.

2. "Accumulated member contributions" means the sum of all member contributions deducted from a member's salary and paid to the fund, plus member contributions transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions which are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.

3. "Average monthly salary" means one-thirty-sixth of the aggregate amount of salary THAT IS paid a member by a participating employer during a period of thirty-six consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service. Average monthly salary means the aggregate amount of ~~compensation~~ SALARY THAT IS paid a member divided by the member's months of service if the member has less than thirty-six months of service. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the salary the employee would have received in the employee's job classification if the employee was not on industrial leave.

4. "Beneficiary" means an individual who is being paid or who has entitlement to the future payment of a pension on account of a reason other than the individual's membership in the retirement plan.

5. "Claimant" means a member, beneficiary or estate that files an application for benefits with the retirement plan.

6. "Credited service" means credited service transferred to the retirement plan from another retirement system or plan for public employees

of this state, plus those compensated periods of service as a member of the retirement plan for which member contributions are on deposit in the fund.

7. "Designated position" means:

(a) For a county:

(i) A county detention officer.

(ii) A nonuniformed employee of a sheriff's department whose primary duties require direct contact with inmates.

(b) For the state department of corrections and the department of juvenile corrections, only the following specifically designated positions:

(i) Food service.

(ii) Nursing personnel.

(iii) Corrections physician assistant.

(iv) Therapist.

(v) Corrections dental assistant.

(vi) Hygienist.

(vii) Corrections medical assistant.

(viii) Correctional service officer, including assistant deputy warden, deputy warden, warden and superintendent.

(ix) State correctional program officer.

(x) Parole or community supervision officers.

(xi) Investigators.

(xii) Teachers.

(xiii) Institutional maintenance workers.

(xiv) Youth corrections officer.

(xv) Youth program officer.

(xvi) Behavioral health treatment unit managers.

(xvii) The director and assistant directors of the department of juvenile corrections and the superintendent of the state educational system for committed youth.

(xviii) The director, deputy directors and assistant directors of the state department of corrections.

(xix) Other positions designated by the local board of the state department of corrections or the local board of the department of juvenile corrections pursuant to section 38-891, subsection E.

(c) For a city or town, a city or town detention officer.

(d) For an employer of an eligible group as defined in section 38-842, full-time dispatchers.

8. "Employee" means a person determined by the local board to be employed by a participating employer in a designated position.

9. "Employer" means an agency or department of this state or a political subdivision of this state which has one or more employees in a designated position.

10. "Fund" means the corrections officer retirement plan fund.

11. "Fund manager" means the fund manager of the public safety personnel retirement system.

12. "Local board" means the retirement board of the employer that consists of persons appointed or elected to administer the plan as it applies to the employer's members in the plan.

13. "Member" means any employee who meets all of the following qualifications:

(a) Who is a full-time paid person employed by a participating employer in a designated position.

(b) Who is receiving salary for personal services rendered to a participating employer or would be receiving salary except for an authorized leave of absence.

(c) Whose customary employment is at least forty hours each week and for more than six months in a calendar year.

14. "Normal retirement date" means the first day of the calendar month immediately following an employee's completion of twenty years of service or, in the case of a dispatcher, twenty-five years of service, the employee's sixty-second birthday and completion of ten years of service or the month in which the sum of the employee's age and years of credited service equals eighty.

15. "Participating employer" means an employer which the fund manager has determined to have one or more employees in a designated position or a county, city or town which has entered into a joinder agreement pursuant to section 38-902.

16. "Pension" means a series of monthly payments by the retirement plan.

17. "Retired member" means an individual who is being paid a pension on account of the individual's membership in the retirement plan.

18. "Retirement" means termination of employment after a member has fulfilled all requirements for a pension.

19. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.

20. "Salary" means the base salary ~~or base wages~~, shift differential pay and holiday pay paid a member in a designated position for personal services rendered to a participating employer on a regular monthly, semimonthly or biweekly payroll basis. Salary includes amounts that are subject to deferred compensation or tax shelter agreements. Salary does not include PAYMENT FOR any remuneration or reimbursement other than as prescribed by this paragraph. FOR THE PURPOSES OF THIS PARAGRAPH, "BASE SALARY" MEANS THE AMOUNT OF COMPENSATION EACH MEMBER IS REGULARLY PAID FOR PERSONAL SERVICES RENDERED TO AN EMPLOYER BEFORE THE ADDITION OF ANY EXTRA MONIES, INCLUDING OVERTIME PAY, SHIFT DIFFERENTIAL PAY, HOLIDAY PAY, FRINGE BENEFIT PAY AND SIMILAR EXTRA PAYMENTS.

