

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

# SENATE BILL 1359

## AN ACT

AMENDING SECTIONS 38-446, 38-806, 38-809, 38-821, 38-842, 38-846, 38-848, 38-849, 38-850, 38-851 AND 38-853, ARIZONA REVISED STATUTES; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 335, SECTION 8; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 324, SECTION 1; AMENDING SECTIONS 38-886, 38-888, 38-897, 38-902, 38-908 AND 38-922, ARIZONA REVISED STATUTES; RELATING TO PUBLIC RETIREMENT PLANS; 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 38-446, Arizona Revised Statutes, is amended to  
3 read:

4 38-446. Acts based on written opinions; immunity

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

13 Sec. 2. Section 38-806, Arizona Revised Statutes, is amended to read:

14 38-806. Disability retirement pensions

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

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

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

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

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

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

30 (c) The member should be retired.

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

35 C. If the fund manager has reason to believe that a member, retired  
36 pursuant to this section but not yet eligible for normal retirement, may no  
37 longer be mentally or physically incapacitated from performing the duties of  
38 the public office from which the member retired, the fund manager may require  
39 such retired member to be medically examined. The examination shall be  
40 conducted by a board of three physicians, one designated by the administrator  
41 of the fund, one designated by the retired member or the member's guardian  
42 and one designated by the governor.

43 D. The fund manager shall discontinue pension payments to a member  
44 retired pursuant to this section, if the board of physicians certifies that

1 the member is mentally and physically capable of performing the duties of the  
2 public office from which the member retired.

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

8 Sec. 3. Section 38-809, Arizona Revised Statutes, is amended to read:

9 38-809. Correction of pension payment errors; assignments  
10 prohibited; liability

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

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

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

33 **D. A PERSON WHO DEFRAUDS THE PLAN OR WHO TAKES, CONVERTS, STEALS OR**  
34 **EMBEZZLES MONIES OWNED BY OR FROM THE PLAN AND WHO FAILS OR REFUSES TO RETURN**  
35 **THE MONIES TO THE PLAN ON THE FUND MANAGER'S WRITTEN REQUEST IS SUBJECT TO A**  
36 **CIVIL SUIT BY THE PLAN IN THE SUPERIOR COURT OF MARICOPA COUNTY. ON ENTRY OF**  
37 **AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED,**  
38 **STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER**  
39 **AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS**  
40 **COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY**  
41 **TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A**  
42 **JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM**  
43 **JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL**  
44 **AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION**  
45 **44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.**

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

5 Sec. 4. Section 38-821, Arizona Revised Statutes, is amended to read:  
6 38-821. Charter city retirement system service credits:  
7 transfers

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

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

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

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

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

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

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

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

36 2. If a member decides to transfer:

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

40 (i) The charter city retirement system shall transfer to the elected  
41 officials' retirement plan the greater of the amount calculated in paragraph  
42 1, subdivision (a) of this subsection or the member's accumulated  
43 contribution account balance.

44 (ii) If the amount transferred is less than the amount calculated  
45 under paragraph 1, subdivision (b) of this subsection, the transferring

1 member shall elect either to pay the difference or to accept a reduced  
2 transfer of service credits. If the member elects to pay the difference, the  
3 amount paid shall be added to the member's accumulated contribution account  
4 balance. If the member elects to accept a reduced transfer of service  
5 credits, the amount of service credits transferred shall be equal to the  
6 amount of service credits used in making the calculation under paragraph 1,  
7 subdivision (a) of this subsection multiplied by the ratio of the amount  
8 calculated under paragraph 1, subdivision (a) of this subsection to the  
9 amount calculated under paragraph 1, subdivision (b) of this subsection.

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

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

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

28 Sec. 5. Section 38-842, Arizona Revised Statutes, is amended to read:

29 38-842. Definitions

30 In this article, unless the context otherwise requires:

31 1. "Accidental disability" means a physical or mental condition which  
32 the local board finds totally and permanently prevents an employee from  
33 performing a reasonable range of duties within the employee's job  
34 classification and was incurred in the performance of the employee's duty.

35 2. "Accumulated contributions" means, for each member, the sum of the  
36 amount of the member's aggregate contributions made to the fund and the  
37 amount, if any, attributable to the employee's contributions prior to the  
38 member's effective date under another public retirement system, other than  
39 the federal social security act, and transferred to the fund minus the  
40 benefits paid to or on behalf of the member.

41 3. "Actuarial equivalent" means equality in present value of the  
42 aggregate amounts expected to be received under two different forms of  
43 payment, based on mortality and interest assumptions adopted by the fund  
44 manager. The fund manager may from time to time change the mortality and  
45 interest assumptions.

1           4. "Average monthly benefit compensation" means the result obtained by  
2 dividing the total compensation paid to an employee during a considered  
3 period by the number of months, including fractional months, in which such  
4 compensation was received. The considered period shall be the three  
5 consecutive years within the last twenty completed years of credited service  
6 which yield the highest average. In the computation under this paragraph a  
7 period of nonpaid or partially paid industrial leave shall be considered  
8 based on the compensation the employee would have received in the employee's  
9 job classification if the employee was not on industrial leave.

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

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

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

19           8. "Compensation" means, for the purpose of computing retirement  
20 benefits, base salary, overtime pay, shift differential pay and holiday pay  
21 paid to an employee by the employer on a regular monthly, semimonthly or  
22 biweekly payroll basis and longevity pay paid to an employee at least every  
23 six months for which contributions are made to the system pursuant to section  
24 38-843, subsection D. Compensation does not include, for the purpose of  
25 computing retirement benefits, payment for unused sick leave, payment in lieu  
26 of vacation, payment for compensatory time **OR PAYMENT FOR** ~~or~~ any ~~other~~  
27 ~~payment for~~ fringe benefits. **FOR THE PURPOSES OF THIS PARAGRAPH, "BASE**  
28 **SALARY" MEANS THE AMOUNT OF COMPENSATION EACH EMPLOYEE IS REGULARLY PAID FOR**  
29 **PERSONAL SERVICES RENDERED TO AN EMPLOYER BEFORE THE ADDITION OF ANY EXTRA**  
30 **MONIES, INCLUDING OVERTIME PAY, SHIFT DIFFERENTIAL PAY, HOLIDAY PAY,**  
31 **LONGEVITY PAY, FRINGE BENEFIT PAY AND SIMILAR EXTRA PAYMENTS.**

32           9. "Credited service" means the member's total period of service prior  
33 to the member's effective date of participation, plus those compensated  
34 periods of the member's service thereafter for which the member made  
35 contributions to the fund.

