House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 308

SENATE BILL 1142

AN ACT

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 38-893 AND 38-902, ARIZONA REVISED STATUTES; RELATING TO THE CORRECTIONS OFFICER RETIREMENT PLAN; 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 38-881, 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transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions which are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.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 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 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.
(e) FOR THE JUDICIARY, PROBATION, SURVEILLANCE AND JUVENILE DETENTION OFFICERS.
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. "JUVENILE DETENTION OFFICER" MEANS A JUVENILE DETENTION OFFICER RESPONSIBLE FOR THE DIRECT CUSTODIAL SUPERVISION OF JUVENILES WHO ARE DETAINED IN A COUNTY JUVENILE DETENTION CENTER.

~~12.~~ 13. "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.~~ 14. "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.~~ 15. "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.~~ 16. "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.~~ 17. "Pension" means a series of monthly payments by the retirement plan.

18. "PROBATION OR SURVEILLANCE OFFICER" MEANS AN OFFICER APPOINTED PURSUANT TO SECTION 8-203, 12-251 OR 12-259 BUT DOES NOT INCLUDE OTHER PERSONNEL, OFFICE ASSISTANTS OR SUPPORT STAFF.

~~17.~~ 19. "Retired member" means an individual who is being paid a pension on account of the individual's membership in the retirement plan.

~~18.~~ 20. "Retirement" means termination of employment after a member has fulfilled all requirements for a pension.

~~19.~~ 21. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.

~~20.~~ 22. "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 any remuneration or reimbursement other than as prescribed by this paragraph.

~~21.~~ 23. "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.~~ 24. "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. 2. 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 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 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.

(e) FOR THE JUDICIARY, PROBATION, SURVEILLANCE AND JUVENILE DETENTION OFFICERS.

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. "JUVENILE DETENTION OFFICER" MEANS A DETENTION OFFICER RESPONSIBLE FOR THE DIRECT CUSTODIAL SUPERVISION OF JUVENILES WHO ARE DETAINED IN A COUNTY JUVENILE DETENTION CENTER.

~~12.~~ 13. "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.~~ 14. "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.~~ 15. "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.~~ 16. "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.~~ 17. "Pension" means a series of monthly payments by the retirement plan.

18. "PROBATION OR SURVEILLANCE OFFICER" MEANS AN OFFICER APPOINTED PURSUANT TO SECTION 8-203, 12-251 OR 12-259 BUT DOES NOT INCLUDE OTHER PERSONNEL, OFFICE ASSISTANTS OR SUPPORT STAFF.

~~17.~~ 19. "Retired member" means an individual who is being paid a pension on account of the individual's membership in the retirement plan.

~~18.~~ 20. "Retirement" means termination of employment after a member has fulfilled all requirements for a pension.

~~19.~~ 21. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.

~~20.~~ 22. "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 any remuneration or reimbursement other than as prescribed by this paragraph.

~~21.~~ 23. "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.~~ 24. "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. 3. Section 38-893, Arizona Revised Statutes, is amended to read:

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

A. The administration of the plan and the responsibility for making the provisions of the plan effective for each employer are vested in a local board. The state department of corrections, the department of juvenile corrections, each participating county sheriff's department, each participating city or town, ~~and~~ each participating employer of full-time dispatchers for eligible groups as defined in section 38-842 AND THE JUDICIARY shall have a local board. Each local board is constituted as follows:

1. For the state departments, two members who are elected by secret ballot by members employed by that department in a designated position and two citizens who are appointed by the governor. The director of each state department shall appoint one member to the local board who is knowledgeable in personnel actions. Each state department local board shall elect a chairman.

2. For each participating county, the chairman of the board of supervisors, or the chairman's designee who is approved by the board of supervisors, as chairman, two members who are elected by secret ballot by members employed by the participating county in a designated position and two citizens, one of whom shall be the head of the merit system if it exists for

the group of members, who are appointed by the chairman of the board of supervisors with the approval of the board of supervisors.

3. For political subdivisions, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the city council or governing body of the employer.