21. "Service" means employment rendered to a participating employer as an employee in a designated position. Any absence that is authorized by an employer, including any periods during which the employee is on an employer sponsored long-term disability program, is considered as service if the

employee returns or is deemed by the employer to have returned to a designated position within the period of the authorized absence.

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

Sec. 14. Section 38-881, Arizona Revised Statutes, as amended by Laws 2005, chapter 324, section 1, is amended to read:

38-881. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:

(a) Physical contact with inmates, prisoners, parolees or persons on probation.

(b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.

(c) A job related motor vehicle accident while on official business for the employee's employer. A job related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job related motor vehicle accident do not meet the conditions for accidental disability.

2. "Accumulated member contributions" means the sum of all member contributions deducted from a member's salary and paid to the fund, plus member contributions transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions which are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.

3. "Average monthly salary" means one-thirty-sixth of the aggregate amount of salary THAT IS paid a member by a participating employer during a period of thirty-six consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service. Average monthly salary means the aggregate amount of ~~compensation~~ SALARY THAT IS paid a member divided by the member's months of service if the member has less than thirty-six months of service. In the computation under this paragraph, a period of nonpaid or partially paid industrial leave shall be considered based on the salary the employee would have received in the employee's job classification if the employee was not on industrial leave.

4. "Beneficiary" means an individual who is being paid or who has entitlement to the future payment of a pension on account of a reason other than the individual's membership in the retirement plan.

5. "Claimant" means a member, beneficiary or estate that files an application for benefits with the retirement plan.

6. "Credited service" means credited service transferred to the retirement plan from another retirement system or plan for public employees of this state, plus those compensated periods of service as a member of the retirement plan for which member contributions are on deposit in the fund.

7. "Designated position" means:

(a) For a county:

(i) A county detention officer.

(ii) A nonuniformed employee of a sheriff's department whose primary duties require direct contact with inmates.

(b) For the state department of corrections and the department of juvenile corrections, only the following specifically designated positions:

(i) Food service.

(ii) Nursing personnel.

(iii) Corrections physician assistant.

(iv) Therapist.

(v) Corrections dental assistant.

(vi) Hygienist.

(vii) Corrections medical assistant.

(viii) Correctional service officer, including assistant deputy warden, deputy warden, warden and superintendent.

(ix) State correctional program officer.

(x) Parole or community supervision officers.

(xi) Investigators.

(xii) Teachers.

(xiii) Institutional maintenance workers.

(xiv) Youth corrections officer.

(xv) Youth program officer.

(xvi) Behavioral health treatment unit managers.

(xvii) The director and assistant directors of the department of juvenile corrections and the superintendent of the state educational system for committed youth.

(xviii) The director, deputy directors and assistant directors of the state department of corrections.

(xix) Other positions designated by the local board of the state department of corrections or the local board of the department of juvenile corrections pursuant to section 38-891, subsection E.

(c) For a city or town, a city or town detention officer.

(d) For an employer of an eligible group as defined in section 38-842, full-time dispatchers.

8. "Employee" means a person determined by the local board to be employed by a participating employer in a designated position.

9. "Employer" means an agency or department of this state or a political subdivision of this state which has one or more employees in a designated position.

10. "Fund" means the corrections officer retirement plan fund.

11. "Fund manager" means the fund manager of the public safety personnel retirement system.

12. "Local board" means the retirement board of the employer that consists of persons appointed or elected to administer the plan as it applies to the employer's members in the plan.

13. "Member" means any employee who meets all of the following qualifications:

(a) Who is a full-time paid person employed by a participating employer in a designated position.

(b) Who is receiving salary for personal services rendered to a participating employer or would be receiving salary except for an authorized leave of absence.

(c) Whose customary employment is at least forty hours each week and for more than six months in a calendar year.