36           10. "Depository" means a bank in which all monies of the system are  
37 deposited and held and from which all expenditures for benefits, expenses and  
38 investments are disbursed.

39           11. "Effective date of participation" means July 1, 1968, except with  
40 respect to employers and their covered employees whose contributions to the  
41 fund commence thereafter, the effective date of their participation in the  
42 system is as specified in the applicable joinder agreement.

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

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

6           14. "Eligible groups" means only the following who are regularly  
7 assigned to hazardous duty:

8           (a) Municipal police officers who are certified peace officers.

9           (b) Municipal fire fighters.

10          (c) Paid full-time fire fighters employed directly by a fire district  
11 organized pursuant to section 48-803 or 48-804 with three or more full-time  
12 fire fighters, but not including fire fighters employed by a fire district  
13 pursuant to a contract with a corporation.

14          (d) State highway patrol officers who are certified peace officers.

15          (e) State fire fighters.

16          (f) County sheriffs and deputies who are certified peace officers.

17          (g) Fish and game wardens who are certified peace officers.

18          (h) Police officers who are certified peace officers and fire fighters  
19 of a nonprofit corporation operating a public airport pursuant to sections  
20 28-8423 and 28-8424. A police officer shall be designated pursuant to  
21 section 28-8426 to aid and supplement state and local law enforcement  
22 agencies and a fire fighter's sole duty shall be to perform fire fighting  
23 services, including services required by federal regulations.

24          (i) Police officers who are certified peace officers and who are  
25 appointed by the Arizona board of regents.

26          (j) Police officers who are certified peace officers and who are  
27 appointed by a community college district governing board.

28          (k) State attorney general investigators who are certified peace  
29 officers.

30          (l) County attorney investigators who are certified peace officers.

31          (m) Police officers who are certified peace officers and who are  
32 employed by an Indian reservation police agency.

33          (n) Fire fighters who are employed by an Indian reservation fire  
34 fighting agency.

35          (o) Police officers who are certified peace officers and who are  
36 appointed by the department of administration.

37          (p) Department of liquor licenses and control investigators who are  
38 certified peace officers.

39          (q) Arizona department of agriculture officers who are certified peace  
40 officers.

41          (r) Arizona state parks board rangers and managers who are certified  
42 peace officers.

43          (s) County park rangers who are certified peace officers.

44          15. "Employee" means any person who is employed by a participating  
45 employer and who is a member of an eligible group but does not include any

1 persons compensated on a contractual or fee basis. If an eligible group  
2 requires certified peace officer status and at the option of the local board,  
3 employee may include a person who is training to become a certified peace  
4 officer.

5 16. "Employers" means:

6 (a) Cities contributing to the fire fighters' relief and pension fund  
7 as provided in sections 9-951 through 9-971 or statutes amended thereby and  
8 antecedent thereto, as of June 30, 1968 on behalf of their full-time paid  
9 fire fighters.

10 (b) Cities contributing under the state police pension laws as  
11 provided in sections 9-911 through 9-934 or statutes amended thereby and  
12 antecedent thereto, as of June 30, 1968 on behalf of their municipal  
13 policemen.

14 (c) The state highway patrol covered under the state highway patrol  
15 retirement system.

16 (d) The state, or any political subdivision thereof, including but not  
17 limited to towns, cities, fire districts, counties and nonprofit corporations  
18 operating public airports pursuant to sections 28-8423 and 28-8424, which has  
19 elected to participate in the system on behalf of an eligible group of public  
20 safety personnel pursuant to a joinder agreement entered into after July 1,  
21 1968.

22 (e) Indian tribes which have elected to participate in the system on  
23 behalf of an eligible group of public safety personnel pursuant to a joinder  
24 agreement entered into after July 1, 1968.

25 17. "Fund" means the public safety personnel retirement fund, which is  
26 the fund established to receive and invest contributions accumulated under  
27 the system and from which benefits are paid.

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

30 19. "Local board" means the retirement board of the employer, who are  
31 the persons appointed to administer the system as it applies to their members  
32 in the system.

33 20. "Member" means any employee who meets all of the following  
34 qualifications:

35 (a) Who is either a full-time paid municipal police officer, a  
36 full-time paid fire fighter, a law enforcement officer who is employed by the  
37 state including the director thereof, a state fire fighter who is primarily  
38 assigned to fire fighting duties, a fire fighter or police officer of a  
39 nonprofit corporation operating a public airport pursuant to sections 28-8423  
40 and 28-8424, all ranks designated by the Arizona law enforcement merit system  
41 council, a state attorney general investigator who is a certified peace  
42 officer, a county attorney investigator who is a certified peace officer, a  
43 police officer who is appointed by the department of administration and who  
44 is a certified peace officer, a department of liquor licenses and control  
45 investigator who is a certified peace officer, an Arizona department of

1 agriculture officer who is a certified peace officer, an Arizona state parks  
2 board ranger or manager who is a certified peace officer, a county park  
3 ranger who is a certified peace officer, a person who is a certified peace  
4 officer and who is employed by an Indian reservation police agency, a fire  
5 fighter who is employed by an Indian reservation fire fighting agency or an  
6 employee included in a group designated as eligible employees under a joinder  
7 agreement entered into by their employer after July 1, 1968 and who is or was  
8 regularly assigned to hazardous duty.

9 (b) Who, on or after the employee's effective date of participation,  
10 is receiving compensation for personal services rendered to an employer or  
11 would be receiving compensation except for an authorized leave of absence.

12 (c) Whose employment with an employer commenced prior to attainment of  
13 age fifty.

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

16 (e) Who has not attained age sixty-five prior to the employee's  
17 effective date of participation or who was over age sixty-five with  
18 twenty-five years or more of service prior to the employee's effective date  
19 of participation.

