

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

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)

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

2 Section 1. Section 38-881, Arizona Revised Statutes, as amended by
3 Laws 2002, chapter 335, section 8, is amended to read:

4 38-881. Definitions

5 In this article, unless the context otherwise requires:

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

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

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

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

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24 covering public employees of this state, plus previously withdrawn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

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

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

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

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

- 1 7. "Designated position" means:
2 (a) For a county:
3 (i) A county detention officer.
4 (ii) A nonuniformed employee of a sheriff's department whose primary
5 duties require direct contact with inmates.
6 (b) For the state department of corrections and the department of
7 juvenile corrections, only the following specifically designated positions:
8 (i) Food service.
9 (ii) Nursing personnel.
10 (iii) Corrections physician assistant.
11 (iv) Therapist.
12 (v) Corrections dental assistant.
13 (vi) Hygienist.
14 (vii) Corrections medical assistant.
15 (viii) Correctional service officer, including assistant deputy
16 warden, deputy warden, warden and superintendent.
17 (ix) State correctional program officer.
18 (x) Parole or community supervision officers.
19 (xi) Investigators.
20 (xii) Teachers.
21 (xiii) Institutional maintenance workers.
22 (xiv) Youth corrections officer.
23 (xv) Youth program officer.
24 (xvi) Behavioral health treatment unit managers.
25 (xvii) The director and assistant directors of the department of
26 juvenile corrections and the superintendent of the state educational system
27 for committed youth.
28 (xviii) The director, deputy directors and assistant directors of the
29 state department of corrections.
30 (xix) Other positions designated by the local board of the state
31 department of corrections or the local board of the department of juvenile
32 corrections pursuant to section 38-891, subsection E.
33 (c) For a city or town, a city or town detention officer.
34 (d) For an employer of an eligible group as defined in section 38-842,
35 full-time dispatchers.
36 (e) FOR THE JUDICIARY, PROBATION, SURVEILLANCE AND JUVENILE DETENTION
37 OFFICERS.
38 8. "Employee" means a person determined by the local board to be
39 employed by a participating employer in a designated position.
40 9. "Employer" means an agency or department of this state or a
41 political subdivision of this state which has one or more employees in a
42 designated position.
43 10. "Fund" means the corrections officer retirement plan fund.
44 11. "Fund manager" means the fund manager of the public safety
45 personnel retirement system.

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

4 ~~12.~~ 13. "Local board" means the retirement board of the employer that
5 consists of persons appointed or elected to administer the plan as it applies
6 to the employer's members in the plan.

7 ~~13.~~ 14. "Member" means any employee who meets all of the following
8 qualifications:

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

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

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

16 ~~14.~~ 15. "Normal retirement date" means the first day of the calendar
17 month immediately following an employee's completion of twenty years of
18 service or, in the case of a dispatcher, twenty-five years of service, the
19 employee's sixty-second birthday and completion of ten years of service or
20 the month in which the sum of the employee's age and years of credited
21 service equals eighty.

22 ~~15.~~ 16. "Participating employer" means an employer which the fund
23 manager has determined to have one or more employees in a designated position
24 or a county, city or town which has entered into a joinder agreement pursuant
25 to section 38-902.

26 ~~16.~~ 17. "Pension" means a series of monthly payments by the retirement
27 plan.

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

31 ~~17.~~ 19. "Retired member" means an individual who is being paid a
32 pension on account of the individual's membership in the retirement plan.

33 ~~18.~~ 20. "Retirement" means termination of employment after a member
34 has fulfilled all requirements for a pension.

35 ~~19.~~ 21. "Retirement plan" or "plan" means the corrections officer
36 retirement plan established by this article.

37 ~~20.~~ 22. "Salary" means the base salary or base wages, shift
38 differential pay and holiday pay paid a member in a designated position for
39 personal services rendered to a participating employer on a regular monthly,
40 semimonthly or biweekly payroll basis. Salary includes amounts that are
41 subject to deferred compensation or tax shelter agreements. Salary does not
42 include any remuneration or reimbursement other than as prescribed by this
43 paragraph.

