

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SENATE BILL 1213

AN ACT

AMENDING SECTIONS 38-766.02, 38-804, 38-849 AND 38-884, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-766.02, Arizona Revised Statutes, is amended
3 to read:

4 38-766.02. Retired members; return to work; employer
5 contribution payments; exception; definitions

6 A. Notwithstanding section 38-766.01, subsection E, beginning July
7 1, 2012, an employer shall pay contributions at an alternate contribution
8 rate on behalf of a retired member who returns to work with an ASRS
9 employer in any capacity in a position ordinarily filled by an employee of
10 the employer or in a position that is similar in duties and
11 responsibilities to that of a position ordinarily filled by an employee of
12 the employer. This subsection applies to a retired member who has reached
13 a normal retirement age or a retired member who retired under section
14 38-758 if the retired member's retirement benefit has not been suspended
15 pursuant to section 38-766.

16 B. The ASRS actuary shall determine the alternate contribution rate
17 in an annual valuation performed as of June 30. For the fiscal year
18 beginning on July 1 of the following calendar year, the valuation shall
19 determine the percentage to be applied to the compensation, gross salary
20 or contract fee of a retired member who meets the requirements of this
21 section.

22 C. The alternate contribution rate shall not be less than two
23 percent in any fiscal year. The alternate contribution rate is equal to
24 the lesser of:

25 1. The employer contribution rate established by the ASRS actuary
26 pursuant to section 38-737 plus the employer contribution rate established
27 by the ASRS actuary pursuant to section 38-797.06.

28 2. The total past service funding requirement rate established by
29 the ASRS actuary pursuant to section 38-737 plus the total past service
30 funding requirement rate established by the ASRS actuary pursuant to
31 section 38-797.06.

32 D. ASRS shall determine the schedule and method of payment of the
33 alternate contribution rate. Subject to section 38-738, subsection A, all
34 contributions made by the employer and allocated to the fund established
35 by section 38-712 are irrevocable and shall be used as benefits under this
36 article or to pay the expenses of ASRS. Payments made pursuant to this
37 section by employers become delinquent after the due date prescribed in
38 the board's rules and thereafter shall be increased by interest from and
39 after that date until payment is received by ASRS. ASRS shall charge
40 interest on the delinquent payments as prescribed in section 38-711. ASRS
41 may recover delinquent payments due under this section, together with
42 interest charges as provided in this section, by action in a court of
43 competent jurisdiction against an employer liable for payments or, at the
44 request of the director, ASRS may deduct the delinquent payments and

1 interest charges from any other monies, including excise revenue taxes,
2 payable to the employer by any department or agency of this state.

3 E. An employer of a retired member shall submit any reports, data,
4 paperwork or materials that are requested by ASRS and that are necessary
5 to determine the compensation, gross salary or contract fee associated
6 with a retired member who returns to work or to determine the function,
7 utilization, efficacy or operation of the return to work program.

8 F. AN EMPLOYER IS NOT REQUIRED TO PAY CONTRIBUTIONS AT AN ALTERNATE
9 CONTRIBUTION RATE ON BEHALF OF A RETIRED MEMBER UNDER SUBSECTION A OF THIS
10 SECTION IF THE RETIRED MEMBER RETURNS TO WORK WITH THE EMPLOYER IN A
11 POSITION THAT IS CURRENTLY FILLED BY AN EMPLOYEE OF THE EMPLOYER WHO IS AN
12 ACTIVE MEMBER AND FOR WHICH THE EMPLOYER IS CURRENTLY REQUIRED TO PAY AND
13 IS PAYING CONTRIBUTIONS ON BEHALF OF THE ACTIVE MEMBER IN THAT SAME
14 POSITION PURSUANT TO SECTIONS 38-736 AND 38-737. AN EMPLOYER MAY PAY
15 CONTRIBUTIONS AT AN ALTERNATE CONTRIBUTION RATE FOR A RETIRED MEMBER WHO
16 MEETS THE REQUIREMENTS FOR AN EXEMPTION UNDER THIS SUBSECTION.

17 G. FOR CONTRIBUTIONS MADE PURSUANT TO SUBSECTION F OF THIS SECTION
18 BEGINNING JULY 1, 2019, IF ASRS AND THE EMPLOYER DETERMINE THAT THE
19 ALTERNATE CONTRIBUTION RATE DOES NOT APPLY TO A RETIRED MEMBER WHO RETURNS
20 TO WORK FOR WHOM THE EMPLOYER HAS PAID CONTRIBUTIONS AT THE ALTERNATE
21 CONTRIBUTION RATE, THE EMPLOYER MAY REQUEST AN EMPLOYER CREDIT, NOT
22 INCLUDING INTEREST, FOR THOSE CONTRIBUTIONS WITHIN NINETY DAYS AFTER THE
23 END OF THE FISCAL YEAR IN WHICH THE CONTRIBUTIONS WERE PAID. IF ASRS
24 DETERMINES THAT AN EMPLOYER CREDIT IS NOT FEASIBLE, ASRS SHALL ISSUE A
25 REFUND TO AN EMPLOYER IN A FORM DETERMINED BY ASRS.