20 21. "Normal retirement date" means the first day of the calendar month  
21 immediately following an employee's completion of twenty years of service or  
22 the employee's sixty-second birthday and the employee's completion of fifteen  
23 years of service.

24 22. "Ordinary disability" means a physical condition which the local  
25 board determines will prevent an employee totally and permanently from  
26 performing a reasonable range of duties within the employee's department or a  
27 mental condition which the local board determines will prevent an employee  
28 totally and permanently from engaging in any substantial gainful activity.

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

31 24. "Regularly assigned to hazardous duty" means regularly assigned to  
32 duties of the type normally expected of municipal police officers, municipal  
33 or state fire fighters, eligible fire district fire fighters, state highway  
34 patrol officers, county sheriffs and deputies, fish and game wardens, fire  
35 fighters and police officers of a nonprofit corporation operating a public  
36 airport pursuant to sections 28-8423 and 28-8424, police officers who are  
37 appointed by the Arizona board of regents or a community college district  
38 governing board, state attorney general investigators who are certified peace  
39 officers, county attorney investigators who are certified peace officers,  
40 police officers who are appointed by the department of administration and who  
41 are certified peace officers, department of liquor licenses and control  
42 investigators who are certified peace officers, Arizona department of  
43 agriculture officers who are certified peace officers, Arizona state parks  
44 board rangers and managers who are certified peace officers, county park  
45 rangers who are certified peace officers, police officers who are certified

1 peace officers and are employed by an Indian reservation police agency or  
2 fire fighters who are employed by an Indian reservation fire fighting  
3 agency. Those individuals who are assigned solely to support duties such as  
4 secretaries, stenographers, clerical personnel, clerks, cooks, maintenance  
5 personnel, mechanics and dispatchers are not assigned to hazardous duty  
6 regardless of their position classification title. Since the normal duties  
7 of municipal police officers, municipal or state fire fighters, eligible fire  
8 district fire fighters, state highway patrol officers, county sheriffs and  
9 deputies, fish and game wardens, fire fighters and police officers of a  
10 nonprofit corporation operating a public airport pursuant to sections 28-8423  
11 and 28-8424, police officers who are appointed by the Arizona board of  
12 regents or a community college district governing board, state attorney  
13 general investigators who are certified peace officers, county attorney  
14 investigators who are certified peace officers, police officers who are  
15 appointed by the department of administration and who are certified peace  
16 officers, department of liquor licenses and control investigators who are  
17 certified peace officers, Arizona department of agriculture officers who are  
18 certified peace officers, Arizona state parks board rangers and managers who  
19 are certified peace officers, county park rangers who are certified peace  
20 officers, police officers who are certified peace officers and are employed  
21 by an Indian reservation police agency and fire fighters who are employed by  
22 an Indian reservation fire fighting agency are constantly changing, questions  
23 as to whether a person is or was previously regularly assigned to hazardous  
24 duty shall be resolved by the local board on a case-by-case basis.  
25 Resolutions by local boards are subject to rehearing and appeal.

26 25. "Retirement" means termination of employment after a member has  
27 fulfilled all requirements for a pension. Retirement shall be considered as  
28 commencing on the first day of the month immediately following a member's  
29 last day of employment or authorized leave of absence, if later.

30 26. "Service" means the last period of continuous employment of an  
31 employee by the employers prior to the employee's retirement or the  
32 employee's sixty-fifth birthday, whichever first occurs, except that if such  
33 period includes employment during which the employee would not have qualified  
34 as a member had the system then been effective, such as employment as a  
35 volunteer fire fighter, then only twenty-five per cent of such noncovered  
36 employment shall be considered as service. Any absence which is authorized  
37 by an employer shall not be considered as interrupting continuity of  
38 employment if the employee returns within the period of authorized absence.  
39 Transfers between employers also shall not be considered as interrupting  
40 continuity of employment. Any period during which a member is receiving sick  
41 leave payments or a temporary disability pension shall be considered as  
42 service. Any period during which a person was employed as a full-time paid  
43 fire fighter by a fire district pursuant to a contract with a corporation  
44 within that fire district shall be considered as service if it is part of the  
45 person's last period of continuous employment with that corporation in that

1 fire district and the fire district has elected to treat the period as  
2 service in its applicable joinder agreement. Any reference in this system to  
3 the number of years of service of an employee shall be deemed to include  
4 fractional portions of a year.

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

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

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

13 Sec. 6. Section 38-846, Arizona Revised Statutes, is amended to read:

14 38-846. Death benefits

15 A. If the spouse of a member or retired member is surviving at such  
16 member's death, the spouse shall be eligible for a surviving spouse's  
17 pension, provided that such spouse had been married to the decedent either  
18 for a period of at least two years prior to such member's date of death or  
19 during such member's service. Payment of a surviving spouse's pension shall  
20 commence as of the last day of the month following the member's or retired  
21 member's date of death. The last payment shall be made as of the last day of  
22 the month in which the surviving spouse's death occurs.

23 B. The surviving spouse of a deceased retired member shall receive a  
24 monthly amount equal to four-fifths of the monthly amount of pension which  
25 the decedent would have received immediately before death. The surviving  
26 spouse of a deceased member who was not killed in the line of duty or did not  
27 die from injuries suffered in the line of duty shall receive a monthly amount  
28 computed as for the surviving spouse of a deceased retired member, under the  
29 assumption that the member had retired for reason of accidental disability  
30 immediately before death. The surviving spouse of a deceased member who is  
31 killed in the line of duty or dies from injuries suffered in the line of duty  
32 is entitled to receive a monthly amount equal to the deceased member's  
33 average monthly benefit compensation less any amount payable for an eligible  
34 child under this section. A member who was eligible for or receiving a  
35 temporary disability pension at the time of the member's death is not deemed  
36 to be retired for the purposes of this subsection. **FOR THE PURPOSES OF THIS  
37 SUBSECTION, "KILLED IN THE LINE OF DUTY" MEANS THE DECEDENT'S DEATH WAS THE  
38 DIRECT AND PROXIMATE RESULT OF THE PERFORMANCE OF THE DECEDENT'S PUBLIC  
39 SAFETY DUTIES AND DOES NOT INCLUDE SUICIDE.**

40 C. If at least one eligible child is surviving at the death of a  
41 member or retired member, but no surviving spouse's pension then becomes  
42 payable, a guardian's or conservator's pension shall be payable to the person  
43 who is serving, or who is deemed by the local board to be serving, as the  
44 legally appointed guardian or custodian of the eligible child. If an  
45 eligible child of a member or retired member is surviving at the member's or

1 retired member's death, the eligible child is entitled to receive a child's  
2 pension payable to the person who is serving or who is deemed by the local  
3 board to be serving as the legally appointed guardian or custodian of the  
4 eligible child. The member may also direct by designation to the local board  
5 that the guardian or conservator pension or child's pension be paid to the  
6 trustee of a trust created for the benefit of the eligible child. A  
7 guardian's or conservator's pension shall also become payable if at least one  
8 eligible child is surviving when a surviving spouse's pension terminates.