4. FOR THE JUDICIARY, TWO MEMBERS WHO ARE ELECTED BY SECRET BALLOT BY MEMBERS WHO ARE EMPLOYED AS A PROBATION, SURVEILLANCE OR JUVENILE DETENTION OFFICER, A DESIGNEE OF THE CHIEF JUSTICE OF THE ARIZONA SUPREME COURT AND TWO CITIZENS, ONE OF WHOM SHALL BE THE HEAD OF A HUMAN RESOURCE DEPARTMENT FOR THE GROUP OF MEMBERS, APPOINTED BY THE CHIEF JUSTICE.

B. The appointments and elections of local board members shall take place with one elective and one appointive board member, as designated by the appointing authority, serving a term ending two years after the date of appointment or election and the other local board members serving a term ending four years after the date of appointment or election. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as provided in this section.

C. Within ten days after the member's appointment or election, each member of a local board shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the plan.

D. Except as limited by subsection E OF THIS SECTION, a local board shall:

1. Decide all questions of eligibility and service credits and determine the amount, manner and time of payment of any benefit under the plan.

2. Make a determination as to the right of a claimant to a benefit and afford a claimant or the fund manager, or both, a right to a rehearing on the original determination.

3. Request and receive from the employers and from members information as is necessary for the proper administration of the plan and action on claims for benefits and forward the information to the fund manager.

4. Distribute, in the manner the local board determines to be appropriate, information explaining the plan ~~which~~ THAT is received from the fund manager.

5. Furnish the employer, the fund manager and the legislature, on request, with annual reports with respect to the administration of the plan that are reasonable and appropriate.

6. Appoint a medical board, which is composed of a designated physician or clinic other than the employer's regular employee or

contractor. If required, the local board may employ other physicians to report on special cases. The examining physician or clinic shall report the results of examinations made to the local board, and the secretary of the local board shall preserve the report as a permanent record.

7. Sue and be sued to effectuate the duties and responsibilities set forth in this article.

E. A local board has no power to add to, subtract from, modify or waive any of the terms of the plan, change or add to any benefits provided by the plan or waive or fail to apply any requirement of eligibility for membership or benefits under the plan.

F. A local board, from time to time, shall establish and adopt rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances.

G. An action by a majority vote of the members of a local board ~~which~~ THAT is not inconsistent with the provisions of the plan is final, conclusive and binding on all persons affected by it, unless a timely application for a rehearing or appeal is filed as provided in this article.

H. A claimant or the fund manager may apply for a rehearing before the local board within the time period prescribed in this subsection. A claimant or the fund manager shall file an application for rehearing in writing with a member of the local board or its secretary within sixty days after:

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

2. The fund manager receives notification of the local board's original action by certified mail or by receipt of written directions from the local board pursuant to its original action, whichever occurs first.

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

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

K. When making a ruling, determination or calculation, the local board is entitled to rely on information furnished by the employer, the fund manager, independent legal counsel or the actuary for the plan.

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

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

N. The employer shall pay the fees of the medical board and of the local board's legal counsel and all other expenses of the local board necessary for the administration of the plan at rates and in amounts as the local board approves.

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

P. The local board and the individual members of the local board are indemnified from the assets of the fund against any liability arising by reason of any act, or failure to act, made in good faith pursuant to the provisions of the plan.

Sec. 4. 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. PROBATION, SURVEILLANCE AND JUVENILE DETENTION OFFICERS MAY PARTICIPATE IN THIS PLAN IF THE ADMINISTRATIVE OFFICE OF THE COURTS ENTERS INTO A JOINDER AGREEMENT WITH THE FUND MANAGER TO BRING ITS PROBATION, SURVEILLANCE AND JUVENILE DETENTION OFFICERS INTO THIS PLAN. THE JOINDER AGREEMENT SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THIS PLAN. THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL DESIGNATE ALL PROBATION,

SURVEILLANCE AND JUVENILE DETENTION OFFICERS FOR MEMBERSHIP IN THIS PLAN UNLESS WRITTEN CONSENT TO THE CONTRARY IS OBTAINED FROM THE FUND MANAGER.

~~D.~~ E. 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.~~ F. 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.~~ G. 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 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. 5. Joinder agreement; transfer of all credited service to corrections officer retirement plan; election to remain in existing retirement system

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

Sec. 6. Conditional enactment

Section 38-881, Arizona Revised Statutes, as amended by Laws 2005, chapter 324, section 1 and section 2 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 JUNE 1, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 1, 2006.