

Senate Engrossed

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SENATE BILL 1262

AN ACT

AMENDING SECTION 38-848, ARIZONA REVISED STATUTES; RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-848, Arizona Revised Statutes, is amended to
3 read:

4 38-848. Board of trustees; powers and duties; independent
5 trust fund; administrator; agents and employees;
6 advisory committee

7 A. Beginning January 1, 2017, the board of trustees shall consist
8 of nine members and shall have the rights, powers and duties that are set
9 forth in this section. The term of office of members shall be five years
10 to expire on the third Monday in January of the appropriate year. The
11 board shall select a chairperson from among its members each calendar
12 year. Members are eligible to receive compensation in an amount of fifty
13 dollars a day, but not to exceed one thousand dollars in any one fiscal
14 year, and are eligible for reimbursement of expenses pursuant to chapter
15 4, article 2 of this title. Beginning January 1, 2017, the board consists
16 of the following members appointed as follows:

17 1. Two members representing law enforcement, one of whom is
18 appointed by the president of the senate and one of whom is appointed by
19 the governor. A statewide association representing law enforcement in
20 this state shall forward nominations to the appointing elected officials,
21 providing at least three nominees for each position. At least one of the
22 members appointed under this paragraph shall be an elected local board
23 member.

24 2. Two members representing firefighters, one of whom is appointed
25 by the speaker of the house of representatives and one of whom is
26 appointed by the governor. A statewide association representing
27 firefighters in this state shall forward nominations to the appointing
28 elected officials, providing at least three nominees for each position.
29 At least one of the members appointed under this paragraph shall be an
30 elected local board member.

31 3. Three members representing cities and towns in this state, one
32 of whom is appointed by the president of the senate, one of whom is
33 appointed by the speaker of the house of representatives and one of whom
34 is appointed by the governor. An association representing cities and
35 towns in this state shall forward nominations to the appointing elected
36 officials, providing at least three nominees for each position. These
37 nominees shall represent taxpayers or employers and may not be members of
38 the system.

39 4. One member who represents counties in this state and who is
40 appointed by the governor. An association representing county supervisors
41 in this state shall forward nominations to the governor, providing at
42 least three nominees for the position. These nominees shall represent
43 taxpayers or employers and may not be members of the system.

44 5. One member who is appointed by the governor from a list of three
45 nominees forwarded by the board. The board shall select the nominees to

1 forward to the governor from a list of at least five nominees received
2 from the advisory committee.

3 B. Each appointment made pursuant to subsection A of this section
4 shall be chosen from the list of nominees provided to the appointing
5 elected official. For any appointment made by the governor pursuant to
6 subsection A of this section, before appointment by the governor, a
7 prospective member of the board shall submit a full set of fingerprints to
8 the governor for the purpose of obtaining a state and federal criminal
9 records check pursuant to section 41-1750 and Public Law 92-544. The
10 department of public safety may exchange this fingerprint data with the
11 federal bureau of investigation. A board member may be reappointed.
12 Notwithstanding section 38-295, a board member may be removed from office
13 only for cause by the appointing power or because the board member has
14 vacated the member's seat on the board. A board member who is removed for
15 cause shall be provided written notice and an opportunity for a response.
16 The appointing power may remove a board member based on written findings
17 that specify the reason for removal. Any vacancy that occurs other than
18 by expiration of a term shall be filled for the balance of the term. All
19 vacancies shall be filled in the same manner as the initial appointment.
20 A board member vacates the office if the member either:

21 1. Is absent without excuse from three consecutive regular meetings
22 of the board.

23 2. Resigns, dies or becomes unable to perform board member duties.

24 C. The members of the board who are appointed pursuant to
25 subsection A of this section and who are not members of the system shall
26 be independent, qualified professionals who are responsible for the
27 performance of fiduciary duties and other responsibilities required to
28 preserve and protect the fund and shall have at least ten years'
29 substantial experience as any one or a combination of the following:

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

31 2. A securities analyst.

32 3. A senior executive or principal of a trust institution,
33 investment organization or endowment fund acting either in a management or
34 an investment-related capacity.