14. "Normal retirement date" means the first day of the calendar month immediately following an employee's completion of twenty years of service or, in the case of a dispatcher, twenty-five years of service, the employee's sixty-second birthday and completion of ten years of service or the month in which the sum of the employee's age and years of credited service equals eighty.

15. "Participating employer" means an employer which the fund manager has determined to have one or more employees in a designated position or a county, city or town which has entered into a joinder agreement pursuant to section 38-902.

16. "Pension" means a series of monthly payments by the retirement plan.

17. "Retired member" means an individual who is being paid a pension on account of the individual's membership in the retirement plan.

18. "Retirement" means termination of employment after a member has fulfilled all requirements for a pension.

19. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.

20. "Salary" means the base salary ~~or base wages~~, overtime pay, shift differential pay and holiday pay paid a member in a designated position for personal services rendered to a participating employer on a regular monthly, semimonthly or biweekly payroll basis, except that for the purposes of this paragraph the amount of overtime included shall not include payments to the member for the sale of compensatory time. Salary includes amounts that are subject to deferred compensation or tax shelter agreements. Salary does not include PAYMENT FOR any remuneration or reimbursement other than as prescribed by this paragraph. FOR THE PURPOSES OF THIS PARAGRAPH, "BASE

SALARY" MEANS THE AMOUNT OF COMPENSATION EACH MEMBER IS REGULARLY PAID FOR PERSONAL SERVICES RENDERED TO AN EMPLOYER BEFORE THE ADDITION OF ANY EXTRA MONIES, INCLUDING OVERTIME PAY, SHIFT DIFFERENTIAL PAY, HOLIDAY PAY, PAYMENTS FOR THE SALE OF COMPENSATORY TIME, FRINGE BENEFIT PAY AND SIMILAR EXTRA PAYMENTS.

21. "Service" means employment rendered to a participating employer as an employee in a designated position. Any absence that is authorized by an employer, including any periods during which the employee is on an employer sponsored long-term disability program, is considered as service if the employee returns or is deemed by the employer to have returned to a designated position within the period of the authorized absence.

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

Sec. 15. Section 38-886, Arizona Revised Statutes, is amended to read:

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

A. A member may retire and receive an accidental disability pension or a total and permanent disability pension if the local board finds that all of the following conditions occur:

1. An application for disability retirement is filed with the retirement plan or the local board by either the member or the member's participating employer after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an accidental or a total and permanent disability pension is a prerequisite to receipt of the pension.

2. The member undergoes all medical examinations and tests ordered by the local board and releases to the local board all medical reports and records requested by the local board.

3. The local board determines that an accidental disability or total and permanent disability condition exists which meets the requirements for accidental disability retirement or total and permanent disability retirement.

B. The effective date of an accidental disability retirement or a total and permanent disability retirement shall not predate the date of disability or the date the member ceases to be an employee.

C. The amount of an accidental disability pension or a total and permanent disability pension is equal to fifty per cent of the member's average monthly salary or the amount computed using the member's average monthly salary and the member's actual years of credited service, whichever is higher.

D. During the period, if any, between the effective date of accidental disability retirement or total and permanent disability retirement and the date the disabled retired member attains sixty-two years of age the local board may require a disabled retired member to undergo periodic reevaluation of the continuation of accidental disability or total and permanent disability. If the disabled retired member refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the disabled retired member's rights to the pension. An accidental disability pension or a total and permanent disability pension is terminated if the local board finds the retired member no longer meets the requirements for accidental disability retirement or total and permanent disability retirement.

E. A member does not qualify for an accidental disability pension or a total and permanent disability pension if the local board determines that the member's disability results from any of the following:

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

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

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

F. Local boards shall base a finding of total and permanent disability and accidental disability on medical evidence obtained by a medical doctor or clinic selected by the local board AND SHALL DISREGARD ANY OTHER MEDICAL EVIDENCE OR OPINIONS. IF THE LOCAL BOARD RETAINS MORE THAN ONE MEDICAL DOCTOR OR CLINIC IN CONNECTION WITH ANY CASE, the local board shall resolve ANY material conflicts in THE medical evidence THAT IS PRESENTED BY THE LOCAL BOARD'S MEDICAL DOCTORS OR CLINICS.

