Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 83

HOUSE BILL 2326

AN ACT

AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 144, SECTION 1 AND CHAPTER 185, SECTION 1; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 144, SECTION 2 AND CHAPTER 185, SECTION 2; AMENDING SECTIONS 38-882, 38-884, 38-885.01, 38-887, 38-888, 38-891, 38-893 AND 38-904, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 38-911 AND 38-912; 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 2008, chapter 144, section 1 and chapter 185, 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 FOR EACH MEMBER the sum of THE AMOUNT OF all ~~member~~ THE MEMBER'S contributions deducted from ~~a~~ THE 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transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions that are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.

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

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

5. "ANNUITANT" MEANS A PERSON WHO IS RECEIVING A BENEFIT PURSUANT TO SECTION 38-911.

~~5.~~ 6. "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 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.

~~6.~~ 7. "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.

~~7.~~ 8. "Claimant" means a member, beneficiary or estate that files an application for benefits with the retirement plan.

~~8.~~ 9. "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.

~~9.~~ 10. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the plan issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.

~~10.~~ 11. "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.

(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 and those positions designated by the local board of the judiciary pursuant to section 38-891.

(f) For the department of public safety, state detention officers.

~~11.~~ 12. "Determination" means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.

~~12.~~ 13. "Determination period" means the ninety-day period in which the plan must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the plan mails a notice of receipt to the participant and alternate payee.

~~13.~~ 14. "Domestic relations order" means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.

15. "ELIGIBLE CHILD" MEANS AN UNMARRIED CHILD OF A DECEASED ACTIVE OR RETIRED MEMBER WHO MEETS ONE OF THE FOLLOWING QUALIFICATIONS:

(a) IS UNDER EIGHTEEN YEARS OF AGE.

(b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.

(c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR GUARDIAN.

~~14.~~ 16. "Employee" means a person ~~determined by the local board to be~~ employed by a participating employer in a designated position.

~~15.~~ 17. "Employer" means an agency or department of this state or a political subdivision of this state that has one or more employees in a designated position.

~~16.~~ 18. "Fund" means the corrections officer retirement plan fund.

~~17.~~ 19. "Fund manager" means the fund manager of the public safety personnel retirement system.

~~18.~~ 20. "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.

~~19.~~ 21. "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.

~~20.~~ 22. "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~~.

~~21.~~ 23. "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.

~~22.~~ 24. "Notice of receipt" means a written document that is issued by the plan to a participant and alternate payee and that states that the plan has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

25. "ORDINARY DISABILITY" MEANS A PHYSICAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL TOTALLY AND PERMANENTLY PREVENT AN EMPLOYEE FROM PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE EMPLOYEE'S DEPARTMENT OR A MENTAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL TOTALLY AND PERMANENTLY PREVENT AN EMPLOYEE FROM ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY.

~~23.~~ 26. "Participant" means a member who is subject to a domestic relations order.

~~24.~~ 27. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

~~25.~~ 28. "Participating employer" means an employer that the fund manager has determined to have one or more employees in a designated position or a county, city, town or department of this state that has entered into a joinder agreement pursuant to section 38-902.

~~26.~~ 29. "Pension" means a series of monthly payments by the retirement plan BUT DOES NOT INCLUDE AN ANNUITY THAT IS PAYABLE PURSUANT TO SECTION 38-911.

~~27.~~ 30. "Personal representative" means the personal representative of a deceased alternate payee.

~~28.~~ 31. "Plan approved domestic relations order" means a domestic relations order that the plan approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.

~~29.~~ 32. "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.

~~30.~~ 33. "Retired member" means an individual who ~~is being paid a pension on account of the individual's membership in the retirement plan~~ TERMINATES EMPLOYMENT AND WHO IS RECEIVING A PENSION PURSUANT TO EITHER SECTION 38-885 OR 38-886.

~~31.~~ 34. "Retirement" OR "RETIRED" means termination of employment after a member has fulfilled all requirements for a pension.

~~32.~~ 35. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.

~~33.~~ 36. "Salary" means the base salary, shift differential pay and holiday pay paid a member ~~in a designated position~~ for personal services rendered IN A DESIGNATED POSITION 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.

~~34.~~ 37. "Segregated funds" means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the plan, or a domestic relations order submitted to the plan that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.

~~35.~~ 38. "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.

~~36.~~ 39. "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 2008, chapter 144, section 2 and chapter 185, section 2, is amended to read:

38-881. <u>Definitions</u>

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 FOR EACH MEMBER the sum of THE AMOUNT OF all ~~member~~ THE MEMBER'S contributions deducted from ~~a~~ THE 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 that are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.

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

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

5. "ANNUITANT" MEANS A PERSON WHO IS RECEIVING A BENEFIT PURSUANT TO SECTION 38-911.

~~5.~~ 6. "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 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.

~~6.~~ 7. "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.

~~7.~~ 8. "Claimant" means a member, beneficiary or estate that files an application for benefits with the retirement plan.

~~8.~~ 9. "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.

~~9.~~ 10. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the plan issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.

~~10.~~ 11. "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.