35 4. A chartered financial analyst in good standing as determined by
36 the chartered financial analyst institute.

37 5. A current or former professor or instructor at the college or
38 university level in the field of economics, finance, actuarial science,
39 accounting or pension-related subjects.

40 6. An economist.

41 7. Any other senior executive engaged in the field of public or
42 private finances or with experience with public pension systems.

43 8. A senior executive in insurance, banking, underwriting,
44 auditing, human resources or risk management.

1 D. All monies in the fund shall be deposited and held in a public
2 safety personnel retirement system depository. Monies in the fund shall
3 be disbursed from the depository separate and apart from all monies or
4 funds of this state and the agencies, instrumentalities and subdivisions
5 of this state, except that the board may commingle the assets of the fund
6 and the assets of all other plans entrusted to its management in one or
7 more group trusts, subject to the crediting of receipts and earnings and
8 charging of payments to the appropriate employer, system or plan. The
9 monies shall be secured by the depository in which they are deposited and
10 held to the same extent and in the same manner as required by the general
11 depository law of this state. For purposes of making the decision to
12 invest in securities owned by the fund or any plan or trust administered
13 by the board, the fund and assets of the plans and the plans' trusts are
14 subject to the sole management of the board for the purpose of this
15 article except that, on the board's election to invest in a particular
16 security or make a particular investment, the assets comprising the
17 security or investment may be chosen and managed by third parties approved
18 by the board. The board may invest in portfolios of securities chosen and
19 managed by a third party. The board's decision to invest in securities
20 such as mutual funds, commingled investment funds, exchange traded funds,
21 private equity or venture capital limited partnerships, real estate
22 limited partnerships or limited liability companies and real estate
23 investment trusts whose assets are chosen and managed by third parties
24 ~~does not constitute~~ IS NOT an improper delegation of the board's
25 investment authority.

26 E. All contributions under this system and other retirement plans
27 that the board administers shall be forwarded to the board and shall be
28 held, invested and reinvested by the board as provided in this article.
29 All property and monies of the fund and other retirement plans that the
30 board administers, including income from investments and from all other
31 sources, shall be retained for the exclusive benefit of members, as
32 provided in the system and other retirement plans that the board
33 administers, and shall be used to pay benefits to members or their
34 beneficiaries or to pay expenses of operation and administration of the
35 system and fund and other retirement plans that the board administers.

36 F. The board shall have the full power in its sole discretion to
37 invest and reinvest, alter and change the monies accumulated under the
38 system and other retirement plans and trusts that the board administers as
39 provided in this article. In addition to its power to make investments
40 managed by others, the board may delegate the authority the board deems
41 necessary and prudent to investment management pursuant to section
42 38-848.03, as well as to the administrator, employed by the board pursuant
43 to subsection M, paragraph 6 of this section, and any assistant
44 administrators to invest the monies of the system and other retirement
45 plans and trusts that the board administers if the administrator,

1 investment management and any assistant administrators follow the
2 investment policies that are adopted by the board. The board may commingle
3 securities and monies of the fund, the elected officials' retirement plan,
4 the corrections officer retirement plan and other plans or monies
5 entrusted to its care, subject to the crediting of receipts and earnings
6 and charging of payments to the account of the appropriate employer,
7 system or plan. In making every investment, the board shall exercise the
8 judgment and care under the circumstances then prevailing that persons of
9 ordinary prudence, discretion and intelligence exercise in the management
10 of their own affairs, not in regard to speculation but in regard to the
11 permanent disposition of their funds, considering the probable income from
12 their funds as well as the probable safety of their capital, **provided IF:**

13 1. ~~That~~ Not more than eighty percent of the combined assets of the
14 system or other plans that the board manages ~~shall be~~ **IS** invested at any
15 given time in corporate stocks, based on **THE** cost value of ~~such~~ **THE** stocks
16 irrespective of capital appreciation.

17 2. ~~That no~~ **NOT** more than five percent of the combined assets of the
18 system or other plans that the board manages ~~shall be~~ **IS** invested in
19 corporate stock issued by any one corporation, other than corporate stock
20 issued by corporations chartered by the United States government or
21 corporate stock issued by a bank or insurance company.