Sec. 16. Section 38-888, Arizona Revised Statutes, is amended to read:

38-888. Pension to the surviving spouse of a member who dies before retirement

A. The surviving spouse of a deceased active member is entitled to receive a pension for life if each of the following conditions is met:

1. The member was married to the surviving spouse for at least two years at the time of death.

2. The surviving spouse files a written application with the retirement plan for the survivor benefit.

B. The amount of a surviving spouse's pension is forty per cent of the deceased member's average monthly salary.

C. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly benefit compensation. FOR THE PURPOSES OF THIS SUBSECTION, "KILLED IN THE LINE OF DUTY" MEANS THE DECEDENT'S DEATH WAS THE DIRECT AND PROXIMATE RESULT

OF PHYSICAL INJURIES INCURRED IN THE PERFORMANCE OF THE DECEDENT'S PUBLIC SAFETY DUTIES AND DOES NOT INCLUDE SUICIDE.

Sec. 17. Section 38-897, Arizona Revised Statutes, is amended to read:

38-897. Assignments prohibited; liability of fund

A. The right of an individual to a pension, to a refund of accumulated member contributions, to the pension itself or to any other right accrued or accruing to any individual, and the monies and assets of the retirement plan, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or other process of law except a qualified domestic relations order and are unassignable except as may be otherwise specifically provided.

B. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right provided in subsection A is void. The fund is not liable in any manner for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to these rights.

C. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

D. A PERSON WHO DEFRAUDS THE PLAN OR WHO TAKES, CONVERTS, STEALS OR EMBEZZLES MONIES OWNED BY OR FROM THE PLAN AND WHO FAILS OR REFUSES TO RETURN THE MONIES TO THE PLAN ON THE FUND MANAGER'S WRITTEN REQUEST IS SUBJECT TO CIVIL SUIT BY THE PLAN IN THE SUPERIOR COURT OF MARICOPA COUNTY. ON ENTRY OF AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED, STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.

E. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE FUND MANAGER MAY OFFSET AGAINST ANY BENEFITS OTHERWISE PAYABLE BY THE PLAN TO AN ACTIVE OR RETIRED MEMBER OR SURVIVOR ANY COURT ORDERED AMOUNTS AWARDED TO THE FUND MANAGER AND PLAN AND ASSESSED AGAINST THE MEMBER OR SURVIVOR.

Sec. 18. Section 38-901, Arizona Revised Statutes, is amended to read:

38-901. Transfers into or out of retirement plan

A. A member who changes employment or transfers or is assigned to a position in which the member is no longer eligible to be a member of this plan, because of a change in duties or otherwise, with the same or another employer of this state OR A MUNICIPALITY OF THIS STATE participating in a different retirement system or plan, is entitled to have all credited service

transferred to the retirement system or plan applicable to the new position in accordance with article 7 of this chapter.

B. A member who begins employment with a participating employer in this plan and who has credited service from a different system or plan may transfer the prior service to this plan in accordance with article 7 of this chapter.

Sec. 19. Section 38-902, Arizona Revised Statutes, is amended to read:

38-902. Joinder agreement

A. County detention officers and nonuniformed employees of a sheriff's department whose primary duties require direct contact with inmates may participate in this plan if the board of supervisors of the county enters into a joinder agreement with the fund manager to bring such employees into this plan. The joinder agreement shall be in accordance with the provisions of this plan. All such employees shall be designated for membership in the joinder agreement unless written consent to the contrary is obtained from the fund manager.

B. City or town detention officers may participate in this plan if the governing body of the city or town enters into a joinder agreement with the fund manager to bring its detention officers into this plan. The joinder agreement shall be in accordance with the provisions of the plan. The governing body of the city or town shall designate all detention officers for membership in the plan unless written consent to the contrary is obtained from the fund manager.

C. Full-time dispatchers may participate in this plan if the governing body or agency of the employer of an eligible group as defined in section 38-842 enters into a joinder agreement with the fund manager to bring its full-time dispatchers into this plan. The joinder agreement shall be in accordance with the provisions of this plan. The governing body or agency of the employer shall designate all full-time dispatchers for membership in the plan unless written consent to the contrary is obtained from the fund manager.