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(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.

(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 and those positions designated by the local board of the judiciary pursuant to section 38-891.

(f) For the department of public safety, state detention officers.

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~~13.~~ 14. "Domestic relations order" means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.

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(a) IS UNDER EIGHTEEN YEARS OF AGE.

(b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.

(c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR GUARDIAN.

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~~15.~~ 17. "Employer" means an agency or department of this state or a political subdivision of this state that has one or more employees in a designated position.

~~16.~~ 18. "Fund" means the corrections officer retirement plan fund.

~~17.~~ 19. "Fund manager" means the fund manager of the public safety personnel retirement system.

~~18.~~ 20. "Juvenile detention officer" means a detention officer responsible for the direct custodial supervision of juveniles who are detained in a county juvenile detention center.

~~19.~~ 21. "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.

~~20.~~ 22. "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~~.

~~21.~~ 23. "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.

~~22.~~ 24. "Notice of receipt" means a written document that is issued by the plan to a participant and alternate payee and that states that the plan has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

25. "ORDINARY DISABILITY" MEANS A PHYSICAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL TOTALLY AND PERMANENTLY PREVENT AN EMPLOYEE FROM PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE EMPLOYEE'S DEPARTMENT OR A MENTAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL TOTALLY AND PERMANENTLY PREVENT AN EMPLOYEE FROM ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY.

~~23.~~ 26. "Participant" means a member who is subject to a domestic relations order.

~~24.~~ 27. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

~~25.~~ 28. "Participating employer" means an employer that the fund manager has determined to have one or more employees in a designated position or a county, city, town or department of this state that has entered into a joinder agreement pursuant to section 38-902.

~~26.~~ 29. "Pension" means a series of monthly payments by the retirement plan BUT DOES NOT INCLUDE AN ANNUITY THAT IS PAYABLE PURSUANT TO SECTION 38-911.

~~27.~~ 30. "Personal representative" means the personal representative of a deceased alternate payee.

~~28.~~ 31. "Plan approved domestic relations order" means a domestic relations order that the plan approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.

~~29.~~ 32. "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.

~~30.~~ 33. "Retired member" means an individual who ~~is being paid a pension on account of the individual's membership in the retirement plan~~ TERMINATES EMPLOYMENT AND WHO IS RECEIVING A PENSION PURSUANT TO EITHER SECTION 38-885 OR 38-886.

~~31.~~ 34. "Retirement" OR "RETIRED" means termination of employment after a member has fulfilled all requirements for a pension.

~~32.~~ 35. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.

~~33.~~ 36. "Salary" means the base salary, overtime pay, shift differential pay and holiday pay paid a member ~~in a designated position~~ for personal services rendered IN A DESIGNATED POSITION 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.

~~34.~~ 37. "Segregated funds" means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the plan, or a domestic relations order submitted to the plan that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.

~~35.~~ 38. "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.

~~36.~~ 39. "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 38-882, Arizona Revised Statutes, is amended to read:

38-882. <u>Corrections officer retirement plan and fund; administration</u>

A. The corrections officer retirement plan and the corrections officer retirement plan fund are established.

B. The fund consists of the monies and assets generated by the operation of the retirement plan. The fund shall be used exclusively to pay benefits to and on behalf of members and beneficiaries in accordance with the provisions of this article and to pay the administration, operation and investment expenses of the plan and fund. In no case shall all or any portion of the fund revert or otherwise be paid to an employer.

C. The fund manager is entitled to administer, manage and operate the plan and fund.

D. THE CORRECTIONS OFFICER RETIREMENT PLAN IS A JURAL ENTITY THAT MAY SUE AND BE SUED.

Sec. 4. Section 38-884, Arizona Revised Statutes, is amended to read:

38-884. Membership of retirement plan; termination; credited service; redemption

A. Each employee of a participating employer is a member of the plan UNLESS THE EMPLOYEE IS RECEIVING A PENSION FROM THE PLAN. A person employed shall undergo a medical examination performed by a doctor or clinic appointed by the local board or, in the case of a state correctional officer who is employed by the state department of corrections, complete a physical examination pursuant to section 41-1822, subsection B. For the purposes of subsection B of this section, the doctor or clinic appointed by the local board may be the employer's regular employee or contractor.

B. The purpose of the medical examination authorized by this section is to identify a member's physical or mental condition or injury that existed or occurred before the member's date of membership in the plan. Any employee who fails or refuses to submit to the medical examination prescribed in this section is deemed to waive all rights to disability benefits under this article. Medical examinations conducted under this article shall not be conducted or used for purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to receipt or qualification for pension benefits or service credits from the fund. This subsection does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.

C. If a member ceases to be an employee for any reason other than death or retirement, within twenty days after filing a completed application with the fund manager, the member is entitled to receive the following amounts, less any benefit payments the member has received and any amount the member may owe to the plan:

1. If the member has less than five years of credited service with the plan, the member may withdraw the member's accumulated contributions from the plan.

