

House Engrossed Senate Bill

~~insurance contracts; oral agreements~~
(now: PSPRS; advisory committee)

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 72
SENATE BILL 1081

AN ACT

REPEALING SECTION 38-848, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 405, SECTION 15; AMENDING SECTION 38-848, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2021, CHAPTER 34, SECTION 4 AND CHAPTER 251, SECTION 2; RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 38-848, Arizona Revised Statutes, as amended by Laws 2021,
4 chapter 405, section 15, is repealed.

5 Sec. 2. Section 38-848, Arizona Revised Statutes, as amended by
6 Laws 2021, chapter 34, section 4 and chapter 251, section 2, is amended to
7 read:

8 38-848. Board of trustees; powers and duties; reporting
9 requirements; independent trust fund;
10 administrator; agents and employees; advisory
11 committee

12 A. The board of trustees shall consist of nine members and shall
13 have the rights, powers and duties that are set forth in this section.
14 The term of office of members shall be five years to expire on the third
15 Monday in January of the appropriate year. The board shall select a
16 chairperson from among its members each calendar year. Members are
17 eligible to receive compensation in an amount of \$50 a day, but not to
18 exceed \$1,000 in any one fiscal year, and are eligible for reimbursement
19 of expenses pursuant to chapter 4, article 2 of this title. The board
20 consists of the following members appointed as follows:

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

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

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

43 4. One member who represents counties in this state and who is
44 appointed by the governor. An association representing county supervisors
45 in this state shall forward nominations to the governor, providing at

1 least three nominees for the position. These nominees shall represent
2 taxpayers or employers and may not be members of the system.

3 5. One member who is appointed by the governor from a list of three
4 nominees forwarded by the board. The board shall select the nominees to
5 forward to the governor from a list of at least five nominees received
6 from the advisory committee.

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

25 1. Is absent without excuse from three consecutive regular meetings
26 of the board.

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

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

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

35 2. A securities analyst.

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

39 4. A chartered financial analyst in good standing as determined by
40 the chartered financial analyst institute.

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

44 6. An economist.

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

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

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

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

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

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

17 1. Not more than eighty percent of the combined assets of the
18 system or other plans that the board manages is invested at any given time
19 in corporate stocks, based on the cost value of the stocks irrespective of
20 capital appreciation.

21 2. Not more than five percent of the combined assets of the system
22 or other plans that the board manages is invested in corporate stock
23 issued by any one corporation, other than corporate stock issued by
24 corporations chartered by the United States government or corporate stock
25 issued by a bank or insurance company.

26 3. Not more than five percent of the voting stock of any one
27 corporation is owned by the system and other plans that the board
28 administers, except that this limitation does not apply to membership
29 interests in limited liability companies.

30 4. Corporate stocks and exchange traded funds eligible for direct
31 purchase are restricted to stocks and exchange traded funds that, except
32 for bank stocks, insurance stocks, stocks acquired for coinvestment in
33 connection with the system's or the plans' or trusts' commingled
34 investments and interests in limited liability companies and mutual funds,
35 are any of the following:

36 (a) Listed or approved on issuance for listing on an exchange
37 registered under the securities exchange act of 1934, as amended
38 (15 United States Code sections 78a through 78pp).

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

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

1 (d) Listed or approved on issuance for listing on an exchange of a
2 foreign country with which the United States is maintaining diplomatic
3 relations at the time of purchase, except that not more than twenty
4 percent of the combined assets of the system and other plans that the
5 board manages is invested in foreign securities, based on the cost value
6 of the stocks irrespective of capital appreciation.

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

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

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

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

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

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

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

5 3. Also:

6 (a) Vote on any stocks, bonds or other securities.

7 (b) Give general or special proxies or powers of attorney with or
8 without power of substitution.

9 (c) Exercise any conversion privileges, subscription rights or
10 other options and make any payments incidental to the exercise of the
11 conversion privileges, subscription rights or other options.

12 (d) Consent to or otherwise participate in corporate
13 reorganizations or other changes affecting corporate securities, delegate
14 discretionary powers and pay any assessments or charges in connection
15 therewith.

16 (e) Generally exercise any of the powers of an owner with respect
17 to stocks, bonds, securities or other investments held in or owned by the
18 system or other plans whose assets the board administers.

19 4. Make, execute, acknowledge and deliver any other instruments
20 that may be necessary or appropriate to carry out the powers granted in
21 this section.

22 5. Register any investment held by the system or other plans whose
23 assets the board administers in the name of the system or plan or in the
24 name of a nominee or trust.

