

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2058

AN ACT

AMENDING SECTION 38-847, ARIZONA REVISED STATUTES; 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. Section 38-847, Arizona Revised Statutes, is amended to
3 read:

4 38-847. Local boards

5 A. The administration of the system and responsibility for making the
6 provisions of the system effective for each employer are vested in a local
7 board. The department of public safety, the Arizona game and fish
8 department, the department of emergency and military affairs, the university
9 of Arizona, Arizona state university, northern Arizona university, each
10 county sheriff's office, each county attorney's office, each county parks
11 department, each municipal fire department, each eligible fire district, each
12 community college district, each municipal police department, the department
13 of law, the department of administration, the department of liquor licenses
14 and control, the Arizona department of agriculture, the Arizona state parks
15 board, each Indian reservation police agency and each Indian reservation fire
16 fighting agency shall have a local board. A nonprofit corporation operating
17 pursuant to sections 28-8423 and 28-8424 shall have one board for all of its
18 members. Each local board shall be constituted as follows:

19 1. For political subdivisions or Indian tribes, the mayor or chief
20 elected official or a designee of the mayor or chief elected official
21 approved by the respective governing body as chairman, two members elected by
22 secret ballot by members employed by the appropriate employer and two
23 citizens, one of whom shall be the head of the merit system if it exists for
24 the group of members, appointed by the mayor or chief elected official and
25 with the approval of the governing body of the city or the governing body of
26 the employer. The appointed two citizens shall serve on both local boards in
27 a city or Indian tribes where both fire and police department employees are
28 members.

29 2. For state agencies and nonprofit corporations operating pursuant to
30 sections 28-8423 and 28-8424, two members elected by secret ballot by members
31 employed by the appropriate employer and three citizens appointed by the
32 governor. Each state agency local board shall elect a chairman.

33 3. For fire districts organized pursuant to section 48-804, the
34 secretary-treasurer as chairman, two members elected by secret ballot by
35 members employed by the fire district and two citizens appointed by the
36 secretary-treasurer, one of whom is a resident of the fire district and one
37 of whom has experience in personnel administration but who is not required to
38 be a resident of the fire district.

39 B. Upon the taking effect of this system for an employer, the
40 appointments and elections of board members shall take place with one
41 elective and appointive board member serving a term ending two years after
42 the effective date of participation for the employer and other local board
43 members serving a term ending four years after the effective date.
44 Thereafter, every second year, and as a vacancy occurs, an office shall be
45 filled for a term of four years in the same manner as previously provided.

1 C. Each member of a local board ~~shall~~, within ten days after the
2 member's appointment or election, SHALL take an oath of office that, so far
3 as it devolves upon the member, the member shall diligently and honestly
4 administer the affairs of the local board and that the member shall not
5 knowingly violate or willingly permit to be violated any of the provisions of
6 law applicable to the system.

7 D. Except as limited by subsection E of this section, a local board
8 shall have such powers as may be necessary to discharge the following duties:

9 1. To decide all questions of eligibility and service credits, and
10 determine the amount, manner and time of payment of any benefits under the
11 system.

12 2. To prescribe procedures to be followed by claimants in filing
13 applications for benefits.

14 3. To make a determination as to the right of any claimant to a
15 benefit and to afford any claimant or the fund manager, or both, a right to a
16 rehearing on the original determination. UNLESS ALL PARTIES INVOLVED IN A
17 MATTER PRESENTED TO THE LOCAL BOARD FOR DETERMINATION OTHERWISE AGREE, THE
18 LOCAL BOARD SHALL COMMENCE A HEARING ON THE MATTER WITHIN NINETY DAYS AFTER
19 THE DATE THE MATTER IS PRESENTED TO THE LOCAL BOARD FOR DETERMINATION. IF A
20 LOCAL BOARD FAILS TO COMMENCE A HEARING AS PROVIDED IN THIS PARAGRAPH, ON A
21 MATTER PRESENTED TO THE BOARD FOR DETERMINATION, THE RELIEF DEMANDED BY THE
22 PARTY PETITIONING THE BOARD IS DEEMED GRANTED AND APPROVED BY THE BOARD. THE
23 GRANTING AND APPROVAL OF THIS RELIEF IS CONSIDERED FINAL AND BINDING UNLESS A
24 TIMELY REQUEST FOR REHEARING OR APPEAL IS MADE AS PROVIDED IN THIS ARTICLE.

25 4. To request and receive from the employers and from members such
26 information as is necessary for the proper administration of the system and
27 action on claims for benefits and to forward such information to the fund
28 manager.

29 5. To distribute, in such manner as the local board determines to be
30 appropriate, information explaining the system received from the fund
31 manager.