D. The new employer shall designate the groups of employees who are eligible to participate in the plan and shall agree to make contributions each year that are sufficient to meet both the normal cost of a level cost method attributable to inclusion of its employees and the prescribed interest on the past service cost for its employees.

E. Before the execution of any joinder agreement each employer contemplating participation in the plan shall have an actuarial valuation made, which is payable by the employer, to determine the estimated cost of participation in accordance with section 38-894.

F. Assets under any existing public employee defined benefit retirement program, except a military retirement program, that are necessary to equal the actuarial present value of projected benefits TO THE EXTENT FUNDED ON A MARKET VALUE BASIS AS OF THE MOST RECENT ACTUARIAL VALUATION attributable to the employer's designated employee group, calculated using

the actuarial methods and assumptions adopted by the existing public employee retirement program, shall be transferred from the program to this fund no later than sixty days after the employer's effective date. That portion of the transferred assets that is attributable to employee contributions, including interest credits, shall be properly allocated to each affected employee of the employer and credited to the employee's initial accumulated contributions in accordance with a schedule furnished by the employer to the fund manager.

Sec. 20. Section 38-908, Arizona Revised Statutes, is amended to read:

38-908. Transfer of credited service

A. A member who terminates employment with an employer and accepts a position with the same or another employer participating in the plan shall have the member's credited service transferred to the member's record with the new employer provided the member leaves the member's accumulated contributions on deposit with the fund. The period not employed shall not be considered as service or credited service.

B. The new employer's account shall be credited with the member's accumulated contributions plus the additional amount, if any, necessary to equal the increase in the actuarial present value TO THE EXTENT FUNDED ON A MARKET VALUE BASIS AS OF THE MOST RECENT ACTUARIAL VALUATION of projected benefits resulting from the transfer calculated by the system's actuary using the actuarial methods and assumptions adopted by the fund manager.

Sec. 21. Section 38-922, Arizona Revised Statutes, is amended to read:

38-922. Transfer or redemption of service credits

A. Service credits qualified in accordance with section 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits TO THE EXTENT FUNDED ON A MARKET VALUE BASIS AS OF THE MOST RECENT ACTUARIAL VALUATION under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based upon the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn his member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which he is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

Sec. 22. Title 38, chapter 5, article 7, Arizona Revised Statutes, is amended by adding sections 38-923 and 38-924, to read:

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

A. AN ACTIVE OR INACTIVE MEMBER OF A RETIREMENT SYSTEM OR PLAN OF A MUNICIPALITY OF THIS STATE OR THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM WHO BECOMES A MEMBER OF ONE OR THE OTHER OF THESE RETIREMENT SYSTEMS OR PLANS MAY TRANSFER SERVICE CREDITS FROM THE MEMBER'S PRIOR RETIREMENT SYSTEM OR PLAN TO THE MEMBER'S CURRENT RETIREMENT SYSTEM OR PLAN PURSUANT TO SECTION 38-924 IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

1. THE BOARD OR FUND MANAGER GOVERNING THE RETIREMENT SYSTEM OR PLAN FROM WHICH THE SERVICE CREDITS ARE BEING TRANSFERRED MUTUALLY AGREES WITH THE BOARD OR FUND MANAGER GOVERNING THE RETIREMENT SYSTEM OR PLAN TO WHICH THE SERVICE CREDITS ARE BEING TRANSFERRED REGARDING THE TERMS OF THE TRANSFER.

2. THE TRANSFER DOES NOT CAUSE EITHER THE RETIREMENT SYSTEM OR PLAN TO WHICH THE TRANSFER IS MADE OR THE RETIREMENT SYSTEM OR PLAN FROM WHICH THE TRANSFER IS MADE TO INCUR ANY UNFUNDED ACCRUED LIABILITIES AS A RESULT OF THE TRANSFER.

3. THE MEMBER INITIATES THE TRANSFER BY MAKING WRITTEN APPLICATION TO THE GOVERNING BOARD OR FUND MANAGER OF THE RETIREMENT SYSTEM OR PLAN TO WHICH THE MEMBER IS CONTRIBUTING.

