

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

CHAPTER 79
SENATE BILL 1354

AN ACT

AMENDING SECTION 35-311, ARIZONA REVISED STATUTES; AMENDING TITLE 35, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 35-314.04; AMENDING TITLE 38, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.1; RELATING TO PUBLIC RETIREMENT SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 35-311, Arizona Revised Statutes, is amended to
3 read:

4 35-311. State board of investment; membership; powers and
5 duties

6 A. The state board of investment is established consisting of the
7 state treasurer, the director of the department of administration or the
8 director of the department of administration's designee, the director of
9 the department of insurance and financial institutions or the director of
10 the department of insurance and financial institutions' designee and two
11 individuals appointed by the state treasurer, one of whom has verifiable
12 expertise in investment management and one of whom represents a public
13 entity with current deposits in a local government investment pool. The
14 state treasurer is ~~chairman~~ CHAIRPERSON of the board. The board shall
15 keep an accurate record of its proceedings. A certified copy of the
16 record is prima facie evidence of the matters appearing in the record in
17 any court. A meeting of the board may be called at any time by the
18 ~~chairman~~ CHAIRPERSON or a majority of the board members.

19 B. The state board of investment shall:

20 1. Hold regular monthly meetings.

21 2. Review investments of treasury monies.

22 3. Serve as trustees of the permanent state land funds and provide
23 management of the assets of the funds consistent with the requirements of
24 article X, section 7, Constitution of Arizona.

25 4. Serve as trustees of any endowments established pursuant to
26 section 35-314.03.

27 5. SERVE AS TRUSTEES OF ANY PENSION PREFUNDING PLAN INVESTMENT
28 ACCOUNTS ESTABLISHED PURSUANT TO SECTION 35-314.04.

29 C. The state treasurer shall furnish to the board of investment at
30 its regular monthly meeting a report of the performance of current
31 investments and a report of the current investments as of the close of
32 business of the preceding month. The state treasurer shall make these
33 reports available for inspection by the public during normal working hours
34 at the office of the state treasurer for a period of time of not less than
35 two years after the date of the report.

36 D. The board of investment may order the state treasurer to sell
37 any of the securities, and any order shall specifically describe the
38 securities and fix the time period during which they are to be sold.
39 Securities so ordered to be sold shall be sold for cash by the state
40 treasurer at the current market price. The state treasurer and the
41 members of the board are not accountable for any loss occasioned by sales
42 of securities at prices lower than their book value. Any loss shall be
43 charged against earnings received from interest or capital gains on the
44 applicable treasury monies.

1 E. The board may establish standards in addition to those
2 established by section 35-317, subsection A for the qualification of
3 agents acting pursuant to section 35-317, subsection B.

4 Sec. 2. Title 35, chapter 2, article 2, Arizona Revised Statutes,
5 is amended by adding section 35-314.04, to read:

6 35-314.04. Pension prefunding plan investment accounts; state
7 treasurer; investment authority; definitions

8 A. IN ADDITION TO THE INVESTMENT AUTHORITY PURSUANT TO SECTION
9 35-313, THE STATE TREASURER MAY INVEST AND REINVEST PENSION PREFUNDING
10 PLAN MONIES IN EQUITY SECURITIES PURSUANT TO SECTION 35-314 FOR PENSION
11 PREFUNDING PLAN INVESTMENT ACCOUNTS.

12 B. ALL PENSION PREFUNDING PLAN MONIES SHALL BE ACCOUNTED FOR
13 SEPARATELY FROM ALL OTHER FUNDS. MONIES MAY NOT BE TAKEN FROM ONE
14 INVESTMENT ACCOUNT FOR DEPOSIT IN ANY OTHER INVESTMENT ACCOUNT.

15 C. ALL MONIES IN PENSION PREFUNDING PLAN INVESTMENT ACCOUNTS SHALL
16 BE INVESTED IN SAFE INTEREST-BEARING SECURITIES AND PRUDENT EQUITY
17 SECURITIES CONSISTENT WITH THE REQUIREMENTS OF SECTION 35-314.