26 ~~F.~~ H. For the purposes of this section:

27 1. "Contract fee" means the gross amount paid to a retired member
28 as an independent contractor minus an amount, not to exceed ten percent,
29 for an administrative fee.

30 2. "Gross salary" means the gross amount paid to a retired member
31 by a leasing company as salary or wages, including amounts that are
32 subject to deferred compensation or tax shelter agreements, for services
33 rendered or that would have been paid to the retired member except for the
34 member's election or a legal requirement that all or part of the gross
35 amount be used for other purposes.

36 Sec. 2. Section 38-804, Arizona Revised Statutes, is amended to
37 read:

38 38-804. Membership; termination; credited service;
39 redemption; reemployment

40 A. Except as otherwise provided in this section, all elected
41 officials are members of the plan, except that a state elected official
42 who is subject to term limits may elect not to participate in the plan.
43 The state elected official who is subject to term limits shall make the
44 election in writing and file the election with the board within thirty
45 days after the state elected official assumes office. The election is

1 effective on the first day of the state elected official's eligibility for
2 that term of office. The election not to participate is specific for that
3 term of office. If a state elected official who is subject to term limits
4 fails to make an election as provided in this subsection, the state
5 elected official is deemed to have elected to participate in the plan.
6 The election not to participate in the plan is irrevocable and constitutes
7 a waiver of all benefits provided by the plan for the state elected
8 official's entire term, except for any benefits accrued by the state
9 elected official in the plan for periods of participation before being
10 elected to an office subject to term limits or any benefits expressly
11 provided by law. The state elected official who elects not to participate
12 in the plan shall participate in the Arizona state retirement system
13 unless the state elected official makes an irrevocable election not to
14 participate in the Arizona state retirement system as provided in section
15 38-727.

16 B. All elected officials who are members of the plan on December
17 31, 2013 may remain members of the plan under the terms and limitations of
18 this article.

19 C. If a member who becomes a member of the plan before January 1,
20 2012 ceases to hold office for any reason other than death or retirement,
21 within twenty days after filing a completed application with the board,
22 the member is entitled to receive the following amounts, less any benefit
23 payments the member has received and any amount the member may owe to the
24 plan:

25 1. If the member has less than five years of credited service with
26 the plan, the member may withdraw the member's accumulated contributions
27 from the plan.

28 2. If the member has five or more years of credited service with
29 the plan, the member may withdraw the member's accumulated contributions
30 plus an amount equal to the amount determined as follows:

31 (a) 5.0 to 5.9 years of credited service, twenty-five percent of
32 all member contributions deducted from the member's salary pursuant to
33 section 38-810, subsection A.

34 (b) 6.0 to 6.9 years of credited service, forty percent of all
35 member contributions deducted from the member's salary pursuant to section
36 38-810, subsection A.

37 (c) 7.0 to 7.9 years of credited service, fifty-five percent of all
38 member contributions deducted from the member's salary pursuant to section
39 38-810, subsection A.

40 (d) 8.0 to 8.9 years of credited service, seventy percent of all
41 member contributions deducted from the member's salary pursuant to section
42 38-810, subsection A.

43 (e) 9.0 to 9.9 years of credited service, eighty-five percent of
44 all member contributions deducted from the member's salary pursuant to
45 section 38-810, subsection A.

1 (f) 10.0 or more years of credited service, one hundred percent of
2 all member contributions deducted from the member's salary pursuant to
3 section 38-810, subsection A.

4 D. If a member has more than ten years of credited service with the
5 plan, leaves the monies prescribed in subsection C of this section on
6 account with the plan for more than thirty days after termination of
7 employment and after that time period requests a refund of those monies,
8 the member is entitled to receive the amount prescribed in subsection C of
9 this section plus interest at a rate determined by the board for each year
10 computed from and after the member's termination of employment.

11 E. If an elected official who becomes a member of the plan on or
12 after January 1, 2012 ceases to hold office for any reason other than
13 death or retirement, within twenty days after filing a completed
14 application with the board, the member may withdraw the member's
15 accumulated contributions from the plan and shall be paid the member's
16 accumulated contributions plus interest at a rate determined by the board
17 as of the date of termination, less any benefit payments the member has
18 received and any amount the member may owe to the plan.