B. AN ACTIVE OR INACTIVE MEMBER OF A RETIREMENT SYSTEM OR PLAN OF A MUNICIPALITY OF THIS STATE OR THE CORRECTIONS OFFICER RETIREMENT PLAN WHO BECOMES A MEMBER OF ONE OR THE OTHER OF THESE RETIREMENT SYSTEMS OR PLANS MAY TRANSFER SERVICE CREDITS FROM THE MEMBER'S PRIOR RETIREMENT SYSTEM OR PLAN TO THE MEMBER'S CURRENT RETIREMENT SYSTEM OR PLAN PURSUANT TO SECTION 38-924 IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

1. THE BOARD OR FUND MANAGER GOVERNING THE RETIREMENT SYSTEM OR PLAN FROM WHICH THE SERVICE CREDITS ARE BEING TRANSFERRED MUTUALLY AGREES WITH THE BOARD OR FUND MANAGER GOVERNING THE RETIREMENT SYSTEM OR PLAN TO WHICH THE SERVICE CREDITS ARE BEING TRANSFERRED REGARDING THE TERMS OF THE TRANSFER.

2. THE TRANSFER DOES NOT CAUSE EITHER THE RETIREMENT SYSTEM OR PLAN TO WHICH THE TRANSFER IS MADE OR THE RETIREMENT SYSTEM OR PLAN FROM WHICH THE TRANSFER IS MADE TO INCUR ANY UNFUNDED ACCRUED LIABILITIES AS A RESULT OF THE TRANSFER.

3. THE MEMBER INITIATES THE TRANSFER BY MAKING WRITTEN APPLICATION TO THE GOVERNING BOARD OR FUND MANAGER OF THE RETIREMENT SYSTEM OR PLAN TO WHICH THE MEMBER IS CONTRIBUTING.

C. FOR THE PURPOSES OF THIS SECTION:

1. "ACTIVE MEMBER" MEANS A MEMBER WHO SATISFIES THE ELIGIBILITY CRITERIA OF THE RETIREMENT SYSTEM OR PLAN AND WHO IS CURRENTLY MAKING MEMBER CONTRIBUTIONS TO OR RECEIVING CREDITED SERVICE FROM THE RETIREMENT SYSTEM OR PLAN.

2. "INACTIVE MEMBER" MEANS A MEMBER OF THE RETIREMENT SYSTEM OR PLAN WHO PREVIOUSLY MADE CONTRIBUTIONS TO THE RETIREMENT SYSTEM OR PLAN AND WHO SATISFIES EACH OF THE FOLLOWING:

(a) HAS NOT RETIRED.

(b) IS NOT ELIGIBLE FOR ACTIVE MEMBERSHIP IN THE RETIREMENT SYSTEM OR PLAN.

(c) IS NOT CURRENTLY MAKING CONTRIBUTIONS TO THE RETIREMENT SYSTEM OR PLAN.

(d) HAS NOT WITHDRAWN CONTRIBUTIONS FROM THE RETIREMENT SYSTEM OR PLAN.

3. "MUNICIPALITY" MEANS A CITY IN THIS STATE WITH A POPULATION OF MORE THAN FIVE HUNDRED THOUSAND PERSONS.

38-924. Transfer of service credits

A. SERVICE CREDITS QUALIFIED PURSUANT TO SECTION 38-923 MAY BE TRANSFERRED PURSUANT TO THIS SECTION.

B. IN THE CASE OF A MEMBER WHOSE CONTRIBUTIONS REMAIN ON DEPOSIT WITH THE PRIOR RETIREMENT SYSTEM OR PLAN, THE FOLLOWING SHALL OCCUR:

1. THE PRIOR SYSTEM OR PLAN SHALL DETERMINE THE AMOUNT OF THE MEMBER'S ACCUMULATED CONTRIBUTION ACCOUNT BALANCE UNDER THE PRIOR SYSTEM OR PLAN PLUS ACCUMULATED INTEREST AS DETERMINED BY THE GOVERNING BODY OF THE SYSTEM OR PLAN.