18 D. THE EARNINGS, INTEREST, DIVIDENDS AND REALIZED CAPITAL GAINS AND
19 LOSSES FROM THE INVESTMENT OF EACH INVESTMENT ACCOUNT SHALL BE CREDITED TO
20 THAT INVESTMENT ACCOUNT.

21 E. PENSION PREFUNDING PLAN MONIES ARE FOR THE PURPOSE OF ALLOWING
22 EMPLOYERS THAT PROVIDE A DEFINED BENEFIT PENSION PLAN TO THEIR EMPLOYEES
23 TO PREFUND THE EMPLOYER'S REQUIRED DEFINED BENEFIT PENSION PAYMENTS.

24 F. PENSION PREFUNDING PLAN MONIES ARE AN INTEGRAL PART OF THIS
25 STATE AND OF THE POLITICAL SUBDIVISIONS OF THIS STATE AND PERFORM AN
26 ESSENTIAL GOVERNMENTAL FUNCTION. INVESTMENTS OF PENSION PREFUNDING PLAN
27 MONIES ARE INTENDED TO BE STRUCTURED AND ADMINISTERED IN A MANNER THAT
28 RESULTS IN THE TAX-EXEMPT STATUS OF THE PENSION PREFUNDING PLAN'S INCOME.
29 THE STATE BOARD OF INVESTMENT MAY ADOPT RULES, POLICIES AND PROCEDURES AS
30 THE BOARD DEEMS NECESSARY TO ENSURE THAT THE PREFUNDING PLAN'S INCOME IS
31 NOT SUBJECT TO FEDERAL INCOME TAX.

32 G. THE GOVERNING BODY OF AN EMPLOYER MAY AUTHORIZE AND REQUEST THE
33 STATE TREASURER TO INVEST PENSION PREFUNDING PLAN MONIES IN A PENSION
34 PREFUNDING PLAN INVESTMENT ACCOUNT AND SET FORTH THE TERMS OF THE
35 DISTRIBUTIONS FROM SUCH INVESTMENT ACCOUNT FOR THE EMPLOYER PURSUANT TO
36 THIS SECTION.

37 H. PENSION PREFUNDING PLAN INVESTMENT ACCOUNTS ESTABLISHED PURSUANT
38 TO THIS SECTION OR ANY OTHER SECTION IN THIS TITLE AND THE PENSION
39 PREFUNDING PLAN MONIES IN SUCH ACCOUNTS ARE SEPARATE AND APART FROM THE
40 ARIZONA EMPLOYERS' PENSION PREFUNDING PLAN ESTABLISHED BY TITLE 38,
41 CHAPTER 5, ARTICLE 7.1 AND THE ASSETS, RECEIPTS, EARNINGS AND INCOME OF
42 THAT PLAN.

43 I. FOR THE PURPOSES OF THIS SECTION:

44 1. "DEFINED BENEFIT PENSION" MEANS:

1 (a) THE ARIZONA STATE RETIREMENT SYSTEM ESTABLISHED BY TITLE 38,
2 CHAPTER 5, ARTICLES 2 AND 2.1.

3 (b) THE ELECTED OFFICIALS' RETIREMENT PLAN ESTABLISHED BY TITLE 38,
4 CHAPTER 5, ARTICLE 3.

5 (c) THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM ESTABLISHED BY
6 TITLE 38, CHAPTER 5, ARTICLE 4.

7 (d) THE CORRECTIONS OFFICER RETIREMENT PLAN ESTABLISHED BY TITLE
8 38, CHAPTER 5, ARTICLE 6.

9 (e) ANY DEFINED BENEFIT PENSION PLAN ESTABLISHED BY THE GOVERNING
10 BODY OF ANY POLITICAL SUBDIVISION OF THIS STATE FOR ITS EMPLOYEES.

11 2. "EMPLOYER" MEANS AN EMPLOYER AS DEFINED IN SECTION 38-711,
12 38-801, 38-842 OR 38-881 OR ANY GOVERNING BODY OF A POLITICAL SUBDIVISION
13 OF THIS STATE THAT HAS ESTABLISHED A DEFINED BENEFIT PENSION PLAN FOR ITS
14 EMPLOYEES.

