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

Section 1. Repeal

Section 38-848, Arizona Revised Statutes, as amended by Laws 2021, chapter 405, section 15, is repealed.

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

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

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

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

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

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

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

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

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

1. Is absent without excuse from three consecutive regular meetings of the board.
2. Resigns, dies or becomes unable to perform board member duties.

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

1. A portfolio manager acting in a fiduciary capacity.
2. A securities analyst.
3. A senior executive or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment-related capacity.
4. A chartered financial analyst in good standing as determined by the chartered financial analyst institute.
5. A current or former professor or instructor at the college or university level in the field of economics, finance, actuarial science, accounting or pension-related subjects.
6. An economist.
7. Any other senior executive engaged in the field of public or private finances or with experience with public pension systems.

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

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

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

F. The board shall have the full power in its sole discretion to invest and reinvest, alter and change the monies accumulated under the system and other retirement plans and trusts that the board administers as provided in this article. In addition to its power to make investments managed by others, the board may delegate the authority the board deems necessary and prudent to investment management pursuant to section 38-848.03, as well as to the administrator, employed by the board pursuant
to subsection M, paragraph 6 of this section, and any deputy or assistant
administrators to invest the monies of the system and other retirement
plans and trusts that the board administers if the administrator,
investment management and any deputy or assistant administrators follow
the investment policies that are adopted by the board. The board may
commingle securities and monies of the fund, the elected officials',
retirement plan, the corrections officer retirement plan and other plans
or monies entrusted to its care, subject to the crediting of receipts and
earnings and charging of payments to the account of the appropriate
employer, system or plan. In making every investment, the board shall
exercise the judgment and care under the circumstances then prevailing
that persons of ordinary prudence, discretion and intelligence exercise in
the management of their own affairs, not in regard to speculation but in
regard to the permanent disposition of their funds, considering the
probable income from their funds as well as the probable safety of their
capital, if:

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

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

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

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

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

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

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

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

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

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

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

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

1. Invest and reinvest the principal and income of all assets that the board manages without distinction between principal and income.
2. Sell, exchange, convey, transfer or otherwise dispose of any investments made on behalf of the system or other plans the board administers in the name of the system or plans by private contract or at public auction.

3. Also:
   (a) Vote on any stocks, bonds or other securities.
   (b) Give general or special proxies or powers of attorney with or without power of substitution.
   (c) Exercise any conversion privileges, subscription rights or other options and make any payments incidental to the exercise of the conversion privileges, subscription rights or other options.
   (d) Consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities, delegate discretionary powers and pay any assessments or charges in connection therewith.
   (e) Generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other investments held in or owned by the system or other plans whose assets the board administers.

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

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

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

7. Appear before local boards and the courts of this state and political subdivisions of this state through counsel or an appointed representative to protect the fund or the assets of other plans that the board administers. The board is not responsible for the actions or omissions of the local boards under this system but may require a review or rehearing of actions or omissions of local boards. A limitation period does not prohibit the board or administrator from contesting or require the board or administrator to implement or comply with a local board decision that violates the internal revenue code or that threatens to impair the tax-qualified status of the system or any plan administered by the board or administrator.
8. Empower the fund administrator to take actions on behalf of the board that are necessary for the protection and administration of the fund or the assets of other plans that the board administers pursuant to the guidelines of the board.

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

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

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

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

1. A balance sheet.
2. A statement of income and expenditures for the year.
3. A report on an actuarial valuation of its assets and liabilities.
4. A list of investments owned.
5. The total rate of return, yield on cost, and percent of cost to market value of the fund and the assets of other plans that the board administers.

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

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

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

9. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the public safety personnel retirement system:
   (a) Department of liquor licenses and control.
   (b) Department of public safety.
   (c) Northern Arizona university.
(d) University of Arizona.
(e) Arizona state university.
(f) Arizona game and fish department.
(g) Department of law.
(h) Department of emergency and military affairs.
(i) Arizona state parks board.

10. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the corrections officer retirement plan:
   (a) State department of corrections.
   (b) Department of public safety.
   (c) The judiciary.
   (d) Department of juvenile corrections.

11. An estimate of the aggregate fees paid for private equity investments and other alternative investments, including management fees and performance fees and carried interest.

M. The board shall:
1. Maintain the accounts of the system and other plans that the board administers and issue statements to each employer annually and to each member who requests a statement.
2. Report the results of the actuarial valuations to the local boards and employers.
3. Contract on a fee basis with an independent investment counsel to advise the board in the investment management of the fund and assets of other plans that the board administers and with an independent auditing firm to audit the board's accounting.
4. Allow the auditor general to make an annual audit and transmit the results to the governor and the legislature.
5. Contract on a fee basis with an actuary who shall make actuarial valuations of the system and other plans that the board administers, be the technical adviser of the board on matters regarding the operation of the funds created by the provisions of the system, the elected officials' retirement plan, the corrections officer retirement plan and the public safety cancer insurance policy program and perform other duties required in connection therewith. The actuary must be a member of a nationally recognized association or society of actuaries.
6. Employ, as administrator, a person, state department or other body to serve at the pleasure of the board.
7. Establish procedures and guidelines for contracts with actuaries, auditors, investment counsel and legal counsel and for safeguarding of securities.
8. Issue a request for proposals every five years for an external auditor. The board is not required to change its auditor after issuing the request for proposals.
9. Develop a policy regarding routine stress testing of the retirement systems and plans administered by the board at the employer level and system level. The stress test shall use industry standards, such as the inclusion of assumptions regarding investment returns, inflation, population growth, payroll growth and employer contributions. For the purposes of this paragraph, "stress test" means an assessment of the risk exposure of the retirement system or plan, including scenario analysis, simulation analysis and sensitivity analysis.

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

1. Administer this article.
2. Be responsible for the recruitment, hiring and day-to-day management of employees.
3. Invest the monies of the system and other plans that the board administers as the board deems necessary and prudent as provided in subsections F and J of this section and subject to the investment policies and fund objectives adopted by the board.
4. Establish and maintain an adequate system of accounts and records for the system and other plans that the board administers, which shall be integrated with the accounts, records and procedures of the employers so that the system and other plans that the board administers operate most effectively and at minimum expense and that duplication of records and accounts is avoided.
5. In accordance with the board's governance policy and procedures and the budget adopted by the board, hire employees and services the administrator deems necessary and prescribe their duties, including the hiring of one or more deputy or assistant administrators to manage the system's operations, investments and legal affairs.
6. Be responsible for income, the collection of the income and the accuracy of all expenditures.
7. Recommend to the board annual contracts for the system's actuary, auditor, investment counsel, legal counsel and safeguarding of securities.
8. Perform additional duties and powers prescribed by the board and delegated to the administrator.

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

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

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

1. Administrator.
2. Deputy or assistant administrator.
3. Chief investment officer.
4. Deputy chief investment officer.
5. Fiduciary or investment counsel.

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

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

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

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

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

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

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

1. A member who is a law enforcement officer.
2. A member who is a firefighter.
3. A member of the elected officials’ retirement plan.
4. A member of the corrections officer retirement plan.
5. A retiree from the public safety personnel retirement system.
6. A representative from a city or town in this state.
7. A representative from a county in this state.
8. A representative from a fire district in this state.
9. A representative from a state employer.
10. A representative from a tribal government located in this

state.

APPROVED BY THE GOVERNOR MARCH 25, 2022.