2. If the member has five or more years of credited service with the plan, the member may withdraw the member's accumulated contributions plus an amount equal to the amount determined as follows:

(a) 5.0 to 5.9 years of credited service, twenty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(b) 6.0 to 6.9 years of credited service, forty per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(c) 7.0 to 7.9 years of credited service, fifty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(d) 8.0 to 8.9 years of credited service, seventy per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(e) 9.0 to 9.9 years of credited service, eighty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(f) 10.0 or more years of credited service, one hundred per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

D. If a member has more than ten years of credited service with the plan, leaves the monies prescribed in subsection C of this section on account with the plan for more than thirty days after termination of employment and after that time period requests a refund of those monies, the member is entitled to receive the amount prescribed in subsection C of this section plus interest at a rate determined by the fund manager for each year computed from and after the member's termination of employment.

E. If the refund includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the fund manager.

F. Service shall be credited to a member's individual credited service account in accordance with rules the local board prescribes. In no case shall more than twelve months of credited service be credited on account of all service rendered by a member in any one year. In no case shall service be credited for any period during which the member is not employed in a designated position, except as provided by sections 38-921 and 38-922.

G. Credited service is forfeited if the amounts prescribed in subsection C or D of this section are paid or are transferred in accordance with this section.

H. If a former member becomes reemployed with the same employer within two years after the former member's termination date, a member may have forfeited credited service attributable to service rendered during a prior period of service as an employee restored on satisfaction of each of the following conditions:

1. The member files with the plan a written application for reinstatement of forfeited credited service within ninety days after again becoming an employee.

2. The retirement fund is paid the total amount previously withdrawn pursuant to subsection C or D of this section plus compound interest from the date of withdrawal to the dates of repayment. Interest shall be computed at the rate of nine per cent for each year compounded each year from the date of

withdrawal to the date of repayment. Forfeited credited service shall not be restored until complete payment is received by the fund.

3. The required payment is completed within one year after returning to employee status.

I. A present active member of the plan who received a refund of accumulated contributions from the plan pursuant to subsection C or D of this section and forfeited credited service pursuant to subsection G of this section may elect to redeem any part of that forfeited credited service by paying into the plan any amounts required pursuant to this subsection. A present active member who elects to redeem any part of forfeited credited service for which the member is deemed eligible by the fund manager shall pay into the plan the amounts previously paid or transferred as a refund of the member's accumulated contributions plus an amount, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary.

J. ~~The following conditions apply to a retired member who becomes an employee subsequent to retirement:~~ A RETIRED MEMBER MAY BECOME EMPLOYED BY AN EMPLOYER IN A DESIGNATED POSITION AND CONTINUE TO RECEIVE A PENSION IF THE EMPLOYMENT OCCURS AT LEAST TWELVE MONTHS AFTER RETIREMENT. THE RETIRED MEMBER SHALL NOT CONTRIBUTE TO THE FUND AND SHALL NOT ACCRUE CREDITED SERVICE. IF A RETIRED MEMBER BECOMES EMPLOYED BY AN EMPLOYER IN A DESIGNATED POSITION BEFORE TWELVE MONTHS AFTER RETIREMENT:

1. Payment of the retired member's pension shall be suspended until the retired member again ceases to be an employee. The amount of pension shall not be changed on account of service as an employee subsequent to retirement.

2. The retired member shall not contribute to the fund and shall not accrue credited service.

Sec. 5. Section 38-885.01, Arizona Revised Statutes, is amended to read:

38-885.01. Reverse deferred retirement option plan; purpose

A. A reverse deferred retirement option plan is established. The purpose of the reverse deferred retirement option plan is to add flexibility to the plan and to provide members who elect to participate in the reverse deferred retirement option plan access to a lump sum benefit in addition to their normal monthly retirement benefit on actual retirement.

B. Beginning on July 1, 2006 through June 30, 2011, the fund manager shall offer the reverse deferred retirement option plan to members on a voluntary basis as an alternative method of benefit accrual under the plan.

C. Any member who is eligible for a normal pension pursuant to section 38-885, ~~and~~ WHO IS NOT AWARDED AN ACCIDENTAL, ORDINARY OR TOTAL AND PERMANENT DISABILITY PENSION AND who has at least twenty-four years of credited service, OR IN THE CASE OF A DISPATCHER, WHO HAS AT LEAST TWENTY-FIVE YEARS