15 3. "TAX-EXEMPT STATUS OF PENSION PREFUNDING PLAN'S INCOME" MEANS
16 THAT THE PREFUNDING PLAN'S INCOME IS EXCLUDED FROM GROSS INCOME FOR THE
17 PURPOSES OF THE ASSESSMENT OF FEDERAL INCOME TAX UNDER SECTION 115 OF THE
18 INTERNAL REVENUE CODE, INTERGOVERNMENTAL IMMUNITY OR SIMILAR GROUNDS.

19 Sec. 3. Title 38, chapter 5, Arizona Revised Statutes, is amended
20 by adding article 7.1, to read:

21 ARTICLE 7.1. ARIZONA EMPLOYERS' PENSION PREFUNDING PLAN

22 38-931. Definitions

23 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

24 1. "ADMINISTERING AND INVESTING":

25 (a) MEANS ADMINISTERING, MANAGING, OPERATING, INVESTING AND
26 DISTRIBUTING THE PREFUNDING PLAN AND ITS ASSETS, INCLUDING ACCEPTING,
27 DEPOSITING, HOLDING, INVESTING, REINVESTING AND TRANSFERRING THE ASSETS OF
28 THE PREFUNDING PLAN.

29 (b) INCLUDES EMPLOYING LEGAL SERVICES.

30 2. "BOARD" MEANS THE BOARD OF TRUSTEES OF THE SYSTEM.

31 3. "DEFINED BENEFIT PENSION" MEANS THE ELECTED OFFICIALS'
32 RETIREMENT PLAN ESTABLISHED BY ARTICLE 3 OF THIS CHAPTER, THE PUBLIC
33 SAFETY PERSONNEL RETIREMENT SYSTEM ESTABLISHED BY ARTICLE 4 OF THIS
34 CHAPTER AND THE CORRECTIONS OFFICER RETIREMENT PLAN ESTABLISHED BY ARTICLE
35 6 OF THIS CHAPTER.

36 4. "EMPLOYER" MEANS AN EMPLOYER AS DEFINED IN SECTION 38-801,
37 38-842 OR 38-881.

38 5. "PARTICIPATING EMPLOYER" MEANS AN EMPLOYER THAT IS AUTHORIZED
39 AND HAS ELECTED TO PARTICIPATE IN THE PREFUNDING PLAN AND WHOSE GOVERNING
40 BODY HAS ENTERED INTO A CONTRACT WITH THE BOARD AS PROVIDED IN THIS
41 ARTICLE.

42 6. "PREFUNDING PLAN" MEANS THE ARIZONA EMPLOYERS' PENSION
43 PREFUNDING PLAN ESTABLISHED BY THIS ARTICLE.

1 7. "REQUIRED PENSION CONTRIBUTIONS" MEANS AN EMPLOYER'S UNFUNDED
2 LIABILITY AND FUTURE REQUIRED CONTRIBUTIONS UNDER THE APPLICABLE DEFINED
3 BENEFIT PENSION, WHETHER PERTAINING TO A SINGLE YEAR OR MULTIPLE YEARS.

4 8. "SYSTEM" MEANS THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.

5 9. "TAX-EXEMPT STATUS OF THE PREFUNDING PLAN'S INCOME" MEANS THAT
6 THE PREFUNDING PLAN'S INCOME IS EXCLUDED FROM GROSS INCOME FOR THE
7 PURPOSES OF THE ASSESSMENT OF FEDERAL INCOME TAX UNDER SECTION 115 OF THE
8 INTERNAL REVENUE CODE, INTERGOVERNMENTAL IMMUNITY OR SIMILAR GROUNDS.

9 10. "TRUSTEE" HAS THE SAME MEANING PRESCRIBED IN SECTION 38-848.04.