9 D. The fund manager shall pay a guardian's or conservator's pension  
10 during the same period in which a pension is payable to at least one eligible  
11 child. The guardian, conservator or designated trustee is entitled to  
12 receive the same monthly amount as would have been payable to the decedent's  
13 surviving spouse had a surviving spouse's pension become payable upon the  
14 decedent's death.

15 E. Each eligible child is entitled to a monthly amount equal to  
16 one-tenth of the monthly amount of pension which the deceased member or  
17 retired member would have received immediately prior to death. A deceased  
18 member shall be assumed to be retired for reasons of accidental disability  
19 immediately before the member's death. If there are three or more children  
20 eligible for a child's pension, a maximum of two shares of the child's  
21 pension shall be payable, the aggregate of such shares to be apportioned in  
22 equal measure to each eligible child.

23 F. If a member has accumulated contributions remaining in the system  
24 at the date of death of the last beneficiary, a lump sum refund of such  
25 accumulated contributions shall be payable to the person whom the member has  
26 designated as the member's refund beneficiary, or if the member's refund  
27 beneficiary is not then surviving, to the designated contingent refund  
28 beneficiary, or if the designated contingent refund beneficiary is not then  
29 surviving, to such person nearest of kin as selected by the local board. The  
30 amount of the lump sum refund shall be the remaining accumulated  
31 contributions.

32 G. In calculating the right to and the amount of the surviving  
33 spouse's pension, the law in effect on the date of the death of the member or  
34 retired member controls, unless the law under which the member retired  
35 provides for a greater benefit amount for a surviving spouse.

36 Sec. 7. Section 38-848, Arizona Revised Statutes, is amended to read:

37 38-848. Fund manager

38 A. The fund manager shall consist of five members and shall have the  
39 rights, powers and duties that are set forth in this section. The term of  
40 office of members shall be three years to expire on the third Monday in  
41 January of the appropriate year. Members are eligible to receive  
42 compensation in an amount of fifty dollars a day, but not to exceed one  
43 thousand dollars in any one fiscal year, and are eligible for reimbursement  
44 of expenses pursuant to chapter 4, article 2 of this title. The fund manager

1 consists of the following members appointed by the governor pursuant to  
2 section 38-211:

3 1. One elected member from a local board to represent the employees.

4 2. One member to represent this state as an employer of public safety  
5 personnel. This member shall have the qualifications prescribed in  
6 subsection R of this section.

7 3. One member to represent the cities as employers of public safety  
8 personnel.

9 4. An elected county or state official or a judge of the superior  
10 court, court of appeals or supreme court.

11 5. One public member. This member shall have the qualifications  
12 prescribed in subsection R of this section.

13 B. All monies in the fund shall be deposited and held in a public  
14 safety personnel retirement system depository. Monies in the fund shall be  
15 disbursed from the depository separate and apart from all monies or funds of  
16 the state and the agencies, instrumentalities and subdivisions thereof. The  
17 monies shall be secured by the depository in which they are deposited and  
18 held to the same extent and in the same manner as required by the general  
19 depository law of the state. The fund is subject to the sole management of  
20 the fund manager for the purpose of this article.

21 C. All contributions under this system shall be forwarded to the fund  
22 manager and shall be held, invested and reinvested by the fund manager. All  
23 property and funds of the fund, including income from investments and from  
24 all other sources, shall be retained for the exclusive benefit of members, as  
25 provided in the system, and shall be used to pay benefits to members or their  
26 beneficiaries or to pay expenses of operation and administration of the  
27 system and fund.

28 D. The fund manager shall have the full power in its sole discretion  
29 to invest and reinvest, alter and change the monies accumulated under the  
30 system. The fund manager may delegate the authority ~~to~~ **THE FUND MANAGER**  
31 deems necessary and prudent to the administrator, employed by the fund  
32 manager pursuant to subsection K, paragraph 6 of this section, **AND ANY**  
33 **ASSISTANT ADMINISTRATORS** to invest the monies of the system if the  
34 administrator ~~follows~~ **AND ANY ASSISTANT ADMINISTRATORS FOLLOW** the investment  
35 ~~guidelines, statement of investment policy and fund objectives~~ **POLICIES THAT**  
36 **ARE** promulgated by the fund manager. The fund manager may commingle  
37 securities and monies of the fund subject to the crediting of receipts and  
38 earnings and charging of payments to the account of the appropriate employer.  
39 In making every investment, the fund manager shall exercise the judgment and  
40 care under the circumstances then prevailing which ~~men~~ **PERSONS** of ordinary  
41 prudence, discretion and intelligence exercise in the management of their own  
42 affairs, not in regard to speculation but in regard to the permanent  
43 disposition of their funds, considering the probable income from their funds  
44 as well as the probable safety of their capital, provided:

1           1. That not more than seventy per cent of the pension fund shall be  
2 invested at any given time in corporate stocks, based on cost value of such  
3 stocks irrespective of capital appreciation.

4           2. That no more than five per cent of the pension fund shall be  
5 invested in securities issued by any one institution, agency or corporation,  
6 other than securities issued as direct obligations of and fully guaranteed by  
7 the United States government.

