

REFERENCE TITLE: public retirement systems; prefunding plan

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

## **SB 1354**

Introduced by  
Senator Livingston

### **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 PENSION CONTRIBUTIONS.

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

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

40 I. FOR THE PURPOSES OF THIS SECTION:

41 1. "DEFINED BENEFIT PENSION" MEANS:

42 (a) THE ARIZONA STATE RETIREMENT SYSTEM ESTABLISHED BY TITLE 38,  
43 CHAPTER 5, ARTICLE 2.

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

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

3 (d) THE CORRECTIONS OFFICER RETIREMENT PLAN ESTABLISHED BY TITLE  
4 38, CHAPTER 5, ARTICLE 6.

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

7 2. "EMPLOYER" MEANS AN EMPLOYER AS DEFINED IN SECTION 38-711,  
8 38-801, 38-842 OR 38-881 OR ANY GOVERNING BODY OF A POLITICAL SUBDIVISION  
9 OF THIS STATE THAT HAS ESTABLISHED A DEFINED BENEFIT PENSION PLAN FOR ITS  
10 EMPLOYEES.

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

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

17 ARTICLE 7.1. ARIZONA EMPLOYERS' PENSION PREFUNDING PLAN

18 38-931. Definitions

19 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

20 1. "ADMINISTERING AND INVESTING":

21 (a) MEANS ADMINISTERING, MANAGING, OPERATING, INVESTING AND  
22 DISTRIBUTING THE PREFUNDING PLAN AND ITS ASSETS, INCLUDING ACCEPTING,  
23 DEPOSITING, HOLDING, INVESTING, REINVESTING AND TRANSFERRING THE ASSETS OF  
24 THE PREFUNDING PLAN.

25 (b) INCLUDES EMPLOYING LEGAL SERVICES.

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

27 3. "DEFINED BENEFIT PENSION" MEANS THE ELECTED OFFICIALS'  
28 RETIREMENT PLAN ESTABLISHED BY ARTICLE 3 OF THIS CHAPTER, THE PUBLIC  
29 SAFETY PERSONNEL RETIREMENT SYSTEM ESTABLISHED BY ARTICLE 4 OF THIS  
30 CHAPTER AND THE CORRECTIONS OFFICER RETIREMENT PLAN ESTABLISHED BY ARTICLE  
31 6 OF THIS CHAPTER.

32 4. "EMPLOYER" MEANS AN EMPLOYER AS DEFINED IN SECTION 38-801,  
33 38-842 OR 38-881.

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

38 6. "PREFUNDING PLAN" MEANS THE ARIZONA EMPLOYERS' PENSION  
39 PREFUNDING PLAN ESTABLISHED BY THIS ARTICLE.

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

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

44 9. "TAX-EXEMPT STATUS OF THE PREFUNDING PLAN'S INCOME" MEANS THAT  
45 THE PREFUNDING PLAN'S INCOME IS EXCLUDED FROM GROSS INCOME FOR THE

1 PURPOSES OF THE ASSESSMENT OF FEDERAL INCOME TAX UNDER SECTION 115 OF THE  
2 INTERNAL REVENUE CODE, INTERGOVERNMENTAL IMMUNITY OR SIMILAR GROUNDS.

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

4 38-932. Arizona employers' pension prefunding plan

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

9 B. THE PREFUNDING PLAN AND THE ASSETS HELD IN THE PREFUNDING PLAN  
10 ARE SEPARATE AND APART FROM:

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

13 2. ANY PENSION PREFUNDING PLAN INVESTMENT ACCOUNTS ESTABLISHED  
14 PURSUANT TO SECTION 35-314.04 OR ANY OTHER SECTION OF TITLE 35 AND ANY  
15 PENSION PREFUNDING PLAN MONIES IN SUCH ACCOUNTS.

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

21 38-933. Administration and investment by the board:  
22 investment options; administrative costs

23 A. THE BOARD SHALL HAVE THE SOLE AND EXCLUSIVE CONTROL OF THE  
24 ADMINISTRATION AND INVESTMENT OF THE PREFUNDING PLAN.

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

32 C. EXCEPT AS OTHERWISE SPECIFIED IN THIS ARTICLE, THE PROVISIONS OF  
33 ARTICLE 4 OF THIS CHAPTER PERTAINING TO THE ADMINISTRATION AND INVESTMENT  
34 OF THE SYSTEM, INCLUDING DELEGATION OF AUTHORITY TO THE ADMINISTRATOR AND  
35 OTHERS PERSONS, SUPPLEMENT THIS ARTICLE.