10 38-932. Arizona employers' pension prefunding plan

11 A. THE ARIZONA EMPLOYERS' PENSION PREFUNDING PLAN IS ESTABLISHED AS
12 A SPECIAL TRUST FUND FOR THE PURPOSE OF ALLOWING PARTICIPATING EMPLOYERS
13 THAT PROVIDE A DEFINED BENEFIT PENSION PLAN TO THEIR EMPLOYEES TO PREFUND
14 THE EMPLOYER'S REQUIRED PENSION CONTRIBUTIONS.

15 B. THE PREFUNDING PLAN AND THE ASSETS HELD IN THE PREFUNDING PLAN
16 ARE SEPARATE AND APART FROM:

17 1. THE PUBLIC SAFETY PERSONNEL RETIREMENT FUND AND ANY OTHER FUND,
18 PROGRAM OR PLAN ADMINISTERED BY THE BOARD.

19 2. ANY PENSION PREFUNDING PLAN INVESTMENT ACCOUNTS ESTABLISHED
20 PURSUANT TO SECTION 35-314.04 OR ANY OTHER SECTION OF TITLE 35 AND ANY
21 PENSION PREFUNDING PLAN MONIES IN SUCH ACCOUNTS.

22 C. THE PREFUNDING PLAN IS AN INTEGRAL PART OF THIS STATE AND OF THE
23 POLITICAL SUBDIVISIONS OF THIS STATE, PERFORMS AN ESSENTIAL GOVERNMENTAL
24 FUNCTION AND IS AN ENTITY WITH THE POWER TO SUE AND BE SUED. THE
25 PREFUNDING PLAN IS INTENDED TO BE STRUCTURED AND ADMINISTERED IN A MANNER
26 THAT RESULTS IN THE TAX-EXEMPT STATUS OF THE PREFUNDING PLAN'S INCOME.

27 38-933. Administration and investment by the board;
28 investment options; administrative costs

29 A. THE BOARD SHALL HAVE THE SOLE AND EXCLUSIVE CONTROL OF THE
30 ADMINISTRATION AND INVESTMENT OF THE PREFUNDING PLAN.

31 B. THE BOARD SHALL ADMINISTER AND INVEST THE PREFUNDING PLAN AS
32 PROVIDED IN THIS ARTICLE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS
33 TITLE, THE BOARD SHALL OFFER EACH PARTICIPATING EMPLOYER INVESTMENT
34 OPTIONS FOR MONIES IN THE PREFUNDING PLAN CONSISTING OF COST-EFFECTIVE,
35 DIVERSIFIED INVESTMENT PORTFOLIOS IN PUBLICLY TRADED INVESTMENT OPTIONS
36 THAT DO NOT EXCEED THE RISK AND RETURN PROFILES ESTABLISHED BY THE BOARD,
37 CONSISTENT WITH THE BOARD'S FIDUCIARY DUTY.

38 C. EXCEPT AS OTHERWISE SPECIFIED IN THIS ARTICLE, THE PROVISIONS OF
39 ARTICLE 4 OF THIS CHAPTER PERTAINING TO THE ADMINISTRATION AND INVESTMENT
40 OF THE SYSTEM, INCLUDING DELEGATION OF AUTHORITY TO THE ADMINISTRATOR AND
41 OTHERS PERSONS, SUPPLEMENT THIS ARTICLE.

42 D. THE BOARD MAY KEEP ASSETS OF THE PREFUNDING PLAN SEPARATE OR
43 COMMINGLE THE ASSETS OF THE PREFUNDING PLAN IN ONE OR MORE GROUP TRUSTS,
44 SUBJECT TO THE CREDITING OF ASSETS, RECEIPTS AND EARNINGS AND CHARGING OF
45 PAYMENTS TO THE APPROPRIATE EMPLOYER.

1 E. ALL ASSETS OF AND INCOME EARNED ON THE PREFUNDING PLAN SHALL BE
2 CREDITED TO THE PREFUNDING PLAN.

3 F. EACH PARTICIPATING EMPLOYER SHALL PAY THE REASONABLE
4 ADMINISTRATIVE COSTS AS DETERMINED BY THE BOARD IN ITS SOLE AND ABSOLUTE
5 DISCRETION FOR THE ADMINISTRATION AND INVESTMENT OF THE PREFUNDING PLAN.
6 THE BOARD SHALL DEPOSIT IN THE PREFUNDING PLAN ALL MONIES RECEIVED BY THE
7 BOARD FOR THOSE ADMINISTRATIVE COSTS.