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

10          4. That corporate stocks AND EXCHANGE TRADED FUNDS eligible for  
11 purchase shall be restricted to stocks AND EXCHANGE TRADED FUNDS that, except  
12 for bank stocks, ~~and~~ insurance stocks AND MEMBERSHIP INTERESTS IN LIMITED  
13 LIABILITY COMPANIES, are either:

14           (a) Listed or approved on issuance for listing on an exchange  
15 registered under the securities exchange act of 1934, as amended (15 United  
16 States Code sections 78a through 7811).

17           (b) Designated or approved on notice of issuance for designation on  
18 the national market system of a national securities association registered  
19 under the securities exchange act of 1934, as amended (15 United States Code  
20 sections 78a through 7811).

21           (c) Listed or approved on issuance for listing on an exchange  
22 registered under the laws of this state or any other state.

23           (d) Listed or approved on issuance for listing on an exchange of a  
24 foreign country with which the United States is maintaining diplomatic  
25 relations at the time of purchase, except that no more than ten per cent of  
26 the pension fund shall be invested in foreign equity securities on these  
27 exchanges, based on the cost value of the stocks irrespective of capital  
28 appreciation.

29           (e) AN EXCHANGE TRADED FUND THAT IS RECOMMENDED BY THE CHIEF  
30 INVESTMENT OFFICER OF THE SYSTEM, THAT IS REGISTERED UNDER THE INVESTMENT  
31 COMPANY ACT OF 1940 (15 UNITED STATES CODE SECTION 80a-1) AND THAT IS BOTH  
32 TRADED ON A PUBLIC EXCHANGE AND BASED ON A PUBLICLY RECOGNIZED INDEX.

33           E. Notwithstanding any other law, the fund manager shall not be  
34 required to invest in any type of investment that is dictated or required by  
35 any entity of the federal government and that is intended to fund economic  
36 development projects, public works or social programs, but may consider such  
37 economically targeted investments pursuant to its fiduciary responsibility.  
38 THE FUND MANAGER, ON BEHALF OF THE SYSTEM, MAY INVEST IN, LEND MONIES TO OR  
39 GUARANTEE THE REPAYMENT OF MONIES BY A LIMITED LIABILITY COMPANY, LIMITED  
40 PARTNERSHIP, JOINT VENTURE, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP OR  
41 TRUST IN WHICH THE SYSTEM HAS A FINANCIAL INTEREST, WHETHER THE ENTITY IS  
42 CLOSELY HELD OR PUBLICLY TRADED AND THAT, IN TURN, MAY BE ENGAGED IN ANY  
43 LAWFUL ACTIVITY, INCLUDING THE OWNERSHIP, DEVELOPMENT, MANAGEMENT,  
44 IMPROVEMENT OR OPERATION OF REAL PROPERTY AND ANY IMPROVEMENTS OR BUSINESSES  
45 ON REAL PROPERTY OR THE LENDING OF MONIES.

1 F. Conference call meetings of the fund manager of the public safety  
2 personnel retirement system which are held for investment purposes only are  
3 not subject to chapter 3, article 3.1 of this title, except that the fund  
4 manager shall maintain minutes of these conference call meetings and make  
5 them available for public inspection within twenty-four hours after the  
6 meeting. The fund manager shall review the minutes of each conference call  
7 meeting and shall ratify all legal actions taken during each conference call  
8 meeting at the next scheduled meeting of the fund manager.

9 G. The fund manager shall not be held liable for the exercise of more  
10 than ordinary care and prudence in the selection of investments and  
11 performance of its duties under the system and shall not be limited to  
12 so-called "legal investments for trustees", but all funds of the system shall  
13 be invested subject to all of the conditions, limitations and restrictions  
14 imposed by law.

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

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

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

22 3. Also:

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

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

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

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

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

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

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

39 6. At the expense of the system, enter into an agreement with any bank  
40 or banks for the safekeeping and handling of securities and other investments  
41 coming into the possession of the fund manager. The agreement shall be  
42 entered into under terms and conditions that secure the proper safeguarding,  
43 inventory, withdrawal and handling of the securities and other investments.  
44 No access to and no deposit or withdrawal of the securities from any place of

1 deposit selected by the fund manager shall be permitted or made except as the  
2 terms of the agreement may provide.

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

10 8. Empower the fund administrator to take actions on behalf of the  
11 fund manager that are necessary for the protection and administration of the  
12 fund in accordance with the guidelines of the fund manager.

13 9. Do all acts, whether or not expressly authorized that may be deemed  
14 necessary or proper for the protection of the investments held in the fund.

15 I. Investment expenses and operation and administrative expenses of  
16 the fund manager shall be accounted for separately and allocated against  
17 investment income.

18 J. The fund manager, as soon as possible within a period of six months  
19 following the close of any fiscal year, shall transmit to the governor and  
20 the legislature an annual statement on the operation of the system  
21 containing, among other things:

22 1. A balance sheet.

23 2. A statement of income and expenditures for the year.

24 3. A report on an actuarial valuation of its assets and liabilities.

25 4. A detailed statement of the investments acquired and disposed of  
26 during the year.

27 5. A list of investments owned.

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

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

34 K. The fund manager shall:

35 1. Maintain the accounts of the system and issue statements to each  
36 employer annually and to each member who may request it.

37 2. Report the results of the actuarial valuations to the local boards  
38 and employers.

39 3. Contract on a fee basis with an independent investment counsel to  
40 advise the fund manager in the investment management of the fund and with an  
41 independent auditing firm to audit the fund manager's accounting.

42 4. Permit the auditor general to make an annual audit and the results  
43 shall be transmitted to the governor and the legislature.

44 5. Contract on a fee basis with an actuary who shall make actuarial  
45 valuations of the system, be the technical adviser of the fund manager on

1 matters regarding the operation of the funds created by the provisions of the  
2 system and perform other duties required in connection therewith. The  
3 actuary must be a member of a nationally recognized association or society of  
4 actuaries.

5 6. Employ, as administrator, a person, state department or other body  
6 to serve at the pleasure of the fund manager.

7 7. Establish procedures and guidelines for contracts with actuaries,  
8 auditors, investment counsel and legal counsel and for safeguarding of  
9 securities.

10 L. The administrator, under the direction of the fund manager, shall:

11 1. Administer this article.

