

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# HOUSE BILL 2142

## AN ACT

AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 264, SECTION 13 AND CHAPTER 308, SECTION 1; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 264, SECTION 14 AND CHAPTER 308, SECTION 2; AMENDING SECTIONS 38-885, 38-886.01 AND 38-893, ARIZONA REVISED STATUTES; RELATING TO THE CORRECTIONS OFFICER RETIREMENT PLAN; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-881, Arizona Revised Statutes, as amended by  
3 Laws 2006, chapter 264, section 13 and chapter 308, section 1, is amended to  
4 read:

5 38-881. Definitions

6 In this article, unless the context otherwise requires:

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

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

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

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

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25 covering public employees of this state, plus previously withdrawn  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

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

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

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

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

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

3 7. "Designated position" means:

4 (a) For a county:

5 (i) A county detention officer.

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

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

10 (i) Food service.

11 (ii) Nursing personnel.

12 (iii) Corrections physician assistant.

13 (iv) Therapist.

14 (v) Corrections dental assistant.

15 (vi) Hygienist.

16 (vii) Corrections medical assistant.

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

19 (ix) State correctional program officer.

20 (x) Parole or community supervision officers.

21 (xi) Investigators.

22 (xii) Teachers.

23 (xiii) Institutional maintenance workers.

24 (xiv) Youth corrections officer.

25 (xv) Youth program officer.

26 (xvi) Behavioral health treatment unit managers.

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

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

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

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

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

38 (e) For the judiciary, probation, surveillance and juvenile detention  
39 officers.

40 (f) FOR THE FUND MANAGER OF THE PUBLIC SAFETY PERSONNEL RETIREMENT  
41 SYSTEM, ALL FULL-TIME EMPLOYEES, EXCEPT THE ADMINISTRATOR, OF THE FUND  
42 MANAGER.

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

1 9. "Employer" means an agency or department of this state or a  
2 political subdivision of this state ~~which~~, INCLUDING THE FUND MANAGER, THAT  
3 has one or more employees in a designated position.

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

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

7 12. "Juvenile detention officer" means a juvenile detention officer  
8 responsible for the direct custodial supervision of juveniles who are  
9 detained in a county juvenile detention center.

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

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

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

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

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

22 15. "Normal retirement date" means the first day of the calendar month  
23 immediately following an employee's completion of twenty years of service or,  
24 in the case of a dispatcher OR A FULL-TIME EMPLOYEE OF THE FUND MANAGER,  
25 twenty-five years of service, the employee's sixty-second birthday and  
26 completion of ten years of service or the month in which the sum of the  
27 employee's age and years of credited service equals eighty.

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

33 ~~16.~~ 17. "Participating employer" means:

34 (a) An employer which the fund manager has determined to have one or  
35 more employees in a designated position. ~~or~~

36 (b) A county, city or town which has entered into a joinder agreement  
37 pursuant to section 38-902.

38 (c) BEGINNING JULY 1, 2007, THE FUND MANAGER.

39 ~~17.~~ 18. "Pension" means a series of monthly payments by the retirement  
40 plan.

41 ~~18.~~ 19. "Probation or surveillance officer" means an officer appointed  
42 pursuant to section 8-203, 12-251 or 12-259 but does not include other  
43 personnel, office assistants or support staff.

44 ~~19.~~ 20. "Retired member" means an individual who is being paid a  
45 pension on account of the individual's membership in the retirement plan.

1       ~~20.~~ 21. "Retirement" means termination of employment after a member  
2 has fulfilled all requirements for a pension.

3       ~~21.~~ 22. "Retirement plan" or "plan" means the corrections officer  
4 retirement plan established by this article.

5       ~~22.~~ 23. "Salary" means the base salary, shift differential pay and  
6 holiday pay paid a member in a designated position for personal services  
7 rendered to a participating employer on a regular monthly, semimonthly or  
8 biweekly payroll basis. Salary includes amounts that are subject to deferred  
9 compensation or tax shelter agreements. Salary does not include payment for  
10 any remuneration or reimbursement other than as prescribed by this  
11 paragraph. For the purposes of this paragraph, "base salary" means the  
12 amount of compensation each member is regularly paid for personal services  
13 rendered to an employer before the addition of any extra monies, including  
14 overtime pay, shift differential pay, holiday pay, fringe benefit pay and  
15 similar extra payments.