8 38-934. Board authorization of employer participation;
9 employer election

10 A. THE BOARD, PURSUANT TO THE TERMS AND CONDITIONS SET BY THE
11 BOARD, MAY AUTHORIZE AN EMPLOYER TO PARTICIPATE IN THE PREFUNDING PLAN.

12 B. AN EMPLOYER AUTHORIZED BY THE BOARD MAY ELECT TO PARTICIPATE IN
13 THE PREFUNDING PLAN IF ALL OF THE FOLLOWING OCCUR:

14 1. THE GOVERNING BODY OF THE EMPLOYER ADOPTS A RESOLUTION
15 REQUESTING TO PARTICIPATE IN THE PREFUNDING PLAN.

16 2. THE EMPLOYER SUBMITS A WRITTEN REQUEST TO PARTICIPATE IN THE
17 PREFUNDING PLAN WITH THE RESOLUTION TO THE ADMINISTRATOR OF THE BOARD.

18 3. THE GOVERNING BODY OF THE EMPLOYER ENTERS INTO A CONTRACT WITH
19 THE BOARD SETTING FORTH THE TERMS AND CONDITIONS OF THAT EMPLOYER'S
20 PARTICIPATION IN THE PREFUNDING PLAN, INCLUDING REFLECTING OR
21 INCORPORATING THE REQUIREMENTS OF THIS ARTICLE AND ADDRESSING FUNDING AND
22 EXPENDITURES AND ACTUARIAL, ACCOUNTING, REPORTING AND INVESTMENT
23 CONSIDERATIONS.

24 38-935. Transfer of monies by employer

25 A. THE BOARD MAY AUTHORIZE A PARTICIPATING EMPLOYER TO TRANSFER
26 MONIES INTO THE PREFUNDING PLAN. A TRANSFER OF MONIES INTO THE PREFUNDING
27 PLAN SHALL COMPLY WITH ALL OF THE FOLLOWING:

28 1. THE TRANSFER SATISFIES THE TERMS OF THE CONTRACT BETWEEN THE
29 GOVERNING BODY OF THE PARTICIPATING EMPLOYER AND THE BOARD.

30 2. THE TRANSFER SATISFIES THE REQUIREMENTS UNDER THE APPLICABLE
31 GOVERNMENTAL ACCOUNTING STANDARDS.

32 3. THE TRANSFER DOES NOT JEOPARDIZE THE TAX-EXEMPT STATUS OF THE
33 PREFUNDING PLAN'S INCOME.

34 B. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND SECTIONS 38-936
35 AND 38-937, MONIES TRANSFERRED BY A PARTICIPATING EMPLOYER TO THE
36 PREFUNDING PLAN PURSUANT TO SUBSECTION A OF THIS SECTION ARE IRREVOCABLE
37 AND MAY NOT BE REFUSED BY THE BOARD OR REFUNDED OR RETURNED TO THE
38 PARTICIPATING EMPLOYER MAKING THE TRANSFER.

39 38-936. Transfer of assets out of the prefunding plan;
40 requirements

41 A. THE BOARD MAY AUTHORIZE A PARTICIPATING EMPLOYER TO TRANSFER
42 ASSETS OUT OF THE PREFUNDING PLAN IF THE ASSET TRANSFER COMPLIES WITH
43 SUBSECTION B OF THIS SECTION AND ALL OF THE FOLLOWING:

44 1. THE TRANSFER SATISFIES THE TERMS OF THE CONTRACT BETWEEN THE
45 GOVERNING BODY OF THE PARTICIPATING EMPLOYER AND THE BOARD.