12 2. Invest the funds of the system as the fund manager deems necessary  
13 and prudent as provided in subsections D and H of this section and subject to  
14 the investment ~~guidelines, statement of investment policy~~ POLICIES and fund  
15 objectives promulgated by the fund manager.

16 3. Establish and maintain an adequate system of accounts and records  
17 for the system which shall be integrated with the accounts, records and  
18 procedures of the employers so that the system operates most effectively and  
19 at minimum expense and that duplication of records and accounts is avoided.

20 4. In accordance with THE FUND MANAGER'S GOVERNANCE POLICY AND  
21 personnel rules and procedures and the budget adopted by the fund manager,  
22 hire such employees and services the administrator deems necessary and  
23 prescribe their duties, INCLUDING THE HIRING OF ONE OR MORE ASSISTANT  
24 ADMINISTRATORS TO MANAGE THE SYSTEM'S OPERATIONS, INVESTMENTS AND LEGAL  
25 AFFAIRS.

26 5. Be responsible for income, the collection of the income and the  
27 accuracy of all expenditures.

28 6. Recommend to the fund manager annual contracts for the system's  
29 actuary, auditor, investment counsel, legal counsel and safeguarding of  
30 securities.

31 7. Perform additional duties and powers prescribed by the fund manager  
32 and delegated to the administrator.

33 M. THE SYSTEM IS AN INDEPENDENT TRUST FUND AND the fund manager, the  
34 administrator, THE ASSISTANT ADMINISTRATORS and all persons employed by them  
35 are not under the jurisdiction of the department of administration OR ANY  
36 OTHER AGENCY, DEPARTMENT OR INSTRUMENTALITY OF THIS STATE or subject to  
37 section 38-611 or title 41, chapter 4, ~~articles 5 and~~ OR 6. The salaries of  
38 the administrator, ASSISTANT ADMINISTRATORS and other employees of the fund  
39 manager are the sole determination of the fund manager. Contracts for goods  
40 and services approved by the fund manager are not subject to title 41,  
41 chapter 23. AS AN INDEPENDENT TRUST FUND WHOSE ASSETS ARE SEPARATE AND APART  
42 FROM ALL OTHER FUNDS OF THIS STATE, THE SYSTEM AND THE FUND MANAGER ARE NOT  
43 SUBJECT TO THE RESTRICTIONS PRESCRIBED IN SECTION 35-154 OR ARTICLE IX,  
44 SECTIONS 5 AND 8, CONSTITUTION OF ARIZONA.

1 N. The attorney general or an attorney approved by the attorney  
2 general and paid by the fund shall be the attorney for the fund manager and  
3 shall represent the fund manager in any legal proceeding OR FORUM THAT THE  
4 FUND MANAGER DEEMS APPROPRIATE. THE FUND MANAGER, ADMINISTRATOR, ASSISTANT  
5 ADMINISTRATORS AND EMPLOYEES OF THE FUND MANAGER ARE NOT PERSONALLY LIABLE  
6 FOR ANY ACTS DONE IN THEIR OFFICIAL CAPACITY IN GOOD FAITH RELIANCE ON THE  
7 WRITTEN OPINIONS OF THE FUND MANAGER'S ATTORNEY.

8 O. At least once in each five-year period after the effective date,  
9 the actuary shall make an actuarial investigation into the mortality, service  
10 and compensation experience of the members and beneficiaries of the system  
11 and shall make a special valuation of the assets and liabilities of the funds  
12 of the system. Taking into account the results of the investigation and  
13 special valuation, the fund manager shall adopt for the system such  
14 mortality, service and other tables deemed necessary.

15 P. On the basis of the tables the fund manager adopts, the actuary  
16 shall make a valuation of the assets and liabilities of the funds of the  
17 system not less frequently than every year. By November 1 of each year the  
18 fund manager shall provide a preliminary report and by December 15 of each  
19 year provide a final report to the governor, the speaker of the house of  
20 representatives and the president of the senate on the contribution rate for  
21 the ensuing fiscal year.

22 Q. Neither the fund manager nor any member or employee of the fund  
23 manager shall directly or indirectly, for himself or as an agent, in any  
24 manner use the monies or deposits of the fund except to make current and  
25 necessary payments, nor shall the fund manager or any member or employee  
26 become an endorser or surety or in any manner an obligor for monies loaned by  
27 or borrowed from the fund.

28 R. The members of the fund manager who are appointed pursuant to  
29 subsection A, paragraphs 2 and 5 of this section shall have at least ten  
30 years' substantial experience as any one or a combination of the following:

31 1. A portfolio manager acting in a fiduciary capacity.

32 2. A securities analyst.

33 3. An employee or principal of a trust institution, investment  
34 organization or endowment fund acting either in a management or an investment  
35 related capacity.

36 4. A chartered financial analyst in good standing as determined by the  
37 association for investment management and research.

38 5. A professor at the university level teaching economics or  
39 investment related subjects.

40 6. An economist.

41 7. Any other professional engaged in the field of public or private  
42 finances.

43 S. FINANCIAL OR COMMERCIAL INFORMATION THAT IS PROVIDED TO THE FUND  
44 MANAGER, EMPLOYEES OF THE FUND MANAGER AND ATTORNEYS OF THE FUND MANAGER IN  
45 CONNECTION WITH INVESTMENTS IN WHICH THE FUND MANAGER HAS INVESTED OR

1 INVESTMENTS THE FUND MANAGER HAS CONSIDERED FOR INVESTMENT IS CONFIDENTIAL,  
2 PROPRIETARY AND NOT A PUBLIC RECORD IF THE INFORMATION IS INFORMATION THAT  
3 WOULD CUSTOMARILY NOT BE RELEASED TO THE PUBLIC BY THE PERSON OR ENTITY FROM  
4 WHOM THE INFORMATION WAS OBTAINED.

5 Sec. 8. Section 38-849, Arizona Revised Statutes, is amended to read:  
6 38-849. Limitations on receiving pension; violation;  
7 classification; reemployment after severance;  
8 reinstatement of service credits; reemployment of  
9 retired or disabled member

10 A. If a member is convicted of, or discharged because of, theft,  
11 embezzlement, fraud or misappropriation of an employer's property or property  
12 under the control of the employer, the member shall be subject to restitution  
13 and fines imposed by a court of competent jurisdiction. The court may order  
14 the restitution or fines TO be paid from any payments otherwise payable to  
15 the member from the retirement system.