19 F. If the amount prescribed in subsection C, D or E of this section
20 includes monies that are an eligible rollover distribution and the member
21 elects to have the distribution paid directly to an eligible retirement
22 plan or individual retirement account or annuity and specifies the
23 eligible retirement plan or individual retirement account or annuity to
24 which the distribution is to be paid, the distribution shall be made in
25 the form of a direct trustee-to-trustee transfer to the specified eligible
26 retirement plan. The distribution shall be made in the form and at the
27 time prescribed by the board. A member who receives the amount prescribed
28 in subsection C, D or E of this section from the plan or who elects a
29 transfer pursuant to this subsection forfeits the member's credited
30 service, and all rights to benefits under the plan and membership in the
31 plan terminate.

32 G. For distributions occurring from and after December 31, 2007, a
33 member or a member's beneficiary, including a nonspouse designated
34 beneficiary to the extent ~~permitted~~ ALLOWED under subsection H of this
35 section, may roll over an eligible rollover distribution as defined in
36 section 402(c)(4) of the internal revenue code to a Roth individual
37 retirement account, if, for distributions occurring before January 1,
38 2010, the member or the member's beneficiary satisfies the requirements
39 for making a roth individual retirement account contribution under section
40 408A(c)(3)(B) of the internal revenue code, as in effect on the date of
41 the rollover. Any amount rolled over to a Roth individual retirement
42 account is included in the gross income of the member or the member's
43 beneficiary to the extent the amounts would have been included in gross
44 income if not rolled over as required under section 408A(d)(3)(A) of the
45 internal revenue code. For the purposes of this subsection, the

1 administrator is not responsible for ensuring the member or the member's
2 beneficiary is eligible to make a rollover to a Roth individual retirement
3 account.

4 H. For distributions made from and after December 31, 2009, a
5 nonspouse designated beneficiary as defined in section 401(a)(9)(E) of the
6 internal revenue code may elect to directly roll over an eligible rollover
7 distribution to an individual retirement account under section 408(a) of
8 the internal revenue code or an individual retirement annuity under
9 section 408(b) of the internal revenue code that is established on behalf
10 of the designated beneficiary and that will be treated as an inherited
11 individual retirement plan pursuant to section 402(c)(11) of the internal
12 revenue code. In order to be able to roll over the distribution, the
13 distribution otherwise must satisfy the definition of an eligible rollover
14 distribution as defined in section 402(c)(4) of the internal revenue code.
15 In applying this subsection, a nonspouse rollover is subject to the direct
16 rollover requirements under section 401(a)(31) of the internal revenue
17 code, the rollover notice requirements under section 402(f) of the
18 internal revenue code and the mandatory withholding requirements under
19 section 3405(c) of the internal revenue code.

20 I. For plan years occurring before January 1, 2007, the period for
21 providing the rollover notice as required under section 402(f) of the
22 internal revenue code is not less than thirty days and not more than
23 ninety days before the date of distribution and, for plan years beginning
24 from and after December 31, 2006, the period for providing the rollover
25 notice as required under section 402(f) of the internal revenue code is
26 not less than thirty days and not more than one hundred eighty days before
27 the date of distribution.

28 J. In no case shall more than twelve months of credited service be
29 credited on account of all service rendered by a member in any one year.

30 K. If an elected official who has terminated the member's
31 membership in the plan pursuant to subsection C of this section is
32 subsequently elected, appointed or hired on or after January 1, 2014, the
33 elected official is not eligible to become a member of the plan but is
34 subject to article 3.1 of this chapter.

35 L. Notwithstanding subsection K of this section, if an elected
36 official files a written election form with the board within ninety days
37 after the day of the member's reemployment as an elected official and
38 repays the amount previously withdrawn pursuant to subsection C or D of
39 this section within one year after the date of the member's reemployment
40 as an elected official, with interest on that amount at the rate of nine
41 percent for each year, compounded each year from the date of withdrawal to
42 the date of repayment, credited service shall be restored. Credited
43 service shall not be restored until complete repayment is made to the
44 fund.

1 M. An elected official who is elected, appointed or hired on or
2 after January 1, 2014 and who was not a member of the plan on December 31,
3 2013 is not eligible to become a member of the plan but is subject to
4 article 3.1 of this chapter.

5 N. If a retired member subsequently becomes an elected official,
6 contributions shall not be made by the retired member and credited service
7 shall not accrue while the retired member is holding office.