2. THE SYSTEM OR PLAN TO WHICH THE MEMBER IS TRANSFERRING SHALL CALCULATE ANY INCREASE IN THE ACTUARIAL PRESENT VALUE OF THE PROJECTED BENEFITS PROVIDED AS A RESULT OF THE TRANSFER OF THE MEMBER'S SERVICE CREDITS. THE ACTUARY OF THE SYSTEM OR PLAN TO WHICH THE SERVICE CREDITS ARE BEING TRANSFERRED SHALL PERFORM THIS CALCULATION USING THE ACTUARIAL METHOD AND ASSUMPTIONS RECOMMENDED BY THE ACTUARY AND ADOPTED BY THE GOVERNING BODY OF THE RETIREMENT SYSTEM OR PLAN.

C. IF A MEMBER DECIDES TO TRANSFER:

1. THE PRIOR SYSTEM OR PLAN SHALL TRANSFER TO THE PRESENT SYSTEM OR PLAN THE AMOUNT DETERMINED PURSUANT TO SUBSECTION B, PARAGRAPH 1 OF THIS SECTION. IF THE AMOUNT CALCULATED IN SUBSECTION B, PARAGRAPH 2 OF THIS SECTION IS GREATER THAN THE AMOUNT DETERMINED IN SUBSECTION B, PARAGRAPH 1 OF THIS SECTION, THE TRANSFERRING MEMBER SHALL EITHER ELECT TO PAY THE DIFFERENCE IN ORDER TO RECEIVE ALL SERVICE CREDITS EARNED UNDER THE PRIOR SYSTEM OR PLAN OR TO ACCEPT A REDUCED TRANSFER OF SERVICE CREDITS. IF THE MEMBER ELECTS TO PAY THE DIFFERENCE, THE AMOUNT PAID SHALL BE ADDED TO THE MEMBER'S ACCUMULATED CONTRIBUTION ACCOUNT BALANCE. IF THE MEMBER ELECTS TO ACCEPT A REDUCED TRANSFER OF SERVICE CREDITS, THE AMOUNT OF SERVICE CREDITS TRANSFERRED SHALL BE EQUAL TO THE AMOUNT OF SERVICE CREDITS EARNED UNDER THE PRIOR SYSTEM OR PLAN CORRESPONDING TO THE AMOUNT DETERMINED UNDER SUBSECTION B, PARAGRAPH 1 OF THIS SECTION MULTIPLIED BY THE RATIO OF THE AMOUNT CALCULATED UNDER SUBSECTION B, PARAGRAPH 1 OF THIS SECTION TO THE AMOUNT CALCULATED UNDER SUBSECTION B, PARAGRAPH 2 OF THIS SECTION.

2. IF THE AMOUNT CALCULATED IN SUBSECTION B, PARAGRAPH 2 OF THIS SECTION IS LESS THAN OR EQUAL TO THE AMOUNT DETERMINED IN SUBSECTION B, PARAGRAPH 1 OF THIS SECTION, THE CURRENT SYSTEM OR PLAN SHALL CREDIT THE MEMBER WITH SERVICE CREDITS UNDER THE CURRENT SYSTEM OR PLAN EQUAL TO THE SERVICE CREDIT EARNED UNDER THE PRIOR SYSTEM OR PLAN CORRESPONDING TO THE AMOUNT DETERMINED UNDER SUBSECTION B, PARAGRAPH 1 OF THIS SECTION.

D. THE RETIREMENT SYSTEM OR PLAN SHALL NOT APPLY SERVICE CREDITS TO THE APPLICANT'S ACCOUNT UNTIL SUCH TIME AS COMPLETE PAYMENT IS MADE TO THE RETIREMENT SYSTEM OR PLAN TO WHICH THE APPLICANT IS TRANSFERRING. ON COMPLETION OF THE TRANSFER PROVIDED FOR IN THIS ARTICLE, THE MEMBER'S RIGHTS IN THE RETIREMENT SYSTEM OR PLAN FROM WHICH THE MEMBER IS TRANSFERRING ARE EXTINGUISHED.

Sec. 23. Conditional enactment

Section 38-881, Arizona Revised Statutes, as amended by Laws 2005, chapter 324, section 1 and section 14 of this act, becomes effective on the date prescribed in Laws 2005, chapter 324, section 2 but only on the occurrence of the condition prescribed by Laws 2005, chapter 324, section 2.

APPROVED BY THE GOVERNOR MAY 8, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2006.