16 B. A person who knowingly makes any false statement or who falsifies  
17 or permits to be falsified any record of the system with an intent to defraud  
18 the system is guilty of a class 6 felony. If any change or error in the  
19 records results in any member or beneficiary receiving from the system more  
20 or less than the member or beneficiary would have been entitled to receive  
21 had the records been correct, the local board shall correct such error, and  
22 as far as practicable shall adjust the payments in such manner that the  
23 actuarial equivalent of the benefit to which such member or beneficiary was  
24 correctly entitled shall be paid. If a member is convicted of a crime  
25 specified in this subsection the member shall be entitled to receive a lump  
26 sum payment of the member's accumulated contributions but forfeits any future  
27 compensation and benefits which would otherwise accrue to the member or the  
28 member's estate under this article.

29 C. If a member who received a severance refund upon termination of  
30 employment, as provided in section 38-846.02, is subsequently reemployed by  
31 an employer, the member's prior service credits shall be cancelled and  
32 service shall be credited only from the date the member's most recent  
33 reemployment period commenced. However, if the former member's reemployment  
34 with the same employer occurred within two years after the former member's  
35 termination date, and, within ninety days after reemployment the former  
36 member signs a written election consenting to reimburse the fund within one  
37 year, the former member shall be required to redeposit the amount withdrawn  
38 at the time of the former member's separation from service, with interest  
39 thereon at the rate of nine per cent for each year compounded each year from  
40 the date of withdrawal to the date of repayment. Upon satisfaction of this  
41 obligation the member's prior service credits shall be reinstated.

42 D. If a retired member is reemployed by an employer, no contributions  
43 shall be made on the retired member's account, nor any service credited,  
44 during the period of such reemployment. ~~In addition,~~ NOTWITHSTANDING THIS  
45 SUBSECTION, if a retired member subsequently becomes employed in the same

1 position by the employer from which the member retired, the system shall not  
2 make pension payments to the retired member during the period of  
3 reemployment. On subsequent termination of employment by the retired member,  
4 the retired member is entitled to receive a pension based on the member's  
5 service and compensation before the date of the member's reemployment. If a  
6 member who retired under disability is reemployed by an employer as an  
7 employee, that member shall be treated as if the member had been on an  
8 uncompensated leave of absence during the period of the member's disability  
9 retirement and shall be a contributing member of the system. FOR THE  
10 PURPOSES OF THIS SUBSECTION, "SAME POSITION" MEANS THE MEMBER IS IN A  
11 POSITION WHERE THE MEMBER PERFORMS DUTIES AND EXERCISES AUTHORITY THAT ARE  
12 THE SAME DUTIES THAT WERE PERFORMED AND THE SAME AUTHORITY THAT WAS EXERCISED  
13 BY THE MEMBER BEFORE THE MEMBER'S RETIREMENT.

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

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

32 Sec. 9. Section 38-850, Arizona Revised Statutes, is amended to read:

33 38-850. Assurances and liabilities; fund manager discretion;  
34 overpayments; underpayments

35 A. Nothing contained in the system shall be construed as a contract of  
36 employment between an employer and any employee, or as a right of any  
37 employee to be continued in the employment of an employer, or as a limitation  
38 of the rights of an employer to discharge any of its employees, with or  
39 without cause.

40 B. No employee shall have any right to, or interest in, any assets of  
41 the fund upon termination of his employment or otherwise, except as provided  
42 from time to time under the system, and then only to the extent of the  
43 benefits payable to such employee out of the assets of the fund. All  
44 payments of benefits as provided for in the system shall be made solely out

1 of the assets of the fund and neither the employers, the fund manager, nor  
2 any member of the board shall be liable therefor in any manner.

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

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

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

- 33 1. Directly to such person.
- 34 2. To his legal guardian or conservator.
- 35 3. To his spouse or to any other person charged with his support to be  
36 expended for his benefit.

37 F. If, through misstatement or computation error, benefits are  
38 underpaid or overpaid, there is no liability for any more than the correct  
39 benefit sums under the system. Overpayments may be deducted from future  
40 payments under the system, and underpayments may be added to future payments  
41 under the system. A member or other benefit recipient may elect to repay in  
42 a lump sum any overpayment in lieu of receiving reduced benefits under the  
43 system.

44 G. Nothing in this section exempts employee benefits of any kind from  
45 a writ of attachment, a writ of execution, a writ of garnishment and orders

1 of assignment issued by a court of record which are the result of a judgment  
2 taken for arrearages for child support or for a child support debt or  
3 restitution or fines imposed in accordance with section 38-849, subsection A.

4 Sec. 10. Section 38-851, Arizona Revised Statutes, is amended to read:  
5 38-851. Participation of new employers

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

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

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

35 D. This state or any political subdivision, Indian tribe or public  
36 organization which is contemplating participation in the system shall request  
37 a preliminary actuarial survey to determine the estimated cost of  
38 participation, the benefits to be derived and such other information as may  
39 be deemed appropriate. The cost of such a survey shall be paid by this state  
40 or the political subdivision, Indian tribe or public organization requesting  
41 it.

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

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

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

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

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

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

27 Sec. 11. Section 38-853, Arizona Revised Statutes, is amended to read:

28 **38-853. Transfer of credited service**

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

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

42 Sec. 12. Section 38-881, Arizona Revised Statutes, as amended by Laws  
43 2002, chapter 335, section 8, is amended to read:

44 **38-881. Definitions**

45 In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

41           7. "Designated position" means:

42           (a) For a county:

43           (i) A county detention officer.