1 OF CREDITED SERVICE, is eligible to participate in the reverse deferred
2 retirement option plan.
3 D. A member who elects to participate in the reverse deferred
4 retirement option plan shall voluntarily and irrevocably:
5 1. Designate a reverse deferred retirement option plan date that is
6 the first day of the calendar month immediately following a member's
7 completion of twenty-four years of credited service or a date not more than
8 sixty consecutive months before the date the member elects to participate in
9 the reverse deferred retirement option plan, whichever is later.
10 2. Agree to terminate employment on the date the member elects to
11 participate in the reverse deferred retirement option plan.
12 3. Receive benefits from the plan on termination of employment at the
13 same time and in the same manner as otherwise prescribed in this article
14 using the factors of credited service and average monthly salary in effect on
15 the reverse deferred retirement option plan date.
16 E. On election, a reverse deferred retirement option plan
17 participation account is established within the plan on behalf of each
18 reverse deferred retirement option plan participant. All benefits accrued
19 pursuant to this article shall be accounted for in the reverse deferred
20 retirement option plan participation account. A reverse deferred retirement
21 option plan participant does not have a claim on the assets of the plan with
22 respect to the member's reverse deferred retirement option plan participation
23 account and assets shall not be set aside for any reverse deferred retirement
24 option plan participant that are separate from all other system assets.
25 F. All amounts credited to a member's reverse deferred retirement
26 option plan participation account are fully vested.
27 G. A member's reverse deferred retirement option plan participation
28 account shall be credited with the following:
29 1. An amount that is credited as though accrued monthly from the
30 reverse deferred retirement option plan date to the date the member elected
31 to participate in the reverse deferred retirement option plan and that is
32 computed in the same manner as a normal retirement benefit using the factors
33 of credited service and average monthly salary in effect on the reverse
34 deferred retirement option plan date.
35 2. An amount that is credited as though accrued monthly and that
36 represents interest at a rate equal to the yield on a five year treasury note
37 as of the first day of the month as published by the federal reserve board.
38 H. Employee and employer contributions pursuant to section 38-891 that
39 are deposited during the period of the reverse deferred retirement option
40 plan are not eligible to be refunded to the employer or member.
41 I. The participant is not entitled to receive any amount prescribed by
42 section 38-905 or 38-906 during the reverse deferred retirement option plan
43 participation period.
44 J. The form of payment shall be a lump sum distribution. If allowed
45 by the internal revenue service, the participant may elect to transfer the

lump sum distribution to an eligible retirement plan or individual retirement account.

K. The reverse deferred retirement option plan shall not jeopardize in any way the tax qualified status of the plan under the rules of the internal revenue service. The fund manager may adopt additional provisions to the extent necessary or appropriate for the reverse deferred retirement option plan to comply with applicable federal laws or rules.

Sec. 6. Section 38-887, Arizona Revised Statutes, is amended to read:

38-887. Pension to surviving spouse of deceased retired member

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

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

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

~~B. The amount of pension paid a surviving spouse is equal to four-fifths of the amount of the retired member's pension at the time of death~~ SURVIVING SPOUSE'S PENSION IF THE SPOUSE WAS MARRIED TO THE MEMBER FOR A PERIOD OF AT LEAST TWO CONSECUTIVE YEARS AT THE TIME OF THE MEMBER'S DEATH. PAYMENT OF A SURVIVING SPOUSE'S PENSION COMMENCES AS OF THE LAST DAY OF THE MONTH FOLLOWING THE RETIRED MEMBER'S DATE OF DEATH. THE LAST PAYMENT SHALL BE MADE AS OF THE LAST DAY OF THE MONTH IN WHICH THE SURVIVING SPOUSE'S DEATH OCCURS. THE AMOUNT OF PENSION PAID A SURVIVING SPOUSE IS EQUAL TO FOUR-FIFTHS OF THE AMOUNT OF THE DECEASED RETIRED MEMBER'S PENSION AT THE TIME OF DEATH. THE SURVIVING SPOUSE SHALL FILE A WRITTEN APPLICATION WITH THE PLAN IN ORDER TO RECEIVE THE SURVIVOR BENEFIT.

Sec. 7. Section 38-888, Arizona Revised Statutes, is amended to read:

38-888. Pension to the surviving spouse of a member

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.~~ SURVIVING SPOUSE'S PENSION IF THE SPOUSE WAS MARRIED TO THE MEMBER ON THE DATE OF THE MEMBER'S DEATH. PAYMENT OF A SURVIVING SPOUSE'S PENSION COMMENCES AS OF THE LAST DAY OF THE MONTH FOLLOWING THE MEMBER'S DATE OF DEATH. THE LAST PAYMENT SHALL BE MADE AS OF THE LAST DAY OF THE MONTH IN WHICH THE SURVIVING SPOUSE'S DEATH OCCURS. The amount of a surviving spouse's pension is forty per cent of the deceased member's average monthly salary. THE SURVIVING SPOUSE SHALL FILE A WRITTEN APPLICATION WITH THE PLAN IN ORDER TO RECEIVE THE SURVIVOR BENEFIT.