1 SHALL BE TRANSFERRED TO THE SYSTEM TO PAY THE PARTICIPATING EMPLOYER'S
2 REQUIRED PENSION CONTRIBUTIONS UNDER THE APPLICABLE DEFINED BENEFIT
3 PENSION. ANY REMAINING MONIES IN EXCESS OF THE AMOUNT NECESSARY TO
4 SATISFY THE PARTICIPATING EMPLOYER'S REQUIRED PENSION CONTRIBUTIONS SHALL
5 BE TRANSFERRED TO THE PARTICIPATING EMPLOYER ONLY IF BOTH OF THE FOLLOWING
6 APPLY:

7 1. THE TRANSFER DOES NOT JEOPARDIZE THE TAX-EXEMPT STATUS OF THE
8 PREFUNDING PLAN'S INCOME.

9 2. THE TRANSFER COMPLIES WITH THE REQUIREMENTS UNDER THE APPLICABLE
10 GOVERNMENTAL ACCOUNTING STANDARDS.

11 C. IF THE PREFUNDING PLAN IS TERMINATED AS DESCRIBED IN SUBSECTION
12 A, PARAGRAPH 4 OF THIS SECTION, THE ASSETS ATTRIBUTABLE TO A PARTICIPATING
13 EMPLOYER'S TRANSFERS INTO THE PREFUNDING PLAN, INCLUDING ANY EARNINGS ON
14 SUCH ASSETS, AFTER THE PAYMENT OF ANY OBLIGATION OF THAT PARTICIPATING
15 EMPLOYER OWED TO THE PREFUNDING PLAN FOR REASONABLE ADMINISTRATIVE COSTS,
16 SHALL BE TRANSFERRED TO THE SYSTEM TO PAY THE PARTICIPATING EMPLOYER'S
17 REQUIRED PENSION CONTRIBUTIONS. ANY REMAINING MONIES IN EXCESS OF THE
18 AMOUNT NECESSARY TO SATISFY THE PARTICIPATING EMPLOYER'S REQUIRED PENSION
19 CONTRIBUTIONS SHALL BE TRANSFERRED TO THE PARTICIPATING EMPLOYER IF THE
20 TRANSFER COMPLIES WITH SUBSECTION B, PARAGRAPHS 1 AND 2 OF THIS SECTION.

21 38-938. Annual financial statements; audit; actuarial
22 valuation report; unfunded pension liability
23 calculation

24 A. THE BOARD SHALL CAUSE THE ANNUAL FINANCIAL STATEMENTS OF THE
25 PREFUNDING PLAN TO BE PREPARED IN ACCORDANCE WITH THE APPLICABLE
26 GOVERNMENTAL ACCOUNTING STANDARDS AND AN AUDIT TO BE CONDUCTED OF THOSE
27 FINANCIAL STATEMENTS BY A QUALIFIED INDEPENDENT CERTIFIED ACCOUNTING FIRM
28 FOR EACH FISCAL YEAR IN ACCORDANCE WITH THE APPLICABLE GOVERNMENTAL
29 AUDITING STANDARDS.

30 B. FOR THE PURPOSES OF THE BOARD'S PREPARATION OF THE ANNUAL
31 EMPLOYER ACTUARIAL VALUATION REPORT REGARDING THE DEFINED BENEFIT PENSION,
32 A TOTAL ASSET AMOUNT COMPRISED OF THE SUM OF THE ASSETS IN THE PREFUNDING
33 PLAN AND THE ASSETS OF THE DEFINED BENEFIT PENSION SHALL BE USED IN THE
34 CALCULATION OF THE UNFUNDED PENSION LIABILITY AND THE ANNUAL ACTUARIAL
35 REQUIRED CONTRIBUTION AMOUNT.

36 38-939. Nontaxable status of prefunding plan; intent

37 A. ASSETS TRANSFERRED INTO OR OUT OF OR HELD IN THE PREFUNDING PLAN
38 AND INVESTMENT INCOME ON ASSETS IN THE PREFUNDING PLAN ARE EXEMPT FROM
39 STATE, COUNTY AND MUNICIPAL TAXES.