22 3. ~~That~~ Not more than five percent of the voting stock of any one
23 corporation ~~shall be~~ **IS** owned by the system and other plans that the board
24 administers, except that this limitation does not apply to membership
25 interests in limited liability companies.

26 4. ~~That~~ Corporate stocks and exchange traded funds eligible for
27 direct purchase ~~shall be~~ **ARE** restricted to stocks and exchange traded
28 funds that, except for bank stocks, insurance stocks, stocks acquired for
29 coinvestment in connection with the system's or the plans' or trusts'
30 commingled investments and interests in limited liability companies and
31 mutual funds, are ~~either~~ **ANY OF THE FOLLOWING:**

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

35 (b) Designated or approved on notice of issuance for designation on
36 the national market system of a national securities association registered
37 under the securities exchange act of 1934, as amended (15 United States
38 Code sections 78a through 78pp).

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

41 (d) Listed or approved on issuance for listing on an exchange of a
42 foreign country with which the United States is maintaining diplomatic
43 relations at the time of purchase, except that ~~no~~ **NOT** more than twenty
44 percent of the combined assets of the system and other plans that the

1 board manages ~~shall be~~ IS invested in foreign securities, based on the
2 cost value of the stocks irrespective of capital appreciation.

3 (e) An exchange traded fund that is recommended by the chief
4 investment officer of the system, that is registered under the investment
5 company act of 1940 (15 United States Code sections 80a-1 through 80a-64)
6 and that is both traded on a public exchange and based on a publicly
7 recognized index.

8 G. Notwithstanding any other law, the board ~~shall not be~~ IS NOT
9 required to invest in any type of investment that is dictated or required
10 by any entity of the federal government and that is intended to fund
11 economic development projects, public works or social programs, but may
12 consider ~~such~~ economically targeted investments pursuant to its fiduciary
13 responsibility. The board, on behalf of the system and all other plans or
14 trusts the board administers, may invest in, lend monies to or guarantee
15 the repayment of monies by a limited liability company, limited
16 partnership, joint venture, partnership, limited liability partnership or
17 trust in which the system and plans or trusts have a financial interest,
18 whether the entity is closely held or publicly traded and that, in turn,
19 may be engaged in any lawful activity, including venture capital, private
20 equity, the ownership, development, management, improvement or operation
21 of real property and any improvements or businesses on real property or
22 the lending of monies.

23 H. Conference call meetings of the board that are held for
24 investment purposes only are not subject to chapter 3, article 3.1 of this
25 title, except that the board shall maintain minutes of these conference
26 call meetings and make them available for public inspection within
27 twenty-four hours after the meeting. The board shall review the minutes
28 of each conference call meeting and shall ratify all legal actions taken
29 during each conference call meeting at the next scheduled meeting of the
30 board.

31 I. The board ~~shall not be held~~ IS NOT liable for the exercise of
32 more than ordinary care and prudence in the selection of investments and
33 performance of its duties under the system and ~~shall not be~~ IS NOT limited
34 to so-called "legal investments for trustees", but all monies of the
35 system and other plans that the board administers shall be invested
36 subject to all of the conditions, limitations and restrictions imposed by
37 law.

38 J. Except as provided in subsection F of this section, the board
39 may:

40 1. Invest and reinvest the principal and income of all assets that
41 the board manages without distinction between principal and income.

42 2. Sell, exchange, convey, transfer or otherwise dispose of any
43 investments made on behalf of the system or other plans the board
44 administers in the name of the system or plans by private contract or at
45 public auction.