~~C.~~ B. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly

1 benefit compensation. For the purposes of this subsection, "killed in the
2 line of duty" means the decedent's death was the direct and proximate result
3 of physical injuries incurred in the performance of the decedent's public
4 safety duties and does not include suicide.
5 Sec. 8. Section 38-891, Arizona Revised Statutes, is amended to read:
6 38-891. Employer and member contributions
7 A. As determined by actuarial valuations reported to the employers and
8 the local boards by the fund manager, each employer shall make level per cent
9 of salary contributions sufficient under the actuarial valuations to meet
10 both the normal cost plus the actuarially determined amount required to
11 amortize the unfunded accrued liability over, beginning July 1, 2005 a
12 rolling period of at least twenty and not more than thirty years that is
13 established by the fund manager taking into account the recommendation of the
14 plan's actuary, except that, beginning with fiscal year 2006-2007, except as
15 otherwise provided, the employer contribution rate shall not be less than six
16 per cent of salary. For any employer whose actual contribution rate is less
17 than six per cent of salary for fiscal year 2006-2007 and each year
18 thereafter, that employer's contribution rate shall be at least five per cent
19 and not more than the employer's actual contribution rate. An employer may
20 pay a higher level per cent of salary thereby reducing its unfunded past
21 service liability. All contributions made by the employers and all state
22 taxes allocated to the fund shall be irrevocable and shall be used to pay
23 benefits under the plan or to pay expenses of the plan and fund. The minimum
24 employer contribution that is paid and that is in excess of the normal cost
25 plus the actuarially determined amount required to amortize the unfunded
26 accrued liability as calculated pursuant to this subsection shall be used to
27 reduce future employer contribution increases and shall not be used to pay
28 for an increase in benefits that are otherwise payable to members. The fund
29 manager shall separately account for these monies in the fund. Forfeitures
30 arising because of severance of employment before a member becomes eligible
31 for a pension or for any other reason shall be applied to reduce the cost to
32 the employer, not to increase the benefits otherwise payable to members.
33 After the close of any fiscal year, if the plan's actuary determines that the
34 actuarial valuation of an employer's account contains excess valuation assets
35 other than excess valuation assets that were in the employer's account as of
36 fiscal year 2004-2005 and is more than one hundred per cent funded, the fund
37 manager shall account for fifty per cent of the excess valuation assets in a
38 stabilization reserve account. After the close of any fiscal year, if the
39 plan's actuary determines that the actuarial valuation of an employer's
40 account has a valuation asset deficiency and an unfunded actuarial accrued
41 liability, the fund manager shall use any valuation assets in the
42 stabilization reserve account for that employer, to the extent available, to
43 limit the decline in that employer's funding ratio to not more than two per
44 cent.

B. Except as provided by subsection I, each member shall contribute 7.96 per cent of the member's salary to the retirement plan. Member contributions shall be made by payroll deduction. Continuation of employment by the member constitutes consent and agreement to the deduction of the applicable member contribution. Payment of the member's salary less the deducted contributions constitutes full and complete discharge and satisfaction of all claims and demands of the member relating to salary for services rendered during the period covered by the payment.

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

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

E. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a position within that department as a designated position if the position is filled by an employee who has at least five years of credited service under the plan, who is transferred to temporarily fill the position and who makes a written request to the local board to specify the position as a designated position within ninety days of being transferred. On the employee leaving the position, the position is no longer a designated position. FOR THE PURPOSES OF THIS SUBSECTION, "TEMPORARILY FILLED" MEANS AN EMPLOYEE IS TRANSFERRED TO FILL THE POSITION FOR A PERIOD OF NOT MORE THAN ONE YEAR.

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

G. The local board of the judiciary may specify positions within the administrative office of the courts that require direct contact with and primarily provide training or technical expertise to county probation, surveillance or juvenile detention officers as a designated position if the position is filled by an employee who is a member of the plan currently employed in a designated position as a probation, surveillance or juvenile detention officer and who has at least five years of credited service under the plan. An employee who fills such a position shall make a written request to the local board to specify the position as a designated position within

ninety days of accepting the position. On the employee leaving the position, the position reverts to a nondesignated position.

H. Beginning with fiscal year 2008-2009, if the aggregate computed employer contribution rate that is calculated pursuant to subsection A is less than six per cent of salary, beginning on July 1 of the following fiscal year the member contribution rate prescribed in subsection B or I is permanently reduced by an amount that is equal to the difference between six per cent and the aggregate computed employer contribution rate. Notwithstanding this subsection, the member contribution rate shall not be less than 7.65 per cent of the member's salary.

I. Notwithstanding subsection B, except for a full-time dispatcher, a member shall contribute 8.41 per cent of the member's salary to the retirement plan. After the close of any fiscal year, if the plan's actuary determines that the aggregate ratio of the funding value of accrued assets to the accrued liabilities of the fund is at least one hundred per cent, from and after June 30 of the following year, except for a full-time dispatcher, a member shall contribute 7.96 per cent of the member's salary to the retirement plan. Additionally, the member's contribution to the retirement plan may also be permanently reduced pursuant to subsection H.

Sec. 9. Section 38-893, Arizona Revised Statutes, is amended to read:

38-893. <u>Local boards; powers and duties; rules; hearings; administrative review</u>

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, the department of public safety, each participating county sheriff's department, each participating city or town, 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