8 O. In addition to subsection N of this section, if a retired member
9 subsequently becomes, by reason of election or reelection, an elected
10 official of the same office from which the member retired within a time
11 period following the member's retirement that is less than one full term
12 for that office, the member shall not receive a pension. ANY PENSION
13 PAYMENTS RECEIVED BY A MEMBER, WHO RETIRED ON OR AFTER JULY 1, 2009, WHILE
14 HOLDING THE SAME OFFICE FROM WHICH THE MEMBER RETIRED WITHIN ONE FULL TERM
15 AFTER THE DATE OF RETIREMENT ARE CONSIDERED OVERPAYMENTS PURSUANT TO
16 SECTION 38-809, SUBSECTION A AND ARE SUBJECT TO REPAYMENT UP TO THE
17 MAXIMUM OF ONLY THE AMOUNT RECEIVED DURING THAT TERM. If the elected
18 official ceases to hold the same office, the elected official is entitled
19 to receive the same pension the elected official was receiving when the
20 elected official's pension was discontinued pursuant to this subsection.
21 ~~Nothing in~~ This subsection ~~prohibits~~ DOES NOT PROHIBIT a retired judge
22 called by the supreme court to active duties of a judge pursuant to
23 section 38-813 from receiving retirement benefits.

24 Sec. 3. Section 38-849, Arizona Revised Statutes, is amended to
25 read:

26 38-849. Limitations on receiving pension; violation;
27 classification; reemployment after severance;
28 reinstatement of service credits; reemployment of
29 retired member or member with a disability;
30 definition

31 A. If a member is convicted of, or discharged because of, theft,
32 embezzlement, fraud or misappropriation of an employer's property or
33 property under the control of the employer, the member shall be subject to
34 restitution and fines imposed by a court of competent jurisdiction. The
35 court may order the restitution or fines to be paid from any payments
36 otherwise payable to the member from the retirement system.

37 B. A person who knowingly makes any false statement or who
38 falsifies or ~~permits~~ ALLOWS to be falsified any record of the system with
39 an intent to defraud the system is guilty of a class 5 felony. If any
40 change or error in the records results in any member or beneficiary
41 receiving from the system more or less than the member or beneficiary
42 would have been entitled to receive had the records been correct, the
43 local board shall correct such error, and as far as practicable shall
44 adjust the payments in such manner that the actuarial equivalent of the
45 benefit to which such member or beneficiary was correctly entitled shall

1 be paid. If a member is convicted of a crime specified in this
2 subsection, section 13-713 applies.

3 C. If a member who received a severance refund on termination of
4 employment pursuant to section 38-846.02 becomes reemployed with the same
5 employer within two years after the former member's termination date, the
6 member may have forfeited credited service attributable to service
7 rendered during a prior period of service as an employee restored on
8 satisfaction of each of the following conditions:

9 1. The member files with the system a written application for
10 reinstatement of forfeited credited service within ninety days after again
11 becoming an employee.

12 2. The retirement fund is paid the total amount previously
13 withdrawn pursuant to section 38-846.02 plus compound interest from the
14 date of withdrawal to the date of repayment. Interest shall be computed
15 at the rate of nine percent for each year compounded each year from the
16 date of withdrawal to the date of repayment. Forfeited credited service
17 shall not be restored until complete payment is received by the fund.

18 3. The required payment is completed within one year after
19 returning to employee status.

20 D. If a member who received a severance refund on termination of
21 employment, as provided in section 38-846.02, is subsequently reemployed
22 by an employer, the member's prior service credits shall be cancelled and
23 service shall be credited only from the date the member's most recent
24 reemployment period commenced. However, a present active member of the
25 system who forfeited credited service, received a severance refund
26 pursuant to section 38-846.02 and becomes reemployed with the same
27 employer two years or more after the member's termination date or becomes
28 reemployed with another employer may elect to redeem any part of that
29 forfeited credited service by paying into the system any amounts required
30 pursuant to this subsection. A present active member who elects to redeem
31 any part of forfeited credited service for which the member is deemed
32 eligible by the board shall pay into the system the amounts previously
33 paid or transferred to the member as a severance refund plus an amount,
34 computed by the system's actuary that is necessary to equal the increase
35 in the actuarial present value of projected benefits resulting from the
36 redemption calculated using the actuarial methods and assumptions
37 prescribed by the system's actuary. On satisfaction of this obligation
38 the member's prior service credits shall be reinstated.

39 E. If a retired member becomes reemployed in any capacity by the
40 employer from which the member retired before ~~one year from~~ TWELVE MONTHS
41 AFTER the date of retirement or in the same position at any time following
42 retirement:

1 1. The following apply:

2 (a) Within ten days after the retired member is reemployed, the
3 local board shall advise the system in writing of the retired member's
4 reemployment.

5 (b) The system shall not make pension payments to the retired
6 member during the period of reemployment.