40 B. THE LEGISLATURE INTENDS THAT THE PREFUNDING PLAN'S INCOME NOT BE
41 SUBJECT TO FEDERAL INCOME TAX. THE BOARD MAY ADOPT ADDITIONAL RULES,
42 POLICIES AND PROCEDURES AS THE BOARD DEEMS NECESSARY OR APPROPRIATE TO
43 FULFILL THE LEGISLATURE'S INTENT THAT THE PREFUNDING PLAN'S INCOME NOT BE
44 SUBJECT TO FEDERAL INCOME TAX.

1 C. IF THE BOARD RECEIVES NOTIFICATION FROM THE UNITED STATES
2 INTERNAL REVENUE SERVICE THAT THIS ARTICLE OR ANY PORTION OF THIS ARTICLE
3 WILL JEOPARDIZE THE TAX-EXEMPT STATUS OF THE PREFUNDING PLAN'S INCOME, THE
4 PORTION OF THIS ARTICLE THAT WILL CAUSE THE DISQUALIFICATION DOES NOT
5 APPLY.

6 38-940. Board rules; procedures; discretionary fiduciary duty

7 A. THE BOARD MAY ADOPT RULES, POLICIES AND PROCEDURES REGARDING THE
8 PREFUNDING PLAN, INCLUDING ADMINISTERING AND INVESTING THE ASSETS
9 TRANSFERRED INTO THE PREFUNDING PLAN BY PARTICIPATING EMPLOYERS,
10 INVESTMENT OPTIONS AND TERMINATION OF EMPLOYER'S PARTICIPATION IN THE
11 PREFUNDING PLAN, AS THE BOARD DEEMS NECESSARY TO IMPLEMENT THIS ARTICLE.
12 THE BOARD, IN ADMINISTERING AND INVESTING THE PREFUNDING PLAN, MAY EMPLOY
13 SERVICES, INCLUDING LEGAL SERVICES, AND DO ALL ACTS, WHETHER EXPRESSLY
14 AUTHORIZED, THAT IT DEEMS NECESSARY OR APPROPRIATE FOR DEFENDING,
15 PROTECTING OR ADVANCING THE PREFUNDING PLAN.

16 B. THE BOARD HAS FULL DISCRETIONARY FIDUCIARY AUTHORITY TO
17 DETERMINE ALL QUESTIONS ARISING IN CONNECTION WITH ADMINISTERING AND
18 INVESTING THE PREFUNDING PLAN, INCLUDING ITS INTERPRETATION AND ANY
19 FACTUAL QUESTIONS ARISING UNDER THE PREFUNDING PLAN. ANY DETERMINATION,
20 AUTHORIZATION, APPROVAL, REQUEST, REQUIREMENT OR OTHER ACTION, ELECTION OR
21 DECISION, INCLUDING THE SETTING OF TERMS AND CONDITIONS, IN CONNECTION
22 WITH THE PREFUNDING PLAN BY THE BOARD PURSUANT TO THIS ARTICLE IS SUBJECT
23 TO, AND SHALL BE MADE IN, THE SOLE AND ABSOLUTE DISCRETION OF THE BOARD.
24 THE BOARD, INDIVIDUAL TRUSTEES, THE ADMINISTRATOR, DEPUTY OR ASSISTANT
25 ADMINISTRATORS AND EMPLOYEES OF THE BOARD DO NOT GUARANTEE THE PREFUNDING
26 PLAN IN ANY MANNER AGAINST LOSS OR DEPRECIATION, ARE NOT PERSONALLY LIABLE
27 FOR ANY ACT OR FAILURE TO ACT MADE IN THEIR OFFICIAL CAPACITY IN GOOD
28 FAITH AND ARE INDEMNIFIED FROM THE ASSETS OF THE PREFUNDING PLAN FOR ANY
29 JUDGMENT AGAINST ANY OF THEM, INCLUDING ATTORNEY FEES, COSTS AND EXPENSES
30 REASONABLY INCURRED IN THE DEFENSE OF ANY CLAIM ARISING FROM ANY ACT OR
31 FAILURE TO ACT MADE IN GOOD FAITH. THE BOARD MAY APPEAR BEFORE AND
32 MAINTAIN AN ACTION IN POLITICAL SUBDIVISIONS OF THIS STATE, COURTS AND
33 OTHER FORUMS, IN EACH CASE THROUGH A REPRESENTATIVE OR COUNSEL APPOINTED
34 BY THE BOARD, AS THE BOARD DEEMS NECESSARY OR APPROPRIATE, TO DEFEND,
35 PROTECT, ADVANCE OR OTHERWISE ASSERT THE INTERESTS OF THE PREFUNDING PLAN,
36 THE BOARD, A TRUSTEE OR MEMBER OF THE BOARD, THE ADMINISTRATOR, DEPUTY OR
37 ASSISTANT ADMINISTRATORS, EMPLOYEES OF THE BOARD AND PARTICIPATING
38 EMPLOYERS.