1 governing body as chairman, two members elected by secret ballot by members
2 employed by the appropriate employer and two citizens, one of whom shall be
3 the head of the merit system if it exists for the group of members, appointed
4 by the mayor or chief elected official and with the approval of the city
5 council or governing body of the employer.
6 4. For the judiciary, two members who are elected by secret ballot by
7 members who are employed as a probation, surveillance or juvenile detention
8 officer, a designee of the chief justice of the Arizona supreme court and two
9 citizens, one of whom shall be the head of a human resource department for
10 the group of members, appointed by the chief justice.
11 B. The appointments and elections of local board members shall take
12 place with one elective and one appointive board member, as designated by the
13 appointing authority, serving a term ending two years after the date of
14 appointment or election and the other local board members serving a term
15 ending four years after the date of appointment or election. Thereafter,
16 every second year, and as a vacancy occurs, an office shall be filled for a
17 term of four years in the same manner as provided in this section.
18 C. EACH LOCAL BOARD SHALL BE FULLY CONSTITUTED PURSUANT TO SUBSECTION
19 A OF THIS SECTION WITHIN SIXTY DAYS AFTER THE EMPLOYER'S EFFECTIVE DATE OF
20 PARTICIPATION IN THE PLAN. IF THE DEADLINE IS NOT MET, ON THE WRITTEN
21 REQUEST OF ANY MEMBER WHO IS COVERED BY THE LOCAL BOARD OR THE EMPLOYER TO
22 THE FUND MANAGER, THE FUND MANAGER SHALL APPOINT ALL VACANCIES OF THE LOCAL
23 BOARD PURSUANT TO SUBSECTION A OF THIS SECTION AND DESIGNATE WHETHER EACH
24 APPOINTIVE POSITION IS FOR A TWO YEAR OR FOUR YEAR TERM. IF THE FUND MANAGER
25 CANNOT FIND INDIVIDUALS TO SERVE ON THE LOCAL BOARD WHO MEET THE REQUIREMENTS
26 OF SUBSECTION A OF THIS SECTION, THE FUND MANAGER MAY APPOINT INDIVIDUALS TO
27 SERVE AS INTERIM LOCAL BOARD MEMBERS UNTIL QUALIFIED INDIVIDUALS ARE
28 APPOINTED OR ELECTED. Within ten days after the member's appointment or
29 election, each member of a local board shall take an oath of office that, so
30 far as it devolves on the member, the member shall diligently and honestly
31 administer the affairs of the local board and shall not knowingly violate or
32 willingly permit to be violated any of the provisions of law applicable to
33 the plan.
34 D. Except as limited by subsection E of this section, a local board
35 shall:
36 1. Decide all questions of eligibility and service credits and
37 determine the amount, manner and time of payment of any benefit under the
38 plan.
39 2. Make a determination as to the right of a claimant to a benefit and
40 afford a claimant or the fund manager, or both, a right to a rehearing on the
41 original determination, UNLESS THE FUND MANAGER DETERMINES THAT GRANTING THE
42 RELIEF REQUESTED WOULD VIOLATE THE INTERNAL REVENUE CODE OR THREATEN TO
43 IMPAIR THE PLAN'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE.
44 IF THE FUND MANAGER DETERMINES THAT GRANTING THE REQUESTED RELIEF WOULD
45 VIOLATE THE INTERNAL REVENUE CODE OR THREATEN TO IMPAIR THE PLAN'S STATUS AS

A QUALIFIED PLAN, THE FUND MANAGER MAY REFUSE TO GRANT THE RELIEF BY ISSUING A WRITTEN DETERMINATION TO THE LOCAL BOARD AND THE PARTY PETITIONING THE LOCAL BOARD FOR RELIEF. THE DECISION BY THE FUND MANAGER IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

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 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.

8. PRESCRIBE PROCEDURES TO BE FOLLOWED BY CLAIMANTS IN FILING APPLICATIONS FOR BENEFITS.

9. RECEIVE AND REVIEW THE ACTUARIAL VALUATION OF THE PLAN FOR ITS GROUP OF MEMBERS.

10. RECEIVE AND REVIEW REPORTS OF THE FINANCIAL CONDITION AND OF THE RECEIPTS AND DISBURSEMENTS OF THE FUND FROM THE FUND MANAGER.

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. NOTWITHSTANDING ANY LIMITATIONS PERIODS IMPOSED IN THIS ARTICLE, INCLUDING SUBSECTIONS G AND H OF THIS SECTION, IF THE FUND MANAGER DETERMINES A LOCAL BOARD DECISION VIOLATES THE INTERNAL REVENUE CODE OR THREATENS TO IMPAIR THE PLAN'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE THE LOCAL BOARD'S DECISION IS NOT FINAL AND BINDING AND THE FUND MANAGER MAY REFRAIN FROM IMPLEMENTING OR COMPLYING WITH THE LOCAL BOARD DECISION.

F. A local board, from time to time, shall establish and adopt 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. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, an action by a majority vote of the members of a local board that is not inconsistent with the provisions of the plan AND THE INTERNAL REVENUE CODE 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. NO LATER THAN TWENTY BUSINESS DAYS AFTER TAKING ACTION, THE LOCAL BOARD SHALL SUBMIT TO THE FUND MANAGER THE NAME OF THE MEMBER AFFECTED BY ITS DECISION, A DESCRIPTION OF THE ACTION TAKEN AND AN EXPLANATION OF THE REASONS SUPPORTING THE LOCAL BOARD'S ACTION. THE FUND MANAGER MAY NOT IMPLEMENT AND COMPLY WITH ANY LOCAL BOARD ACTION THAT DOES NOT COMPLY WITH THE INTERNAL REVENUE CODE OR THAT THREATENS TO JEOPARDIZE THE PLAN'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE.