44 ~~21.~~ 23. "Service" means employment rendered to a participating
45 employer as an employee in a designated position. Any absence that is

1 authorized by an employer, including any periods during which the employee is
2 on an employer sponsored long-term disability program, is considered as
3 service if the employee returns or is deemed by the employer to have returned
4 to a designated position within the period of the authorized absence.

5 ~~22-~~ 24. "Total and permanent disability" means a physical or mental
6 condition that is not an accidental disability, that the local board finds
7 totally and permanently prevents a member from engaging in any gainful
8 employment and that is the direct and proximate result of the member's
9 performance of the member's duty as an employee of a participating employer.

10 Sec. 2. Section 38-881, Arizona Revised Statutes, as amended by Laws
11 2005, chapter 324, section 1, is amended to read:

12 38-881. Definitions

13 In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

10 7. "Designated position" means:

11 (a) For a county:

12 (i) A county detention officer.

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

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

17 (i) Food service.

18 (ii) Nursing personnel.

19 (iii) Corrections physician assistant.

20 (iv) Therapist.

21 (v) Corrections dental assistant.

22 (vi) Hygienist.

23 (vii) Corrections medical assistant.

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

26 (ix) State correctional program officer.

27 (x) Parole or community supervision officers.

28 (xi) Investigators.

29 (xii) Teachers.

30 (xiii) Institutional maintenance workers.

31 (xiv) Youth corrections officer.

32 (xv) Youth program officer.

33 (xvi) Behavioral health treatment unit managers.

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

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

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

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

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

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

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

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

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

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

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

14 ~~12-~~ 13. "Local board" means the retirement board of the employer that
15 consists of persons appointed or elected to administer the plan as it applies
16 to the employer's members in the plan.

17 ~~13-~~ 14. "Member" means any employee who meets all of the following
18 qualifications:

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

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

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

26 ~~14-~~ 15. "Normal retirement date" means the first day of the calendar
27 month immediately following an employee's completion of twenty years of
28 service or, in the case of a dispatcher, twenty-five years of service, the
29 employee's sixty-second birthday and completion of ten years of service or
30 the month in which the sum of the employee's age and years of credited
31 service equals eighty.

32 ~~15-~~ 16. "Participating employer" means an employer which the fund
33 manager has determined to have one or more employees in a designated position
34 or a county, city or town which has entered into a joinder agreement pursuant
35 to section 38-902.

36 ~~16-~~ 17. "Pension" means a series of monthly payments by the retirement
37 plan.

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

41 ~~17-~~ 19. "Retired member" means an individual who is being paid a
42 pension on account of the individual's membership in the retirement plan.

43 ~~18-~~ 20. "Retirement" means termination of employment after a member
44 has fulfilled all requirements for a pension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 Sec. 4. Section 38-902, Arizona Revised Statutes, is amended to read:
15 38-902. Joinder agreement

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

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

31 C. Full-time dispatchers may participate in this plan if the governing
32 body or agency of the employer of an eligible group as defined in section
33 38-842 enters into a joinder agreement with the fund manager to bring its
34 full-time dispatchers into this plan. The joinder agreement shall be in
35 accordance with the provisions of this plan. The governing body or agency of
36 the employer shall designate all full-time dispatchers for membership in the
37 plan unless written consent to the contrary is obtained from the fund
38 manager.

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

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

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

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

12 ~~F.~~ G. Assets under any existing public employee defined benefit
13 retirement program, except a military retirement program, that are necessary
14 to equal the actuarial present value of projected benefits attributable to
15 the employer's designated employee group, calculated using the actuarial
16 methods and assumptions adopted by the existing public employee retirement
17 program, shall be transferred from the program to this fund no later than
18 sixty days after the employer's effective date. That portion of the
19 transferred assets that is attributable to employee contributions, including
20 interest credits, shall be properly allocated to each affected employee of
21 the employer and credited to the employee's initial accumulated contributions
22 in accordance with a schedule furnished by the employer to the fund manager.

23 Sec. 5. Joinder agreement; transfer of all credited service to
24 corrections officer retirement plan; election to
25 remain in existing retirement system

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

34 Sec. 6. Conditional enactment

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