7 (c) Employee contributions shall not be made on the retired
8 member's account, nor shall any service be credited during the period of
9 reemployment. On subsequent termination of employment by the retired
10 member, the retired member is entitled to receive a pension based on the
11 member's service and compensation before the date of the member's
12 reemployment. The employer shall pay the alternate contribution rate
13 pursuant to section 38-843.05.

14 (d) ANY PENSION PAYMENTS RECEIVED BY THE RETIRED MEMBER, WHO
15 RETIRED ON OR AFTER JULY 1, 2009, DURING THE PERIOD OF REEMPLOYMENT ARE
16 CONSIDERED OVERPAYMENTS PURSUANT TO SECTION 38-850, UNLESS SUBSECTION B OF
17 THIS SECTION APPLIES. IF THE BOARD DETERMINES IN THE BOARD'S SOLE
18 DISCRETION, FOR A MEMBER WHO RETIRED ON OR AFTER JULY 1, 2009, THAT THE
19 RETIRED MEMBER'S REEMPLOYMENT DURING THE TWELVE-MONTH PERIOD AND THE
20 FAILURE OF THE EMPLOYER OR THE LOCAL BOARD TO SUSPEND THE MEMBER'S PENSION
21 WERE NOT INTENTIONAL TO CIRCUMVENT THE REQUIREMENTS OF THIS SUBSECTION,
22 THE PENSION PAYMENTS RECEIVED BY THE RETIRED MEMBER AFTER THE RETIRED
23 MEMBER'S REEMPLOYMENT ARE SUBJECT TO REPAYMENT UP TO ONLY THE AMOUNT
24 RECEIVED BETWEEN THE DATE OF THE MEMBER'S REEMPLOYMENT AND THE EXPIRATION
25 OF THE TWELVE-MONTH PERIOD.

26 (e) IF A RETIRED MEMBER WHO RETIRED ON OR AFTER JULY 1, 2009 AND
27 WHO IS REEMPLOYED TERMINATES EMPLOYMENT, THE RETIRED MEMBER MAY BE
28 SUBSEQUENTLY REEMPLOYED WITH THE EMPLOYER FROM WHICH THE MEMBER RETIRED
29 AND RESUME RECEIVING PENSION PAYMENTS AFTER A PERIOD OF TWELVE MONTHS,
30 LESS THE PERIOD OF TIME THE RETIRED MEMBER WAS NOT REEMPLOYED AFTER
31 RETIREMENT WITH THE EMPLOYER FROM WHICH THE MEMBER RETIRED, IF AT LEAST
32 SIXTY DAYS OF THE TWELVE MONTHS ARE CONSECUTIVE.

33 2. Paragraph 1, subdivisions (a) and (b) of this subsection do not
34 apply if any of the following ~~occur~~ OCCURS:

35 (a) The retired member becomes reemployed after sixty consecutive
36 days from the member's retirement date as a result of participating in an
37 open competitive new hire process for an entry level, nonsupervisory
38 position, except if the retired member is hired for the same position.

39 (b) The retired member is hired as a fire inspector or arson
40 investigator.

41 (c) The retired member accepts a job reassignment as an
42 accommodation in accordance with the Americans with disabilities act of
43 1990 due to a disability that is directly related to the retired member
44 being awarded an accidental disability, ordinary disability, catastrophic
45 disability or temporary disability benefit.

1 F. If a retired member is assigned voluntary duties acting as a
2 limited authority peace officer, pursuant to the Arizona peace officer
3 standards and training board rules, employee contributions shall not be
4 made on the retired member's account, and any service shall not be
5 credited during the period of reemployment. The employer shall not pay
6 the alternate contribution rate pursuant to section 38-843.05.

7 G. If after ~~one year from~~ TWELVE MONTHS AFTER the date of
8 retirement a retired member becomes reemployed by the employer from which
9 the member retired in a position other than the same position from which
10 the member retired, employee contributions shall not be made on the
11 retired member's account, and any service shall not be credited during the
12 period of reemployment. The employer shall pay the alternate contribution
13 rate pursuant to section 38-843.05.

14 H. At any time following retirement, if the retired member becomes
15 employed by an employer, other than the employer from which the member
16 retired, in a position ordinarily filled by an employee of an eligible
17 group, employee contributions shall not be made on the retired member's
18 account, and any service shall not be credited during the period of
19 reemployment. The employer shall pay the alternate contribution rate
20 pursuant to section 38-843.05.

21 I. If a member who retired under an accidental or ordinary
22 disability becomes reemployed as an employee of an eligible group, section
23 38-844 applies and a determination shall be made by the local board as to
24 whether subsection E, F, G or H of this section applies.

25 J. The local board shall review all reemployment determinations and
26 voluntary assignments as described in subsection F of this section. If
27 the local board or the system is not provided the necessary information
28 required by the system to make a reemployment determination, the local
29 board and the system shall suspend pension payments until information is
30 received and a determination is made regarding whether the reemployment
31 meets the requirements of subsection E, F, G, H or I of this section.