32 6. To furnish the employer, the fund manager, and the legislature,
33 upon request, with such annual reports with respect to the administration of
34 the system as are reasonable and appropriate.

35 7. To receive and review the actuarial valuation of the system for its
36 group of members.

37 8. To receive and review reports of the financial condition and of the
38 receipts and disbursements of the fund from the fund manager.

39 9. To appoint medical boards as provided in section 38-859.

40 10. To sue and be sued to effectuate the duties and responsibilities
41 set forth in this article.

42 E. A local board shall have no power to add to, subtract from, modify
43 or waive any of the terms of the system, change or add to any benefits
44 provided by the system or waive or fail to apply any requirement of
45 eligibility for membership or benefits under the system.

1 F. A local board ~~shall~~, from time to time, SHALL establish and adopt
2 such rules as it deems necessary or desirable for its administration. All
3 rules and decisions of a board shall be uniformly and consistently applied to
4 all members in similar circumstances. IF A CLAIM OR DISPUTE IS PRESENTED TO
5 A LOCAL BOARD FOR DETERMINATION BUT THE LOCAL BOARD HAS NOT YET ADOPTED
6 UNIFORM RULES OF PROCEDURE FOR ADJUDICATION OF THE CLAIM OR DISPUTE, THE
7 LOCAL BOARD SHALL ADOPT AND USE THE MODEL UNIFORM RULES OF LOCAL BOARD
8 PROCEDURE THAT ARE ISSUED BY THE FUND MANAGER'S FIDUCIARY COUNSEL TO
9 ADJUDICATE THE CLAIM OR DISPUTE.

10 G. Any action by a majority vote of the members of a local board which
11 is not inconsistent with the provisions of the system shall be final,
12 conclusive and binding upon all persons affected by it unless a timely
13 application for a rehearing or appeal is filed as provided in this article.

14 H. A claimant or the fund manager may apply for a rehearing before the
15 local board within the time period prescribed in this subsection. An
16 application for a rehearing shall be filed in writing with a member of the
17 local board or its secretary within sixty days after:

18 1. The applicant-claimant receives notification of the local board's
19 original action by certified mail, by attending the meeting at which the
20 action is taken or by receiving benefits from the system pursuant to the
21 local board's original action, whichever occurs first.

22 2. The applicant-fund manager receives notification of the local
23 board's original action by certified mail or by receipt of written directions
24 from the local board pursuant to its original action, whichever occurs first.

25 I. A hearing before a local board on a matter remanded from the
26 superior court is not subject to a rehearing before the local board.

27 J. Decisions of local boards are subject to judicial review pursuant
28 to title 12, chapter 7, article 6.

29 K. When making a ruling, determination or calculation, the local board
30 shall be entitled to rely upon information furnished by the employer, the
31 fund manager, independent legal counsel, ~~or~~ or the actuary for the system.

32 L. Each member of a local board is entitled to one vote. A majority
33 of the appointed and elected members is necessary for a decision by the
34 members of a local board at any meeting of the local board.

35 M. The local board shall adopt such bylaws as it deems desirable. The
36 local board shall elect a secretary who may, but need not, be a member of the
37 local board. The secretary of the local board shall keep a record and
38 prepare minutes of all meetings, forward the minutes to the fund manager
39 within forty-five days after each meeting and forward all necessary
40 communications to the fund manager.

41 N. The fees of the medical board and of THE local BOARD'S INDEPENDENT
42 legal counsel and all other expenses of the local board necessary for the
43 administration of the system shall be paid by the employer at such rates and
44 in such amounts as the local board shall approve. LEGAL COUNSEL THAT IS
45 EMPLOYED BY THE LOCAL BOARD IS INDEPENDENT OF THE EMPLOYER AND ANY EMPLOYEE

1 ORGANIZATION OR MEMBER AND OWES ITS DUTY OF LOYALTY ONLY TO THE LOCAL BOARD
2 IN CONNECTION WITH ITS REPRESENTATION OF THE LOCAL BOARD.

3 O. The local board shall issue directions to the fund manager
4 concerning all benefits which are to be paid from the employer's account
5 pursuant to the provisions of the fund. The local board shall keep on file,
6 in such manner as it may deem convenient or proper, all reports from the fund
7 manager and the actuary.

8 P. The local board and the individual members of the local board shall
9 be indemnified from the assets of the employer's account in the fund against
10 any and all liabilities arising by reason of any act, or failure to act, made
11 in good faith pursuant to the provisions of the system, including expenses
12 reasonably incurred in the defense of any claim relating to the act or
13 failure to act.