- 1 3. Also:
- 2 (a) Vote on any stocks, bonds or other securities.
- 3 (b) Give general or special proxies or powers of attorney with or
- 4 without power of substitution.
- 5 (c) Exercise any conversion privileges, subscription rights or
- 6 other options and make any payments incidental to the exercise of the
- 7 conversion privileges, subscription rights or other options.
- 8 (d) Consent to or otherwise participate in corporate
- 9 reorganizations or other changes affecting corporate securities, delegate
- 10 discretionary powers and pay any assessments or charges in connection
- 11 therewith.
- 12 (e) Generally exercise any of the powers of an owner with respect
- 13 to stocks, bonds, securities or other investments held in or owned by the
- 14 system or other plans whose assets the board administers.
- 15 4. Make, execute, acknowledge and deliver any other instruments
- 16 that may be necessary or appropriate to carry out the powers granted in
- 17 this section.
- 18 5. Register any investment held by the system or other plans whose
- 19 assets the board administers in the name of the system or plan or in the
- 20 name of a nominee or trust.
- 21 6. At the expense of the system or other plans that the board
- 22 administers, enter into an agreement with any bank or banks for the
- 23 safekeeping and handling of securities and other investments coming into
- 24 the possession of the board. The agreement shall be entered into under
- 25 terms and conditions that secure the proper safeguarding, inventory,
- 26 withdrawal and handling of the securities and other investments. ~~No~~
- 27 Access to and ~~no~~ deposit or withdrawal of the securities from any place of
- 28 deposit selected by the board ~~shall be permitted or~~ IS NOT ALLOWED AND MAY
- 29 NOT BE made except as the terms of the agreement ~~may~~ provide.
- 30 7. Appear before local boards and the courts of this state and
- 31 political subdivisions of this state through counsel or AN appointed
- 32 representative to protect the fund or the assets of other plans that the
- 33 board administers. The board is not responsible for the actions or
- 34 omissions of the local boards under this system but may seek a review or
- 35 rehearing of actions or omissions of local boards. The board does not
- 36 have a duty to review actions of the local boards but may do so in its
- 37 discretion in order to protect the fund. No limitations period precludes
- 38 the board or administrator from contesting, or requires the board or
- 39 administrator to implement or comply with, a local board decision that
- 40 violates the internal revenue code or that threatens to impair the ~~tax~~
- 41 ~~qualified~~ TAX-QUALIFIED status of the system or any plan administered by
- 42 the board or administrator.
- 43 8. Empower the fund administrator to take actions on behalf of the
- 44 board that are necessary for the protection and administration of the fund

1 or the assets of other plans that the board administers pursuant to the
2 guidelines of the board.

3 9. Do all acts, whether or not expressly authorized, that may be
4 deemed necessary or proper for the protection of the investments held in
5 the fund or owned by other plans or trusts that the board administers.

6 10. Settle threatened or actual litigation against any system or
7 plan that the board administers.

8 K. Investment expenses and operation and administrative expenses of
9 the board shall be accounted for separately and allocated against
10 investment income.

11 L. The board, as soon as possible within a period of six months
12 following the close of any fiscal year, shall transmit to the governor and
13 the legislature a comprehensive annual financial report on the operation
14 of the system and other plans that the board administers ~~containing~~ THAT
15 CONTAINS, among other things:

16 1. A balance sheet.

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

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

20 4. A list of investments owned.

21 5. The total rate of return, yield on cost, and percent of cost to
22 market value of the fund and the assets of other plans that the board
23 administers.

24 6. Any other statistical and financial data that may be necessary
25 for the proper understanding of the financial condition of the system and
26 other plans that the board administers and the results of their
27 operations. A synopsis of the annual report shall be published for the
28 information of members of the system, the elected officials' retirement
29 plan or the corrections officer retirement plan.

30 7. An analysis of the long-term level percent of employer
31 contributions and compensation structure and whether the funding
32 methodology is sufficient to pay one hundred percent of the unfunded
33 accrued liability under the elected officials' retirement plan.

34 8. An estimate of the aggregate employer contribution rate for the
35 public safety personnel retirement system for the next ten fiscal years
36 and an estimate of the aggregate employer contribution rate for the
37 corrections officer retirement plan for the next ten fiscal years.

38 9. An estimate of the employer contribution rates for the next ten
39 fiscal years for each of the following employers within the public safety
40 personnel retirement system:

41 (a) Department of liquor licenses and control.

42 (b) Department of public safety.

43 (c) Northern Arizona university.

44 (d) University of Arizona.

45 (e) Arizona state university.