25 6. At the expense of the system or other plans that the board
26 administers, enter into an agreement with any bank or banks for the
27 safekeeping and handling of securities and other investments coming into
28 the possession of the board. The agreement shall be entered into under
29 terms and conditions that secure the proper safeguarding, inventory,
30 withdrawal and handling of the securities and other investments. Access
31 to and deposit or withdrawal of the securities from any place of deposit
32 selected by the board is not allowed and may not be made except as the
33 terms of the agreement provide.

34 7. Appear before local boards and the courts of this state and
35 political subdivisions of this state through counsel or an appointed
36 representative to protect the fund or the assets of other plans that the
37 board administers. The board is not responsible for the actions or
38 omissions of the local boards under this system but may require a review
39 or rehearing of actions or omissions of local boards. A limitation period
40 does not prohibit the board or administrator from contesting or require
41 the board or administrator to implement or comply with a local board
42 decision that violates the internal revenue code or that threatens to
43 impair the tax-qualified status of the system or any plan administered by
44 the board or administrator.

1 8. Empower the fund administrator to take actions on behalf of the
2 board that are necessary for the protection and administration of the fund
3 or the assets of other plans that the board administers pursuant to the
4 guidelines of the board.

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

8 10. Settle threatened or actual litigation against any system or
9 plan that the board administers.

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

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

18 1. A balance sheet.

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

20 3. A report on an actuarial valuation of its assets and
21 liabilities.

22 4. A list of investments owned.

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

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

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

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

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

43 (a) Department of liquor licenses and control.

44 (b) Department of public safety.

45 (c) Northern Arizona university.

- 1 (d) University of Arizona.
2 (e) Arizona state university.
3 (f) Arizona game and fish department.
4 (g) Department of law.
5 (h) Department of emergency and military affairs.
6 (i) Arizona state parks board.
7 10. An estimate of the employer contribution rates for the next ten
8 fiscal years for each of the following employers within the corrections
9 officer retirement plan:
10 (a) State department of corrections.
11 (b) Department of public safety.
12 (c) The judiciary.
13 (d) Department of juvenile corrections.
14 11. An estimate of the aggregate fees paid for private equity
15 investments and other alternative investments, including management fees
16 and performance fees and carried interest.
17 M. The board shall:
18 1. Maintain the accounts of the system and other plans that the
19 board administers and issue statements to each employer annually and to
20 each member who requests a statement.
21 2. Report the results of the actuarial valuations to the local
22 boards and employers.
23 3. Contract on a fee basis with an independent investment counsel
24 to advise the board in the investment management of the fund and assets of
25 other plans that the board administers and with an independent auditing
26 firm to audit the board's accounting.
27 4. Allow the auditor general to make an annual audit and transmit
28 the results to the governor and the legislature.
29 5. Contract on a fee basis with an actuary who shall make actuarial
30 valuations of the system and other plans that the board administers, be
31 the technical adviser of the board on matters regarding the operation of
32 the funds created by the provisions of the system, the elected officials'
33 retirement plan, the corrections officer retirement plan and the public
34 safety cancer insurance policy program and perform other duties required
35 in connection therewith. The actuary must be a member of a nationally
36 recognized association or society of actuaries.
37 6. Employ, as administrator, a person, state department or other
38 body to serve at the pleasure of the board.
39 7. Establish procedures and guidelines for contracts with
40 actuaries, auditors, investment counsel and legal counsel and for
41 safeguarding of securities.
42 8. Issue a request for proposals every five years for an external
43 auditor. The board is not required to change its auditor after issuing the
44 request for proposals.

1 9. Develop a policy regarding routine stress testing of the
2 retirement systems and plans administered by the board at the employer
3 level and system level. The stress test shall use industry standards,
4 such as the inclusion of assumptions regarding investment returns,
5 inflation, population growth, payroll growth and employer contributions.
6 For the purposes of this paragraph, "stress test" means an assessment of
7 the risk exposure of the retirement system or plan, including scenario
8 analysis, simulation analysis and sensitivity analysis.

9 N. The administrator, under the direction of the board, shall:

10 1. Administer this article.

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

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

17 4. Establish and maintain an adequate system of accounts and
18 records for the system and other plans that the board administers, which
19 shall be integrated with the accounts, records and procedures of the
20 employers so that the system and other plans that the board administers
21 operate most effectively and at minimum expense and that duplication of
22 records and accounts is avoided.

23 5. In accordance with the board's governance policy and procedures
24 and the budget adopted by the board, hire employees and services the
25 administrator deems necessary and prescribe their duties, including the
26 hiring of one or more deputy or assistant administrators to manage the
27 system's operations, investments and legal affairs.

28 6. Be responsible for income, the collection of the income and the
29 accuracy of all expenditures.

30 7. Recommend to the board annual contracts for the system's
31 actuary, auditor, investment counsel, legal counsel and safeguarding of
32 securities.