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

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

- 3 (i) Food service.
- 4 (ii) Nursing personnel.
- 5 (iii) Corrections physician assistant.
- 6 (iv) Therapist.
- 7 (v) Corrections dental assistant.
- 8 (vi) Hygienist.
- 9 (vii) Corrections medical assistant.
- 10 (viii) Correctional service officer, including assistant deputy  
11 warden, deputy warden, warden and superintendent.
- 12 (ix) State correctional program officer.
- 13 (x) Parole or community supervision officers.
- 14 (xi) Investigators.
- 15 (xii) Teachers.
- 16 (xiii) Institutional maintenance workers.
- 17 (xiv) Youth corrections officer.
- 18 (xv) Youth program officer.
- 19 (xvi) Behavioral health treatment unit managers.
- 20 (xvii) The director and assistant directors of the department of  
21 juvenile corrections and the superintendent of the state educational system  
22 for committed youth.
- 23 (xviii) The director, deputy directors and assistant directors of the  
24 state department of corrections.
- 25 (xix) Other positions designated by the local board of the state  
26 department of corrections or the local board of the department of juvenile  
27 corrections pursuant to section 38-891, subsection E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           Sec. 13. Section 38-881, Arizona Revised Statutes, as amended by Laws  
2 2005, chapter 324, section 1, is amended to read:

3           38-881. Definitions

4           In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

45           7. "Designated position" means:

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

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

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

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

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

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

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

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

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

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

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

28          20. "Salary" means the base salary ~~or base wages~~, overtime pay, shift  
29 differential pay and holiday pay paid a member in a designated position for  
30 personal services rendered to a participating employer on a regular monthly,  
31 semimonthly or biweekly payroll basis, except that for the purposes of this  
32 paragraph the amount of overtime included shall not include payments to the  
33 member for the sale of compensatory time. Salary includes amounts that are  
34 subject to deferred compensation or tax shelter agreements. Salary does not  
35 include PAYMENT FOR any remuneration or reimbursement other than as  
36 prescribed by this paragraph. FOR THE PURPOSES OF THIS PARAGRAPH, "BASE  
37 SALARY" MEANS THE AMOUNT OF COMPENSATION EACH MEMBER IS REGULARLY PAID FOR  
38 PERSONAL SERVICES RENDERED TO AN EMPLOYER BEFORE THE ADDITION OF ANY EXTRA  
39 MONIES, INCLUDING OVERTIME PAY, SHIFT DIFFERENTIAL PAY, HOLIDAY PAY, PAYMENTS  
40 FOR THE SALE OF COMPENSATORY TIME, FRINGE BENEFIT PAY AND SIMILAR EXTRA  
41 PAYMENTS.

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

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

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

8 Sec. 14. Section 38-886, Arizona Revised Statutes, is amended to read:

9 38-886. Accidental disability retirement; total and permanent  
10 disability retirement; qualification; amount of  
11 pension; conditions for continued payment of pension

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

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

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

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

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

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

36 D. During the period, if any, between the effective date of accidental  
37 disability retirement or total and permanent disability retirement and the  
38 date the disabled retired member attains sixty-two years of age the local  
39 board may require a disabled retired member to undergo periodic reevaluation  
40 of the continuation of accidental disability or total and permanent  
41 disability. If the disabled retired member refuses to submit to  
42 reevaluation, the local board may suspend payment of the pension. If the  
43 refusal continues for one year, the local board may revoke the disabled  
44 retired member's rights to the pension. An accidental disability pension or  
45 a total and permanent disability pension is terminated if the local board

1 finds the retired member no longer meets the requirements for accidental  
2 disability retirement or total and permanent disability retirement.

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

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

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

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

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

19 Sec. 15. Section 38-888, Arizona Revised Statutes, is amended to read:

20 **38-888. Pension to the surviving spouse of a member who dies**  
21 **before retirement**

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

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

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

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

30 C. The surviving spouse of a deceased member who is killed in the line  
31 of duty or dies from injuries suffered in the line of duty is entitled to  
32 receive a monthly amount equal to the deceased member's average monthly  
33 benefit compensation. **FOR THE PURPOSES OF THIS SUBSECTION, "KILLED IN THE  
34 LINE OF DUTY" MEANS THE DECEDENT'S DEATH WAS THE DIRECT AND PROXIMATE RESULT  
35 OF PHYSICAL INJURIES INCURRED IN THE PERFORMANCE OF THE DECEDENT'S PUBLIC  
36 SAFETY DUTIES AND DOES NOT INCLUDE SUICIDE.**

37 Sec. 16. Section 38-897, Arizona Revised Statutes, is amended to read:

38 **38-897. Assignments prohibited; liability of fund**

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

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

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

10 D. A PERSON WHO DEFRAUDS THE PLAN OR WHO TAKES, CONVERTS, STEALS OR  
11 EMBEZZLES MONIES OWNED BY OR FROM THE PLAN AND WHO FAILS OR REFUSES TO RETURN  
12 THE MONIES TO THE PLAN ON THE FUND MANAGER'S WRITTEN REQUEST IS SUBJECT TO  
13 CIVIL SUIT BY THE PLAN IN THE SUPERIOR COURT OF MARICOPA COUNTY. ON ENTRY OF  
14 AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED,  
15 STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER  
16 AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS  
17 COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY  
18 TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A  
19 JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM  
20 JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL  
21 AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION  
22 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.

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

27 Sec. 17. Section 38-902, Arizona Revised Statutes, is amended to read:  
28 38-902. Joinder agreement

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

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

44 C. Full-time dispatchers may participate in this plan if the governing  
45 body or agency of the employer of an eligible group as defined in section

1 38-842 enters into a joinder agreement with the fund manager to bring its  
2 full-time dispatchers into this plan. The joinder agreement shall be in  
3 accordance with the provisions of this plan. The governing body or agency of  
4 the employer shall designate all full-time dispatchers for membership in the  
5 plan unless written consent to the contrary is obtained from the fund  
6 manager.

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

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

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

29 Sec. 18. Section 38-908, Arizona Revised Statutes, is amended to read:  
30 **38-908. Transfer of credited service**

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

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

1           Sec. 19. Section 38-922, Arizona Revised Statutes, is amended to read:  
2           38-922. Transfer or redemption of service credits

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

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

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

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

21           C. In the event a member decides to transfer:

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

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

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

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

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

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

16           Sec. 20. Conditional enactment

17           Section 38-881, Arizona Revised Statutes, as amended by Laws 2005,  
18 chapter 324, section 1 and section 13 of this act, becomes effective on the  
19 date prescribed in Laws 2005, chapter 324, section 2 but only on the  
20 occurrence of the condition prescribed by Laws 2005, chapter 324, section 2.