16       ~~23.~~ 24. "Service" means employment rendered to a participating  
17 employer as an employee in a designated position. Any absence that is  
18 authorized by an employer, including any periods during which the employee is  
19 on an employer sponsored long-term disability program, is considered as  
20 service if the employee returns or is deemed by the employer to have returned  
21 to a designated position within the period of the authorized absence.

22       ~~24.~~ 25. "Total and permanent disability" means a physical or mental  
23 condition that is not an accidental disability, that the local board finds  
24 totally and permanently prevents a member from engaging in any gainful  
25 employment and that is the direct and proximate result of the member's  
26 performance of the member's duty as an employee of a participating employer.

27       Sec. 2. Section 38-881, Arizona Revised Statutes, as amended by Laws  
28 2006, chapter 264, section 14 and chapter 308, section 2, is amended to read:

29       38-881. Definitions

30       In this article, unless the context otherwise requires:

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

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

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

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

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

7           3. "Average monthly salary" means one-thirty-sixth of the aggregate  
8 amount of salary that is paid a member by a participating employer during a  
9 period of thirty-six consecutive months of service in which the member  
10 received the highest salary within the last one hundred twenty months of  
11 service. Average monthly salary means the aggregate amount of salary that is  
12 paid a member divided by the member's months of service if the member has  
13 less than thirty-six months of service. In the computation under this  
14 paragraph, a period of nonpaid or partially paid industrial leave shall be  
15 considered based on the salary the employee would have received in the  
16 employee's job classification if the employee was not on industrial leave.

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

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

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

26           7. "Designated position" means:

27           (a) For a county:

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

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

33           (i) Food service.

34           (ii) Nursing personnel.

35           (iii) Corrections physician assistant.

36           (iv) Therapist.

37           (v) Corrections dental assistant.

38           (vi) Hygienist.

39           (vii) Corrections medical assistant.

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

42           (ix) State correctional program officer.

43           (x) Parole or community supervision officers.

44           (xi) Investigators.

45           (xii) Teachers.

- 1 (xiii) Institutional maintenance workers.  
2 (xiv) Youth corrections officer.  
3 (xv) Youth program officer.  
4 (xvi) Behavioral health treatment unit managers.  
5 (xvii) The director and assistant directors of the department of  
6 juvenile corrections and the superintendent of the state educational system  
7 for committed youth.  
8 (xviii) The director, deputy directors and assistant directors of the  
9 state department of corrections.  
10 (xix) Other positions designated by the local board of the state  
11 department of corrections or the local board of the department of juvenile  
12 corrections pursuant to section 38-891, subsection E.  
13 (c) For a city or town, a city or town detention officer.  
14 (d) For an employer of an eligible group as defined in section 38-842,  
15 full-time dispatchers.  
16 (e) For the judiciary, probation, surveillance and juvenile detention  
17 officers.  
18 (f) FOR THE FUND MANAGER OF THE PUBLIC SAFETY PERSONNEL RETIREMENT  
19 SYSTEM, ALL FULL-TIME EMPLOYEES, EXCEPT THE ADMINISTRATOR, OF THE FUND  
20 MANAGER.  
21 8. "Employee" means a person determined by the local board to be  
22 employed by a participating employer in a designated position.  
23 9. "Employer" means an agency or department of this state or a  
24 political subdivision of this state ~~which~~, INCLUDING THE FUND MANAGER, THAT  
25 has one or more employees in a designated position.  
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27 11. "Fund manager" means the fund manager of the public safety  
28 personnel retirement system.  
29 12. "Juvenile detention officer" means a detention officer responsible  
30 for the direct custodial supervision of juveniles who are detained in a  
31 county juvenile detention center.  
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33 consists of persons appointed or elected to administer the plan as it applies  
34 to the employer's members in the plan.  
35 14. "Member" means any employee who meets all of the following  
36 qualifications:  
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38 employer in a designated position.  
39 (b) Who is receiving salary for personal services rendered to a  
40 participating employer or would be receiving salary except for an authorized  
41 leave of absence.  
42 (c) Whose customary employment is at least forty hours each week and  
43 for more than six months in a calendar year.  
44 15. "Normal retirement date" means the first day of the calendar month  
45 immediately following an employee's completion of twenty years of service or,

1 in the case of a dispatcher OR A FULL-TIME EMPLOYEE OF THE FUND MANAGER,  
2 twenty-five years of service, the employee's sixty-second birthday and  
3 completion of ten years of service or the month in which the sum of the  
4 employee's age and years of credited service equals eighty.