H. A claimant or the fund manager may apply for a rehearing before the local board within the time ~~period~~ PERIODS prescribed in this subsection, EXCEPT THAT IF A DECISION OF A LOCAL BOARD VIOLATES THE INTERNAL REVENUE CODE OR THREATENS TO JEOPARDIZE THE PLAN'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE, NO LIMITATION PERIOD FOR THE FUND MANAGER TO SEEK A REHEARING OF A LOCAL BOARD DECISION APPLIES. 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 AS PRESCRIBED BY SUBSECTION G OF THIS SECTION by certified mail ~~or by receipt of written directions from the local board pursuant to its original action, whichever occurs first~~.

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

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

K. When making a ruling, determination or calculation, the local board 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 AND NOT THE FUND MANAGER OR PLAN 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 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~~ FOR ANY JUDGMENT AGAINST THE LOCAL BOARD OR ITS MEMBERS, INCLUDING ATTORNEY FEES AND COSTS, ARISING FROM any act, or failure to act, made in good faith pursuant to the provisions of the plan.

Sec. 10. Section 38-904, Arizona Revised Statutes, is amended to read:

38-904. Death benefits; amount

A. If an active or inactive member dies and no pension is payable on account of the member's death, an amount equal to two times the member's accumulated contributions to the retirement plan is payable to the person designated by the deceased member in writing and filed with the fund manager. If the designated person or persons do not survive the deceased member, the payment is payable to the estate of the deceased member. For the purposes of this subsection, "inactive member" means a person who previously made contributions to the plan, who has not retired, who is not currently making contributions to the plan and who has not withdrawn contributions from the plan.

B. If the deceased retired or active member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each ~~surviving unmarried child of the deceased retired or active member~~ ELIGIBLE CHILD is entitled to a CHILD'S pension ~~which terminates on adoption or the attainment of eighteen years of age unless the child is a full time student under twenty-three years of age or the child is under a disability which began before the child attained the age of twenty-three years~~. A CHILD'S PENSION TERMINATES IF THE CHILD IS ADOPTED. IN THE CASE OF A DISABLED CHILD, THE CHILD'S PENSION TERMINATES IF THE CHILD CEASES TO BE UNDER A DISABILITY OR CEASES TO BE A DEPENDENT OF THE SURVIVING SPOUSE OR GUARDIAN. The amount of the pension of each ~~surviving child of a deceased retired or active member~~ ELIGIBLE CHILD is an equal share of the amount of the surviving spouse's pension. The fund manager shall pay the surviving minor OR DISABLED child's pension to the person who is the legally appointed guardian or custodian of the eligible child.

Sec. 11. Title 38, chapter 5, article 6, Arizona Revised Statutes, is amended by adding sections 38-911 and 38-912, to read:

38-911. Deferred annuity; eligibility; amount

IF ANY MEMBER WHO HAS AT LEAST TEN YEARS OF CREDITED SERVICE TERMINATES EMPLOYMENT FOR REASONS OTHER THAN RETIREMENT OR DISABILITY, THE PERSON MAY ELECT TO RECEIVE A DEFERRED ANNUITY, EXCEPT THAT IF THE PERSON WITHDRAWS THE PERSON'S ACCUMULATED CONTRIBUTIONS FROM THE PLAN, ALL RIGHTS TO A DEFERRED ANNUITY ARE FORFEITED. A DEFERRED ANNUITY IS A LIFETIME MONTHLY PAYMENT THAT

IS ACTUARIALLY EQUIVALENT TO THE ANNUITANT'S ACCUMULATED CONTRIBUTIONS IN THE PLAN PLUS AN EQUAL AMOUNT PAID BY THE EMPLOYER AND COMMENCES ON APPLICATION ON OR AFTER THE SIXTY-SECOND BIRTHDAY OF THE ANNUITANT. THE DEFERRED ANNUITY IS NOT A RETIREMENT BENEFIT AND ANNUITANTS ARE NOT ENTITLED TO RECEIVE ANY AMOUNT PRESCRIBED BY SECTION 38-887, 38-888, 38-904, 38-905 OR 38-906.

38-912. Civil liability; restitution or payment of fine; violation; classification; offset of benefits

A. 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 IN MARICOPA COUNTY. ON ENTRY OF AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED, STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.

B. IF A MEMBER IS CONVICTED OF, OR DISCHARGED BECAUSE OF, THEFT, EMBEZZLEMENT, FRAUD OR MISAPPROPRIATION OF AN EMPLOYER'S PROPERTY OR PROPERTY UNDER THE CONTROL OF THE EMPLOYER, THE MEMBER IS SUBJECT TO RESTITUTION AND FINES IMPOSED BY A COURT OF COMPETENT JURISDICTION. THE COURT MAY ORDER THE RESTITUTION OR FINES TO BE PAID FROM ANY PAYMENTS OTHERWISE PAYABLE TO THE MEMBER FROM THE PLAN.