36 D. THE BOARD MAY KEEP ASSETS OF THE PREFUNDING PLAN SEPARATE OR  
37 COMMINGLE THE ASSETS OF THE PREFUNDING PLAN IN ONE OR MORE GROUP TRUSTS,  
38 SUBJECT TO THE CREDITING OF ASSETS, RECEIPTS AND EARNINGS AND CHARGING OF  
39 PAYMENTS TO THE APPROPRIATE EMPLOYER.

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

42 F. EACH PARTICIPATING EMPLOYER SHALL PAY THE REASONABLE  
43 ADMINISTRATIVE COSTS AS DETERMINED BY THE BOARD IN ITS SOLE AND ABSOLUTE  
44 DISCRETION FOR THE ADMINISTRATION AND INVESTMENT OF THE PREFUNDING PLAN.

1 THE BOARD SHALL DEPOSIT IN THE PREFUNDING PLAN ALL MONIES RECEIVED BY THE  
2 BOARD FOR THOSE ADMINISTRATIVE COSTS.

3 38-934. Board authorization of employer participation;  
4 employer election

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

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

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

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

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

19 38-935. Transfer of monies by employer

20 A. THE BOARD MAY AUTHORIZE A PARTICIPATING EMPLOYER TO TRANSFER  
21 MONIES INTO THE PREFUNDING PLAN. A TRANSFER OF MONIES INTO THE PREFUNDING  
22 PLAN SHALL COMPLY WITH ALL OF THE FOLLOWING:

23 1. THE TRANSFER SATISFIES THE TERMS OF THE CONTRACT BETWEEN THE  
24 GOVERNING BODY OF THE PARTICIPATING EMPLOYER AND THE BOARD.

25 2. THE TRANSFER SATISFIES THE REQUIREMENTS UNDER THE APPLICABLE  
26 GOVERNMENTAL ACCOUNTING STANDARDS.

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

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

34 38-936. Transfer of assets out of the prefunding plan;  
35 requirements

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

39 1. THE TRANSFER SATISFIES THE TERMS OF THE CONTRACT BETWEEN THE  
40 GOVERNING BODY OF THE PARTICIPATING EMPLOYER AND THE BOARD.

41 2. THE TRANSFER SATISFIES THE REQUIREMENTS UNDER THE APPLICABLE  
42 GOVERNMENTAL ACCOUNTING STANDARDS.

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

45 B. EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-937:



1 BE TRANSFERRED TO THE PARTICIPATING EMPLOYER ONLY IF BOTH OF THE FOLLOWING  
2 APPLY:

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

5 2. THE TRANSFER COMPLIES WITH THE REQUIREMENTS UNDER THE APPLICABLE  
6 GOVERNMENTAL ACCOUNTING STANDARDS.

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

17 38-938. Annual financial statements; audit; actuarial  
18 valuation report; unfunded pension liability  
19 calculation

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

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

32 38-939. Nontaxable status of prefunding plan; intent

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

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

41 C. IF THE BOARD RECEIVES NOTIFICATION FROM THE UNITED STATES  
42 INTERNAL REVENUE SERVICE THAT THIS ARTICLE OR ANY PORTION OF THIS ARTICLE  
43 WILL JEOPARDIZE THE TAX-EXEMPT STATUS OF THE PREFUNDING PLAN'S INCOME, THE  
44 PORTION OF THIS ARTICLE THAT WILL CAUSE THE DISQUALIFICATION DOES NOT  
45 APPLY.



1           38-940. Board rules; procedures; discretionary fiduciary duty

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

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

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

39           1. THE ADMINISTRATOR, ONE OR MORE DEPUTY OR ASSISTANT  
40 ADMINISTRATORS OR EMPLOYEES OF THE SYSTEM WHOM THE TRUSTEE OR MEMBER OF  
41 THE BOARD REASONABLY BELIEVES ARE RELIABLE AND COMPETENT IN THE MATTERS  
42 PRESENTED.

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

1           3. A COMMITTEE OF THE BOARD OF WHICH THE TRUSTEE OR MEMBER OF THE  
2 BOARD IS NOT A MEMBER IF THE TRUSTEE OR MEMBER OF THE BOARD REASONABLY  
3 BELIEVES THE COMMITTEE MERITS CONFIDENCE.

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

16           Sec. 4. Severability

17           If a provision of this act or its application to any person or  
18 circumstance is held invalid, the invalidity does not affect other  
19 provisions or applications of the act that can be given effect without the  
20 invalid provision or application, and to this end the provisions of this  
21 act are severable.