5 16. "ORDINARY DISABILITY" MEANS A PHYSICAL CONDITION THAT THE LOCAL  
6 BOARD DETERMINES WILL PREVENT AN EMPLOYEE FROM TOTALLY AND PERMANENTLY  
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8 MENTAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL PREVENT AN EMPLOYEE  
9 FROM TOTALLY AND PERMANENTLY ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY.

10 ~~16-~~ 17. "Participating employer" means:

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12 more employees in a designated position. ~~or~~

13 (b) A county, city or town which has entered into a joinder agreement  
14 pursuant to section 38-902.

15 (c) BEGINNING JULY 1, 2007, THE FUND MANAGER.

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17 plan.

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19 pursuant to section 8-203, 12-251 or 12-259 but does not include other  
20 personnel, office assistants or support staff.

21 ~~19-~~ 20. "Retired member" means an individual who is being paid a  
22 pension on account of the individual's membership in the retirement plan.

23 ~~20-~~ 21. "Retirement" means termination of employment after a member  
24 has fulfilled all requirements for a pension.

25 ~~21-~~ 22. "Retirement plan" or "plan" means the corrections officer  
26 retirement plan established by this article.

27 ~~22-~~ 23. "Salary" means the base salary, overtime pay, shift  
28 differential pay and holiday pay paid a member in a designated position for  
29 personal services rendered to a participating employer on a regular monthly,  
30 semimonthly or biweekly payroll basis, except that for the purposes of this  
31 paragraph the amount of overtime included shall not include payments to the  
32 member for the sale of compensatory time. Salary includes amounts that are  
33 subject to deferred compensation or tax shelter agreements. Salary does not  
34 include payment for any remuneration or reimbursement other than as  
35 prescribed by this paragraph. For the purposes of this paragraph, "base  
36 salary" means the amount of compensation each member is regularly paid for  
37 personal services rendered to an employer before the addition of any extra  
38 monies, including overtime pay, shift differential pay, holiday pay, payments  
39 for the sale of compensatory time, fringe benefit pay and similar extra  
40 payments.

41 ~~23-~~ 24. "Service" means employment rendered to a participating  
42 employer as an employee in a designated position. Any absence that is  
43 authorized by an employer, including any periods during which the employee is  
44 on an employer sponsored long-term disability program, is considered as

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

3 ~~24-~~ 25. "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. 3. Section 38-885, Arizona Revised Statutes, is amended to read:

9 ~~38-885.~~ Normal retirement; conditions and pension

10 A. A member may retire if the member:

11 1. Files a written application for normal retirement with the plan in  
12 the form prescribed by the plan.

13 2. Ceases to be an employee before the date of retirement.

14 3. Meets one of the age and service requirements for normal retirement  
15 prescribed in subsection B.

16 B. A member is eligible for a normal retirement pension if the member  
17 satisfies one of the following requirements:

18 1. Is sixty-two years or older and has ten or more years of service.

19 2. Has twenty or more years of service or in the case of a dispatcher  
20 **OR FULL-TIME MEMBER WHO IS EMPLOYED BY THE FUND MANAGER**, twenty-five **OR MORE**  
21 years **OF SERVICE**.

22 3. The sum of the member's age and years of credited service equals at  
23 least eighty.