C. A PERSON WHO KNOWINGLY MAKES ANY FALSE STATEMENT OR WHO FALSIFIES OR PERMITS TO BE FALSIFIED ANY RECORD OF THE PLAN WITH AN INTENT TO DEFRAUD THE PLAN IS GUILTY OF A CLASS 6 FELONY. IF ANY CHANGE OR ERROR IN THE RECORDS RESULTS IN ANY MEMBER OR BENEFICIARY RECEIVING FROM THE PLAN MORE OR LESS THAN THE MEMBER OR BENEFICIARY WOULD HAVE BEEN ENTITLED TO RECEIVE HAD THE RECORDS BEEN CORRECT, THE LOCAL BOARD SHALL CORRECT THE ERROR, AND AS FAR AS PRACTICABLE SHALL ADJUST THE PAYMENTS IN A MANNER THAT THE ACTUARIAL EQUIVALENT OF THE BENEFIT TO WHICH THE MEMBER OR BENEFICIARY WAS CORRECTLY ENTITLED SHALL BE PAID. IF A MEMBER IS CONVICTED OF A CRIME PURSUANT TO THIS SUBSECTION THE MEMBER IS ENTITLED TO RECEIVE A LUMP SUM PAYMENT OF THE MEMBER'S ACCUMULATED CONTRIBUTIONS BUT FORFEITS ANY FUTURE COMPENSATION AND BENEFITS THAT WOULD OTHERWISE ACCRUE TO THE MEMBER OR THE MEMBER'S ESTATE UNDER THIS ARTICLE.

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

1 Sec. 12. Previous return to work retirees
2 Notwithstanding section 38-884, Arizona revised statutes, as amended by
3 this act, a retired member of the corrections officer retirement plan who
4 returned to work and was entitled to continue to receive a pension from the
5 plan pursuant to Laws 2006, chapter 241, section 1 and who is employed by an
6 employer of the corrections officer retirement plan on the effective date of
7 this act is entitled to again begin receiving the retired member's pension
8 from the plan.
9 Sec. 13. Customary employment; probation, surveillance and
10 juvenile detention officers
11 Notwithstanding section 38-881, Arizona Revised Statutes, as amended by
12 Laws 2008, chapter 144, section 1 and chapter 185, section 1, and section 1
13 of this act, and section 38-881, Arizona Revised Statutes, as amended by Laws
14 2008, chapter 144, section 2 and chapter 185, section 2, and section 2 of
15 this act, for a probation, surveillance and juvenile detention officer who is
16 employed by the judiciary and for an employee in those positions designated
17 by the local board of the judiciary pursuant to section 38-891, Arizona
18 Revised Statutes, and who are employed in a designated position in the
19 corrections officer retirement plan on the effective date of this section,
20 customary employment is at least twenty hours each week and for more than
21 twenty weeks in a fiscal year.
22 Sec. 14. Probation, surveillance and juvenile detention
23 officers; calculation of cost to purchase service
24 For a member of the corrections officer retirement plan who is subject
25 to section 13 of this act, relating to customary employment, the cost to
26 purchase active military service pursuant to section 38-907, Arizona Revised
27 Statutes, to redeem credited service pursuant to section 38-909, Arizona
28 Revised Statutes, or in calculating the actuarial present value for transfer
29 or redemption pursuant to section 38-922, Arizona Revised Statutes, shall be
30 calculated on an annualized basis using the member's current hourly salary
31 multiplied by forty hours.
32 Sec. 15. Retroactivity
33 A. Section 38-884, Arizona Revised Statutes, as amended by this act,
34 applies retroactively to from and after December 31, 2008.
35 B. Section 13 of this act, relating to customary employment, and
36 section 14 of this act, relating to calculation of cost to purchase service,
37 are effective retroactively to from and after June 30, 2009.
38 Sec. 16. Delayed repeal
39 Section 13 of this act, relating to customary employment, and section
40 14 of this act, relating to calculation of cost to purchase service, are
41 repealed from and after June 30, 2011.

1 Sec. 17. Conditional enactment
2 Section 38-881, Arizona Revised Statutes, as amended by Laws 2008,
3 chapter 144, section 2 and chapter 185, section 2 and section 2 of this act,
4 becomes effective on the date prescribed in Laws 2005, chapter 324, section 2
5 but only on the occurrence of the condition prescribed by Laws 2005, chapter
6 324, section 2.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.

On reconsideration

Passed the House June 16, 20 09

by the following vote: 49 Ayes,

2 Nays, 9 Not Voting

Speaker of the House

Pro Tempore

Chief Clerk of the House

Passed the Senate June 25, 20 09

by the following vote: 22 Ayes,

4 Nays, 4 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2326

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

June 29, 2009,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting

Speaker of the House

Norman L. Moore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1st day of July, 2009

at 8:25 o'clock A. M.

Susan K Myers

Secretary to the Governor

Approved this 10th day of

July, 2009,

at 2:05 o'clock P M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10 day of July, 2009,

at 4:20 o'clock P.M.

Ken Bennett

Secretary of State

H.B. 2326