32 K. A person who defrauds the system or who takes, converts, steals
33 or embezzles monies owned by or from the system and who fails or refuses
34 to return the monies to the system on the board's written request is
35 subject to civil suit by the system in the superior court in Maricopa
36 county. On entry of an order finding the person has defrauded the system
37 or taken, converted, stolen or embezzled monies owned by or from the
38 system, the court shall enter an order against that person and for the
39 system awarding the system all of its costs and expenses of any kind,
40 including attorney fees, that were necessary to successfully prosecute the
41 action. The court shall also grant the system a judicial lien on all of
42 the nonexempt property of the person against whom judgment is entered
43 pursuant to this subsection in an amount equal to all amounts awarded to
44 the system, plus interest at the rate prescribed by section 44-1201, until
45 all amounts owed are paid to the system.

1 L. Notwithstanding any other provision of this article, the board
2 may offset against any benefits otherwise payable by the system to an
3 active or retired member or survivor any court ordered amounts awarded to
4 the board and system and assessed against the member or survivor.

5 M. Notwithstanding any other provision of this article, a member
6 who retires having met all of the qualifications for retirement and who
7 subsequently becomes an elected official, by election or appointment, is
8 not considered reemployed by the same employer.

9 N. For the purposes of this section, "same position" means a
10 position in which the member performs substantially similar duties that
11 were performed and exercises substantially similar authority that was
12 exercised by the retired member before retirement.

13 Sec. 4. Section 38-884, Arizona Revised Statutes, is amended to
14 read:

15 38-884. Membership of retirement plan; termination; credited
16 service; redemption; reemployment

17 A. Each employee of a participating employer is a member of the
18 plan unless the employee is receiving a pension from the plan. A person
19 employed shall undergo a medical examination performed by a designated
20 physician or a physician working in a clinic that is appointed by the
21 local board or, in the case of a state correctional officer who is
22 employed by the state department of corrections, complete a physical
23 examination pursuant to section 41-1822, subsection B. For the purposes
24 of subsection B of this section, the designated physician or a physician
25 working in a clinic that is appointed by the local board may be the
26 employer's regular employee or contractor.

27 B. The purpose of the medical examination authorized by this
28 section is to identify a member's physical or mental condition or injury
29 that existed or occurred before the member's date of membership in the
30 plan. Any employee who fails or refuses to submit to the medical
31 examination prescribed in this section is deemed to waive all rights to
32 disability benefits under this article. Medical examinations conducted
33 under this article shall be conducted by a physician and shall not be
34 conducted or used for purposes of hiring, advancement, discharge, job
35 training or other terms, conditions and privileges of employment unrelated
36 to receipt or qualification for pension benefits or service credits from
37 the fund. This subsection does not affect or impair the right of an
38 employer to prescribe medical or physical standards for employees or
39 prospective employees.

40 C. If a member who becomes a member of the plan before January 1,
41 2012 ceases to be an employee for any reason other than death or
42 retirement, within twenty days after filing a completed application with
43 the board, the member is entitled to receive the following amounts, less
44 any benefit payments the member has received and any amount the member may
45 owe to the plan:

1 1. If the member has less than five years of credited service with
2 the plan, the member may withdraw the member's accumulated contributions
3 from the plan.

4 2. If the member has five or more years of credited service with
5 the plan, the member may withdraw the member's accumulated contributions
6 plus an amount equal to the amount determined as follows:

7 (a) 5.0 to 5.9 years of credited service, twenty-five percent of
8 all member contributions deducted from the member's salary pursuant to
9 section 38-891, subsection B.

10 (b) 6.0 to 6.9 years of credited service, forty percent of all
11 member contributions deducted from the member's salary pursuant to section
12 38-891, subsection B.

13 (c) 7.0 to 7.9 years of credited service, fifty-five percent of all
14 member contributions deducted from the member's salary pursuant to section
15 38-891, subsection B.

16 (d) 8.0 to 8.9 years of credited service, seventy percent of all
17 member contributions deducted from the member's salary pursuant to section
18 38-891, subsection B.

19 (e) 9.0 to 9.9 years of credited service, eighty-five percent of
20 all member contributions deducted from the member's salary pursuant to
21 section 38-891, subsection B.

22 (f) 10.0 or more years of credited service, one hundred percent of
23 all member contributions deducted from the member's salary pursuant to
24 section 38-891, subsection B.