24 C. A member who meets the requirements for a normal retirement pension  
25 and who has twenty years ~~or twenty five years, as applicable,~~ of credited  
26 service is entitled to receive a pension that equals fifty per cent of the  
27 member's average monthly salary, except that:

28 1. If the member retires with more than twenty years of credited  
29 service the foregoing amount shall be increased by a monthly amount equal to  
30 two per cent of the member's average monthly salary multiplied by the number  
31 of the member's years of credited service in excess of twenty years, with pro  
32 rata increase for any fractional years, except that if a member retires with  
33 twenty-five or more years of credited service the foregoing amount shall be  
34 increased by a monthly amount equal to two and one-half per cent of the  
35 member's average monthly salary multiplied by the number of the member's  
36 years of credited service in excess of twenty years, with pro rata increase  
37 for any fractional year.

38 2. If the member retires pursuant to subsection B but has less than  
39 twenty years of credited service, the member is entitled to receive a pension  
40 equal to the product of:

41 (a) Two and one-half per cent of the member's average monthly salary.

42 (b) The member's credited service.

43 D. In no case shall the amount of a member's pension exceed eighty per  
44 cent of the member's average monthly salary. Such limitation does not  
45 preclude cost-of-living increases granted by the legislature.

1           Sec. 4. Section 38-886.01, Arizona Revised Statutes, is amended to  
2 read:

3           38-886.01. Ordinary disability retirement; qualifications;  
4           amount of pension; conditions for continued  
5           payment of pension

6           A. ~~Full-time dispatchers who are employed by an employer of an~~  
7 ~~eligible group as defined in section 38-842~~ A MEMBER may retire and receive  
8 an ordinary disability pension if the local board finds that all of the  
9 following conditions occur:

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

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

18           3. The local board determines that an ordinary disability condition  
19 exists that meets the requirements for an ordinary disability.

20           4. THE MEMBER IS NOT PARTICIPATING IN THE REVERSE DEFERRED RETIREMENT  
21 OPTION PURSUANT TO SECTION 38-885.01.

22           B. The effective date of an ordinary disability retirement shall not  
23 predate the date of disability or the date the member ceases to be an  
24 employee.

25           C. EXCEPT FOR A FULL-TIME DISPATCHER OR FULL-TIME MEMBER WHO IS  
26 EMPLOYED BY THE FUND MANAGER, THE AMOUNT OF AN ORDINARY DISABILITY PENSION IS  
27 EQUAL TO A FRACTION TIMES THE MEMBER'S NORMAL RETIREMENT PENSION THAT IS  
28 COMPUTED PURSUANT TO SECTION 38-885, SUBSECTION C AS IF THE MEMBER HAD TWENTY  
29 YEARS OF CREDITED SERVICE. THE FRACTION IS THE RESULT OBTAINED BY DIVIDING  
30 THE MEMBER'S ACTUAL YEARS OF CREDITED SERVICE, NOT TO EXCEED TWENTY YEARS OF  
31 CREDITED SERVICE, BY TWENTY. FOR A FULL-TIME DISPATCHER OR FULL-TIME MEMBER  
32 WHO IS EMPLOYED BY THE FUND MANAGER, the amount of an ordinary disability  
33 pension is equal to a fraction times the member's normal retirement pension  
34 that is computed pursuant to section 38-885, subsection C as if the member  
35 had twenty-five years of credited service. The fraction is the result  
36 obtained by dividing the member's actual years of credited service, not to  
37 exceed twenty-five years of credited service, by twenty-five.

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

1 finds the retired member no longer meets the requirements for ordinary  
2 disability retirement.