39 C. A TRUSTEE OR MEMBER OF THE BOARD IS, IN DISCHARGING DUTIES WITH
40 RESPECT TO OR IN CONNECTION WITH THE PREFUNDING PLAN OR THE SYSTEM,
41 ENTITLED TO RELY ON, AMONG OTHER THINGS, INFORMATION, OPINIONS, REPORTS OR
42 STATEMENTS, INCLUDING FINANCIAL STATEMENTS AND OTHER FINANCIAL DATA,
43 PREPARED OR PRESENTED BY ANY OF THE FOLLOWING:

44 1. THE ADMINISTRATOR, ONE OR MORE DEPUTY OR ASSISTANT
45 ADMINISTRATORS OR EMPLOYEES OF THE SYSTEM WHOM THE TRUSTEE OR MEMBER OF

1 THE BOARD REASONABLY BELIEVES ARE RELIABLE AND COMPETENT IN THE MATTERS
2 PRESENTED.

3 2. LEGAL COUNSEL, PUBLIC ACCOUNTANTS OR OTHER PERSONS AS TO MATTERS
4 THE TRUSTEE OR MEMBER OF THE BOARD REASONABLY BELIEVES ARE WITHIN THE
5 PERSON'S PROFESSIONAL OR EXPERT COMPETENCE.

6 3. A COMMITTEE OF THE BOARD OF WHICH THE TRUSTEE OR MEMBER OF THE
7 BOARD IS NOT A MEMBER IF THE TRUSTEE OR MEMBER OF THE BOARD REASONABLY
8 BELIEVES THE COMMITTEE MERITS CONFIDENCE.

9 D. A TRUSTEE OR MEMBER OF THE BOARD IS NOT LIABLE FOR ANY ACTION
10 TAKEN AS A TRUSTEE OR MEMBER OF THE BOARD OR ANY FAILURE TO TAKE ANY
11 ACTION IF THE DUTIES OF THE TRUSTEE OR MEMBER OF THE BOARD WERE PERFORMED
12 IN COMPLIANCE WITH SECTION 38-848.04. IN ANY LEGAL PROCEEDING OR OTHER
13 FORUM, A TRUSTEE OR MEMBER OF THE BOARD HAS ALL OF THE DEFENSES AND
14 PRESUMPTIONS ORDINARILY AVAILABLE TO A TRUSTEE OR MEMBER OF THE BOARD. A
15 TRUSTEE OR MEMBER OF THE BOARD IS PRESUMED IN ALL CASES TO HAVE ACTED,
16 FAILED TO ACT OR OTHERWISE DISCHARGED SUCH DUTIES IN ACCORDANCE WITH
17 SECTION 38-848.04 AND ANY OTHER APPLICABLE LAW. THE BURDEN IS ON THE
18 PARTY CHALLENGING THE ACT, FAILURE TO ACT OR OTHER DISCHARGE OF DUTIES OF
19 OR BY A TRUSTEE OR MEMBER OF THE BOARD TO ESTABLISH BY CLEAR AND
20 CONVINCING EVIDENCE FACTS REBUTTING THE PRESUMPTION.

21 Sec. 4. Severability

22 If a provision of this act or its application to any person or
23 circumstance is held invalid, the invalidity does not affect other
24 provisions or applications of the act that can be given effect without the
25 invalid provision or application, and to this end the provisions of this
26 act are severable.

APPROVED BY THE GOVERNOR JUNE 5, 2020.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 5, 2020.