25 D. If a member who becomes a member of the plan before January 1,
26 2012 has more than ten years of credited service with the plan, leaves the
27 monies prescribed in subsection C of this section on account with the plan
28 for more than thirty days after termination of employment and after that
29 time period requests a refund of those monies, the member is entitled to
30 receive the amount prescribed in subsection C of this section plus
31 interest at a rate determined by the board for each year computed from and
32 after the member's termination of employment.

33 E. The accumulated member contributions of a member who ceases to
34 be an employee for a reason other than death or retirement and who becomes
35 a member of the plan:

36 1. On or after January 1, 2012 and before July 1, 2018 shall be
37 paid to the member plus interest at a rate determined by the board as of
38 the date of termination within twenty days after filing with the plan a
39 written application for payment.

40 2. For a member who has less than ten years of credited service
41 with the plan, on or after July 1, 2018 shall be paid to the member plus
42 interest at a rate determined by the board as of the date of termination
43 within twenty days after filing with the plan a written application for
44 payment.

1 F. If the refund includes monies that are an eligible rollover
2 distribution and the member elects to have the distribution paid directly
3 to an eligible retirement plan or individual retirement account or annuity
4 and specifies the eligible retirement plan or individual retirement
5 account or annuity to which the distribution is to be paid, the
6 distribution shall be made in the form of a direct trustee-to-trustee
7 transfer to the specified eligible retirement plan. The distribution
8 shall be made in the form and at the time prescribed by the board.

9 G. For distributions occurring from and after December 31, 2007, a
10 member or a member's beneficiary, including a nonspouse designated
11 beneficiary to the extent ~~permitted~~ ALLOWED under subsection H of this
12 section, may roll over an eligible rollover distribution as defined in
13 section 402(c)(4) of the internal revenue code to a Roth individual
14 retirement account, if, for distributions occurring before January 1,
15 2010, the member or the member's beneficiary satisfies the requirements
16 for making a Roth individual retirement account contribution under section
17 408A(c)(3)(B) of the internal revenue code, as in effect on the date of
18 the rollover. Any amount rolled over to a Roth individual retirement
19 account is included in the gross income of the member or the member's
20 beneficiary to the extent the amounts would have been included in gross
21 income if not rolled over as required under section 408A(d)(3)(A) of the
22 internal revenue code. For the purposes of this subsection, the
23 administrator is not responsible for ensuring the member or the member's
24 beneficiary is eligible to make a rollover to a Roth individual retirement
25 account.

26 H. For distributions made from and after December 31, 2009, a
27 nonspouse designated beneficiary as defined in section 401(a)(9)(E) of the
28 internal revenue code may elect to directly roll over an eligible rollover
29 distribution to an individual retirement account under section 408(a) of
30 the internal revenue code or an individual retirement annuity under
31 section 408(b) of the internal revenue code that is established on behalf
32 of the designated beneficiary and that will be treated as an inherited
33 individual retirement plan pursuant to section 402(c)(11) of the internal
34 revenue code. In order to be able to roll over the distribution, the
35 distribution otherwise must satisfy the definition of an eligible rollover
36 distribution as defined in section 402(c)(4) of the internal revenue
37 code. In applying this subsection, a nonspouse rollover is subject to the
38 direct rollover requirements under section 401(a)(31) of the internal
39 revenue code, the rollover notice requirements under section 402(f) of the
40 internal revenue code and the mandatory withholding requirements under
41 section 3405(c) of the internal revenue code.

42 I. For plan years occurring before January 1, 2007, the period for
43 providing the rollover notice as required under section 402(f) of the
44 internal revenue code is ~~no~~ NOT less than thirty days and ~~no~~ NOT more than
45 ninety days before the date of distribution and, for plan years beginning

1 from and after December 31, 2006, the period for providing the rollover
2 notice as required under section 402(f) of the internal revenue code is ~~πσ~~
3 NOT less than thirty days and ~~πσ~~ NOT more than one hundred eighty days
4 before the date of distribution.

5 J. Service shall be credited to a member's individual credited
6 service account in accordance with rules the local board prescribes. In
7 no case shall more than twelve months of credited service be credited on
8 account of all service rendered by a member in any one year. In no case
9 shall service be credited for any period during which the member is not
10 employed in a designated position, except as provided by sections 38-921
11 and 38-922.

12 K. Credited service is forfeited if the amounts prescribed in
13 subsection C, D or E of this section are paid or are transferred in
14 accordance with this section.

15 L. If a former member becomes reemployed with the same employer
16 within two years after the former member's termination date, a member may
17 have forfeited credited service attributable to service rendered during a
18 prior period of service as an employee restored on satisfaction of each of
19 the following conditions:

20 1. The member files with the plan a written application for
21 reinstatement of forfeited credited service within ninety days after again
22 becoming an employee.