3 E. A member does not qualify for an ordinary disability pension if the  
4 local board determines that the member's disability results from any of the  
5 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 that 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 ordinary disability on medical~~  
13 ~~evidence that is obtained by a medical doctor or clinic selected by the local~~  
14 ~~board and shall disregard any other medical evidence or opinions. If the~~  
15 ~~local board retains more than one medical doctor or clinic in connection with~~  
16 ~~the application,~~ SHALL RETAIN A PHYSICIAN OR CLINIC TO EXAMINE A MEMBER WHO  
17 APPLIES FOR AN ORDINARY DISABILITY PENSION. THE PHYSICIAN OR CLINIC WHO IS  
18 APPOINTED BY THE LOCAL BOARD SHALL OPINE AS TO WHETHER OR NOT THE MEMBER  
19 QUALIFIES FOR AN ORDINARY DISABILITY PENSION. WITH THE APPROVAL OF THE LOCAL  
20 BOARD, THE PHYSICIAN OR CLINIC MAY REFER THE MEMBER TO A SPECIALIST AND MAY  
21 RELY ON THE OPINION OF THAT SPECIALIST IN RENDERING THE PHYSICIAN'S OR  
22 CLINIC'S OPINION. THE PHYSICIAN OR CLINIC MAY ALSO CONSIDER ANY MEDICAL  
23 EVIDENCE THAT IS PROVIDED BY THE MEMBER OR THE MEMBER'S PHYSICIAN. THE LOCAL  
24 BOARD SHALL BASE A FINDING OF ORDINARY DISABILITY SOLELY ON THE OPINION OF  
25 ITS APPOINTED PHYSICIAN OR CLINIC. IF THE LOCAL BOARD RETAINS MORE THAN ONE  
26 PHYSICIAN OR CLINIC IN CONNECTION WITH ANY APPLICATION, the local board shall  
27 resolve any material conflicts presented in the medical evidence that is  
28 presented by the ~~medical doctors~~ PHYSICIANS or clinics.

29 ~~G. For the purposes of this section, "ordinary disability" means a~~  
30 ~~physical condition that the local board determines will prevent an employee~~  
31 ~~from totally and permanently performing a reasonable range of duties within~~  
32 ~~the employee's department or a mental condition that the local board~~  
33 ~~determines will prevent an employee from totally and permanently engaging in~~  
34 ~~any substantial gainful activity.~~

35 Sec. 5. Section 38-893, Arizona Revised Statutes, is amended to read:

36 38-893. Local boards; powers and duties; rules; hearings;  
37 administrative review

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

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

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

14           3. For political subdivisions, **OTHER THAN THE FUND MANAGER**, the mayor  
15 or chief elected official or a designee of the mayor or chief elected  
16 official approved by the respective governing body as chairman, two members  
17 elected by secret ballot by members employed by the appropriate employer and  
18 two citizens, one of whom shall be the head of the merit system if it exists  
19 for the group of members, appointed by the mayor or chief elected official  
20 and with the approval of the city council or governing body of the employer.

21           4. For the judiciary, two members who are elected by secret ballot by  
22 members who are employed as a probation, surveillance or juvenile detention  
23 officer, a designee of the chief justice of the Arizona supreme court and two  
24 citizens, one of whom shall be the head of a human resource department for  
25 the group of members, appointed by the chief justice.

26           5. **FOR THE FUND MANAGER, THE ADMINISTRATOR HIRED BY THE FUND MANAGER**  
27 **PURSUANT TO SECTION 38-848 OR THE ADMINISTRATOR'S DESIGNEE WHO IS APPROVED BY**  
28 **THE FUND MANAGER, TWO MEMBERS WHO ARE ELECTED BY SECRET BALLOT BY MEMBERS WHO**  
29 **ARE EMPLOYED BY THE FUND MANAGER AND TWO CITIZENS WHO ARE APPOINTED BY THE**  
30 **CHAIRPERSON OF THE FUND MANAGER WITH THE APPROVAL OF THE FUND MANAGER.**