33 8. Perform additional duties and powers prescribed by the board and
34 delegated to the administrator.

35 0. The system is an independent trust fund and the board is not
36 subject to title 41, chapter 6. Contracts for goods and services approved
37 by the board are not subject to title 41, chapter 23. As an independent
38 trust fund whose assets are separate and apart from all other funds of
39 this state, the system and the board are not subject to the restrictions
40 prescribed in section 35-154 or article IX, sections 5 and 8, Constitution
41 of Arizona. Loans, guarantees, investment management agreements and
42 investment contracts that are entered into by the board are contracts
43 memorializing obligations or interests in securities that the board has
44 concluded, after thorough due diligence, do not involve investments in
45 Sudan or Iran or otherwise provide support to terrorists or in any way

1 facilitate illegal immigration into the United States. These contracts do
2 not involve the procurement, supply or provision of goods, equipment,
3 labor, materials or services that would require the warranties required by
4 section 41-4401.

5 P. The board, the administrator, the deputy or assistant
6 administrators and all persons employed by them are subject to title 41,
7 chapter 4, article 4. The administrator, deputy or assistant
8 administrators and other employees of the board are entitled to receive
9 compensation pursuant to section 38-611.

10 Q. In consultation with the director of the department of
11 administration, the board may enter into employment agreements and
12 establish the terms of those agreements with persons holding any of the
13 following system positions:

- 14 1. Administrator.
- 15 2. Deputy or assistant administrator.
- 16 3. Chief investment officer.
- 17 4. Deputy chief investment officer.
- 18 5. Fiduciary or investment counsel.

19 R. The attorney general or an attorney approved by the attorney
20 general and paid by the fund is the attorney for the board and shall
21 represent the board in any legal proceeding or forum that the board deems
22 appropriate. The board, administrator, deputy or assistant administrators
23 and employees of the board are not personally liable for any acts done in
24 their official capacity in good faith reliance on the written opinions of
25 the board's attorney.

26 S. At least once in each five-year period after the effective date,
27 the actuary shall make an actuarial investigation into the mortality,
28 service and compensation experience of the members and beneficiaries of
29 the system and other plans that the board administers and shall make a
30 special valuation of the assets and liabilities of the monies of the
31 system and plans. Taking into account the results of the investigation
32 and special valuation, the board shall adopt for the system and other
33 plans that the board administers those mortality, service and other tables
34 deemed necessary.

35 T. On the basis of the tables the board adopts, the actuary shall
36 make a valuation of the assets and liabilities of the funds of the system
37 and other plans that the board administers at least every year. By
38 November 1 of each year the board shall provide a preliminary report and
39 by December 31 of each year provide a final report to the governor, the
40 speaker of the house of representatives and the president of the senate on
41 the contribution rate for the ensuing fiscal year.

42 U. Neither the board nor any member or employee of the board shall
43 directly or indirectly, for the board, the member or the employee or as an
44 agent, in any manner use the monies or deposits of the fund except to make
45 current and necessary payments, nor shall the board or any member or

1 employee become an endorser or surety or in any manner an obligor for
2 monies loaned by or borrowed from the fund or the assets of any other
3 plans that the board administers.

4 V. Financial or commercial information that is provided to the
5 board, employees of the board and attorneys of the board in connection
6 with investments in which the board has invested or investments the board
7 has considered for investment is confidential, proprietary and not a
8 public record if the information is information that would customarily not
9 be released to the public by the person or entity from whom the
10 information was obtained.

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

14 X. The public safety personnel retirement system advisory committee
15 is established and shall serve as a liaison between the board and the
16 members and employers of the system. The president of the senate and the
17 speaker of the house of representatives shall each appoint to the
18 committee one member ~~who is either a legislator or a legislative staff~~
19 ~~member~~. The remaining members of the committee shall be appointed by the
20 chairperson of the board from names submitted to the chairperson by
21 associations representing law enforcement, firefighters, state government,
22 counties, cities and towns and tribal governments. The committee shall
23 select a chairperson from among its members each calendar year. The
24 committee members appointed by the chairperson of the board shall consist
25 of the following ten members:

- 26 1. A member who is a law enforcement officer.
- 27 2. A member who is a firefighter.
- 28 3. A member of the elected officials' retirement plan.
- 29 4. A member of the corrections officer retirement plan.
- 30 5. A retiree from the public safety personnel retirement system.
- 31 6. A representative from a city or town in this state.
- 32 7. A representative from a county in this state.
- 33 8. A representative from a fire district in this state.
- 34 9. A representative from a state employer.
- 35 10. A representative from a tribal government located in this
36 state.

APPROVED BY THE GOVERNOR MARCH 25, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 25, 2022.