23 2. The retirement fund is paid the total amount previously
24 withdrawn pursuant to subsection C, D or E of this section plus compound
25 interest from the date of withdrawal to the dates of repayment. Interest
26 shall be computed at the rate of nine percent for each year compounded
27 each year from the date of withdrawal to the date of repayment. Forfeited
28 credited service shall not be restored until complete payment is received
29 by the fund.

30 3. The required payment is completed within one year after
31 returning to employee status.

32 M. If a member who receives a severance refund on termination of
33 employment pursuant to subsection C, D or E of this section is
34 subsequently reemployed by an employer, the member's prior service credits
35 are cancelled, and the board shall credit service only from the date the
36 member's most recent reemployment period commenced. However, a present
37 active member of the plan who received a refund of accumulated
38 contributions from the plan pursuant to subsection C, D or E of this
39 section, forfeited credited service pursuant to subsection K of this
40 section and becomes reemployed with the same employer two years or more
41 after the member's termination date or becomes reemployed with another
42 employer may elect to redeem any part of that forfeited credited service
43 by paying into the plan any amounts required pursuant to this subsection.
44 A present active member who elects to redeem any part of forfeited
45 credited service for which the member is deemed eligible by the board

1 shall pay into the plan the amounts previously paid or transferred as a
2 refund of the member's accumulated contributions plus an amount, computed
3 by the plan's actuary that is necessary to equal the increase in the
4 actuarial present value of projected benefits resulting from the
5 redemption calculated using the actuarial methods and assumptions
6 prescribed by the plan's actuary. On satisfaction of this obligation, the
7 board shall reinstate the member's prior service credits.

8 N. A retired member may become employed by ~~an~~ THE employer FROM
9 WHICH THE EMPLOYEE RETIRED in a designated position and continue to
10 receive a pension if the employment occurs at least twelve months after
11 retirement. The retired member shall not contribute to the fund and shall
12 not accrue credited service. If a retired member becomes employed by ~~an~~
13 THE employer FROM WHICH THE EMPLOYEE RETIRED in a designated position
14 before twelve months after retirement THE FOLLOWING APPLY:

15 1. Payment of the retired member's pension shall be suspended until
16 the retired member again ceases to be an employee. The amount of pension
17 shall not be changed on account of service as an employee subsequent to
18 retirement.

19 2. The retired member shall not contribute to the fund and shall
20 not accrue credited service.

21 3. ANY PENSION PAYMENTS RECEIVED BY A RETIRED MEMBER, WHO RETIRED
22 ON OR AFTER JULY 1, 2009, DURING A PERIOD OF REEMPLOYMENT ARE CONSIDERED
23 OVERPAYMENTS PURSUANT TO SECTION 38-899. IF THE BOARD DETERMINES IN THE
24 BOARD'S SOLE DISCRETION, FOR A MEMBER WHO RETIRED ON OR AFTER JULY 1,
25 2009, THAT THE RETIRED MEMBER'S REEMPLOYMENT DURING THE TWELVE-MONTH
26 PERIOD AND THE FAILURE OF THE EMPLOYER OR THE LOCAL BOARD TO SUSPEND THE
27 MEMBER'S PENSION WERE NOT INTENTIONAL TO CIRCUMVENT THE REQUIREMENTS OF
28 THIS SUBSECTION, THE PENSION PAYMENTS RECEIVED BY THE RETIRED MEMBER
29 DURING REEMPLOYMENT ARE SUBJECT TO REPAYMENT UP TO ONLY THE AMOUNT
30 RECEIVED BETWEEN THE DATE OF THE MEMBER'S REEMPLOYMENT AND THE EXPIRATION
31 OF THE TWELVE-MONTH PERIOD.

32 4. IF A RETIRED MEMBER WHO RETIRED ON OR AFTER JULY 1, 2009 AND WHO
33 IS REEMPLOYED TERMINATES EMPLOYMENT, THE RETIRED MEMBER MAY BE
34 SUBSEQUENTLY REEMPLOYED WITH THE EMPLOYER FROM WHICH THE MEMBER RETIRED IN
35 A DESIGNATED POSITION AND RESUME RECEIVING PENSION PAYMENTS AFTER A PERIOD
36 OF TWELVE MONTHS, LESS THE PERIOD OF TIME THE RETIRED MEMBER WAS NOT
37 REEMPLOYED BY THE EMPLOYER FROM WHICH THE MEMBER RETIRED IN A DESIGNATED
38 POSITION AFTER RETIREMENT, IF AT LEAST SIXTY DAYS OF THE TWELVE MONTHS ARE
39 CONSECUTIVE.

40 O. Notwithstanding any other provision of this article, a member
41 who retires having met all of the qualifications for retirement and who
42 subsequently becomes an elected official, by election or appointment, is
43 not considered reemployed by the same employer.