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

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

- 1           D. Except as limited by subsection E of this section, a local board  
2 shall:
- 3           1. Decide all questions of eligibility and service credits and  
4 determine the amount, manner and time of payment of any benefit under the  
5 plan.
- 6           2. Make a determination as to the right of a claimant to a benefit and  
7 afford a claimant or the fund manager, or both, a right to a rehearing on the  
8 original determination.
- 9           3. Request and receive from the employers and from members information  
10 as is necessary for the proper administration of the plan and action on  
11 claims for benefits and forward the information to the fund manager.
- 12           4. Distribute, in the manner the local board determines to be  
13 appropriate, information explaining the plan that is received from the fund  
14 manager.
- 15           5. Furnish the employer, the fund manager and the legislature, on  
16 request, with annual reports with respect to the administration of the plan  
17 that are reasonable and appropriate.
- 18           6. Appoint a medical board, which is composed of a designated  
19 physician or clinic other than the employer's regular employee or  
20 contractor. If required, the local board may employ other physicians to  
21 report on special cases. The examining physician or clinic shall report the  
22 results of examinations made to the local board, and the secretary of the  
23 local board shall preserve the report as a permanent record.
- 24           7. Sue and be sued to effectuate the duties and responsibilities set  
25 forth in this article.
- 26           E. A local board has no power to add to, subtract from, modify or  
27 waive any of the terms of the plan, change or add to any benefits provided by  
28 the plan or waive or fail to apply any requirement of eligibility for  
29 membership or benefits under the plan.
- 30           F. A local board, from time to time, shall establish and adopt rules  
31 as it deems necessary or desirable for its administration. All rules and  
32 decisions of a local board shall be uniformly and consistently applied to all  
33 members in similar circumstances.
- 34           G. An action by a majority vote of the members of a local board that  
35 is not inconsistent with the provisions of the plan is final, conclusive and  
36 binding on all persons affected by it, unless a timely application for a  
37 rehearing or appeal is filed as provided in this article.
- 38           H. A claimant or the fund manager may apply for a rehearing before the  
39 local board within the time period prescribed in this subsection. A claimant  
40 or the fund manager shall file an application for rehearing in writing with a  
41 member of the local board or its secretary within sixty days after:
- 42           1. The claimant receives notification of the local board's original  
43 action by certified mail, by attending the meeting at which the action is  
44 taken or by receiving benefits from the plan pursuant to the local board's  
45 original action, whichever occurs first.

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

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

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

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

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

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

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

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

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

33           Sec. 6. Fund manager resolution

34           Full-time employees who are employed by the fund manager may  
35 participate in the corrections officer retirement plan if the fund manager  
36 adopts a resolution to bring its full-time employees into the plan. The fund  
37 manager shall designate the employees who are eligible to participate in the  
38 plan and shall agree to make contributions each year that are sufficient to  
39 meet both the normal cost of a level cost method attributable to inclusion of  
40 its employees and the prescribed interest on the past service cost for its  
41 employees.

42           Sec. 7. Transfer of assets

43           Notwithstanding any other statute but in accordance with sections  
44 38-921 and 38-922, Arizona Revised Statutes, if eligible employees of the  
45 fund manager become members in the corrections officer retirement plan

1 pursuant to this act, all credited service from any other Arizona defined  
2 benefit state retirement system or plan shall be transferred to the  
3 corrections officer retirement plan unless the employee makes an irrevocable  
4 election to remain in the employee's existing state retirement system or  
5 plan. The fund manager may elect to pay the cost of the fund manager's  
6 full-time employees' past service that is on account with one or more public  
7 retirement systems or plans of this state or any political subdivision of  
8 this state.

9 Sec. 8. Transfer of service purchased through payroll deduction

10 If a full-time employee of the fund manager who has elected to purchase  
11 service credit through a payroll deduction agreement in any Arizona defined  
12 benefit retirement system or plan transfers to the corrections officer  
13 retirement plan, the other Arizona defined benefit retirement system or plan  
14 shall transfer to the corrections officer retirement plan, both on an annual  
15 basis and upon notification of termination of the member's employment, the  
16 total of any interest and principal paid by the transferred member for the  
17 purchase of credited service since the date of the most recent transfer. In  
18 the event credited service transferred from the fund manager employee's  
19 previous Arizona defined benefit retirement system or plan does not fully  
20 cover the cost of the benefits accrued relative to such credited service as  
21 computed pursuant to section 38-922, Arizona Revised Statutes, the employer  
22 is liable for any funding deficiencies.

23 Sec. 9. Retroactivity

24 Section 38-881, Arizona Revised Statutes, as amended by Laws 2006,  
25 chapter 264, section 13 and chapter 308, section 1, section 38-886.01 and  
26 section 38-893, Arizona Revised Statutes, as amended by this act, apply, and  
27 sections 6 and 7 of this act are effective, retroactively to from and after  
28 June 30, 2007.

29 Sec. 10. Conditional enactment

30 Section 38-881, Arizona Revised Statutes, as amended by Laws 2006,  
31 chapter 264, section 14 and chapter 308, section 2 and section 2 of this act,  
32 becomes effective on the date prescribed in Laws 2005, chapter 324, section 2  
33 but only on the occurrence of the condition prescribed by Laws 2005, chapter  
34 324, section 2.