- 1 (f) Arizona game and fish department.
2 (g) Department of law.
3 (h) Department of emergency and military affairs.
4 (i) Arizona state parks board.
5 10. An estimate of the employer contribution rates for the next ten
6 fiscal years for each of the following employers within the corrections
7 officer retirement plan:
8 (a) State department of corrections.
9 (b) Department of public safety.
10 (c) The judiciary.
11 (d) Department of juvenile corrections.
12 11. An estimate of the aggregate fees paid for private equity
13 investments, including management fees and performance fees.
14 M. The board shall:
15 1. Maintain the accounts of the system and other plans that the
16 board administers and issue statements to each employer annually and to
17 each member who ~~may request it~~ REQUESTS A STATEMENT.
18 2. Report the results of the actuarial valuations to the local
19 boards and employers.
20 3. Contract on a fee basis with an independent investment counsel
21 to advise the board in the investment management of the fund and assets of
22 other plans that the board administers and with an independent auditing
23 firm to audit the board's accounting.
24 4. Permit the auditor general to make an annual audit and transmit
25 the results to the governor and the legislature.
26 5. Contract on a fee basis with an actuary who shall make actuarial
27 valuations of the system and other plans that the board administers, be
28 the technical adviser of the board on matters regarding the operation of
29 the funds created by the provisions of the system, the elected officials'
30 retirement plan, the corrections officer retirement plan and the public
31 safety cancer insurance policy program and perform other duties required
32 in connection therewith. The actuary must be a member of a nationally
33 recognized association or society of actuaries.
34 6. Employ, as administrator, a person, state department or other
35 body to serve at the pleasure of the board.
36 7. Establish procedures and guidelines for contracts with
37 actuaries, auditors, investment counsel and legal counsel and for
38 safeguarding of securities.
39 8. BEGINNING WITH THE ACTUARIAL VALUATION REPORT ISSUED FOR FISCAL
40 YEAR 2018-2019, FOR ALL OF THE DEFINED BENEFIT RETIREMENT PLANS THE BOARD
41 MANAGES, ADOPT AN ASSUMED RATE OF RETURN THAT IS NOT GREATER THAN THE
42 PRIOR FISCAL YEAR UNLESS THE FUNDED STATUS OF ALL DEFINED BENEFIT PLANS
43 THE BOARD MANAGES ARE AT LEAST EIGHTY PERCENT.
44 N. The administrator, under the direction of the board, shall:
45 1. Administer this article.

1 2. Be responsible for the recruitment, hiring and day-to-day
2 management of employees.

3 3. Invest the monies of the system and other plans that the board
4 administers as the board deems necessary and prudent as provided in
5 subsections F and J of this section and subject to the investment policies
6 and fund objectives adopted by the board.

7 4. Establish and maintain an adequate system of accounts and
8 records for the system and other plans that the board administers, which
9 shall be integrated with the accounts, records and procedures of the
10 employers so that the system and other plans that the board administers
11 ~~operates~~ OPERATE most effectively and at minimum expense and that
12 duplication of records and accounts is avoided.

13 5. In accordance with the board's governance policy and procedures
14 and the budget adopted by the board, hire ~~such~~ employees and services the
15 administrator deems necessary and prescribe their duties, including the
16 hiring of one or more assistant administrators to manage the system's
17 operations, investments and legal affairs.

18 6. Be responsible for income, the collection of the income and the
19 accuracy of all expenditures.

20 7. Recommend to the board annual contracts for the system's
21 actuary, auditor, investment counsel, legal counsel and safeguarding of
22 securities.

23 8. Perform additional duties and powers prescribed by the board and
24 delegated to the administrator.

25 0. The system is an independent trust fund and the board is not
26 subject to title 41, chapter 6. Contracts for goods and services approved
27 by the board are not subject to title 41, chapter 23. As an independent
28 trust fund whose assets are separate and apart from all other funds of
29 this state, the system and the board are not subject to the restrictions
30 prescribed in section 35-154 or article IX, sections 5 and 8, Constitution
31 of Arizona. Loans, guarantees, investment management agreements and
32 investment contracts that are entered into by the board are contracts
33 memorializing obligations or interests in securities that the board has
34 concluded, after thorough due diligence, do not involve investments in
35 Sudan or Iran or otherwise provide support to terrorists or in any way
36 facilitate illegal immigration into the United States. These contracts do
37 not involve the procurement, supply or provision of goods, equipment,
38 labor, materials or services that would require the warranties required by
39 section 41-4401.

40 P. The board, the administrator, the assistant administrators and
41 all persons employed by them are subject to title 41, chapter 4,
42 article 4. The administrator, assistant administrators and other
43 employees of the board are entitled to receive compensation pursuant to
44 section 38-611.

1 Q. In consultation with the director of the department of
2 administration, the board may enter into employment agreements and
3 establish the terms of those agreements with persons holding any of the
4 following system positions:

- 5 1. Administrator.
- 6 2. Deputy or assistant administrator.
- 7 3. Chief investment officer.
- 8 4. Deputy chief investment officer.
- 9 5. Fiduciary or investment counsel.

10 R. The attorney general or an attorney approved by the attorney
11 general and paid by the fund ~~shall be~~ IS the attorney for the board and
12 shall represent the board in any legal proceeding or forum that the board
13 deems appropriate. The board, administrator, assistant administrators and
14 employees of the board are not personally liable for any acts done in
15 their official capacity in good faith reliance on the written opinions of
16 the board's attorney.

17 S. At least once in each five-year period after the effective date,
18 the actuary shall make an actuarial investigation into the mortality,
19 service and compensation experience of the members and beneficiaries of
20 the system and other plans that the board administers and shall make a
21 special valuation of the assets and liabilities of the monies of the
22 system and plans. Taking into account the results of the investigation
23 and special valuation, the board shall adopt for the system and other
24 plans that the board administers those mortality, service and other tables
25 deemed necessary.

26 T. On the basis of the tables the board adopts, the actuary shall
27 make a valuation of the assets and liabilities of the funds of the system
28 and other plans that the board administers ~~not less frequently than~~ AT
29 LEAST every year. By November 1 of each year the board shall provide a
30 preliminary report and by December 15 of each year provide a final report
31 to the governor, the speaker of the house of representatives and the
32 president of the senate on the contribution rate for the ensuing fiscal
33 year.

34 U. Neither the board nor any member or employee of the board shall
35 directly or indirectly, for himself or as an agent, in any manner use the
36 monies or deposits of the fund except to make current and necessary
37 payments, nor shall the board or any member or employee become an endorser
38 or surety or in any manner an obligor for monies loaned by or borrowed
39 from the fund or the assets of any other plans that the board administers.

40 V. Financial or commercial information that is provided to the
41 board, employees of the board and attorneys of the board in connection
42 with investments in which the board has invested or investments the board
43 has considered for investment is confidential, proprietary and not a
44 public record if the information is information that would customarily not

1 be released to the public by the person or entity from whom the
2 information was obtained.

3 W. A person who is a dealer as defined in section 44-1801 and who
4 is involved in securities or investments related to the board's
5 investments is not eligible to serve on the board.

6 X. ~~Beginning January 1, 2017,~~ The public safety personnel
7 retirement system advisory committee is established and shall serve as a
8 liaison between the board and the members and employers of the system.
9 The committee shall be appointed by the chairperson of the board from
10 names submitted to the chairperson by associations representing law
11 enforcement, firefighters, state government, counties, cities and towns
12 and tribal governments. The committee shall select a chairperson from
13 among its members each calendar year. The committee shall consist of the
14 following ten members:

- 15 1. A member who is a law enforcement officer.
- 16 2. A member who is a firefighter.
- 17 3. A member of the elected officials' retirement plan.
- 18 4. A member of the corrections officer retirement plan.
- 19 5. A retiree from the public safety personnel retirement system.
- 20 6. A representative from a city or town in this state.
- 21 7. A representative from a county in this state.
- 22 8. A representative from a fire district in this state.
- 23 9. A representative from a state employer.
- 24 10. A representative from a tribal government located in this
25 state.