

COMMITTEE ON FINANCE
SENATE AMENDMENTS TO S.B. 1081
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 38-848, Arizona Revised Statutes, is amended to
3 read:

4 38-848. Board of trustees; powers and duties; reporting
5 requirements; independent trust fund; administrator;
6 agents and employees; advisory committee

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

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

23 2. Two members representing firefighters, one of whom is appointed
24 by the speaker of the house of representatives and one of whom is appointed

1 by the governor. A statewide association representing firefighters in this
2 state shall forward nominations to the appointing elected officials,
3 providing at least three nominees for each position. At least one of the
4 members appointed under this paragraph shall be an elected local board
5 member.

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

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

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

22 B. Each appointment made pursuant to subsection A of this section
23 shall be chosen from the list of nominees provided to the appointing
24 elected official. For any appointment made by the governor pursuant to
25 subsection A of this section, before appointment by the governor, a
26 prospective member of the board shall submit a full set of fingerprints to
27 the governor to obtain a state and federal criminal records check pursuant
28 to section 41-1750 and Public Law 92-544. The department of public safety
29 may exchange this fingerprint data with the federal bureau of
30 investigation. A board member may be reappointed. Notwithstanding section
31 38-295, a board member may be removed from office only for cause by the
32 appointing power or because the board member has vacated the member's seat

1 on the board. A board member who is removed for cause shall be provided
2 written notice and an opportunity for a response. The appointing power may
3 remove a board member based on written findings that specify the reason for
4 removal. Any vacancy that occurs other than by expiration of a term shall
5 be filled for the balance of the term. All vacancies shall be filled in
6 the same manner as the initial appointment. A board member vacates the
7 office if the member either:

8 1. Is absent without excuse from three consecutive regular meetings
9 of the board.

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

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

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

18 2. A securities analyst.

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

22 4. A chartered financial analyst in good standing as determined by
23 the chartered financial analyst institute.

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

27 6. An economist.

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

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

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

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

1 beneficiaries or to pay expenses of operation and administration of the
2 system and fund and other retirement plans that the board administers.

3 F. The board shall have the full power in its sole discretion to
4 invest and reinvest, alter and change the monies accumulated under the
5 system and other retirement plans and trusts that the board administers as
6 provided in this article. In addition to its power to make investments
7 managed by others, the board may delegate the authority the board deems
8 necessary and prudent to investment management pursuant to section
9 38-848.03, as well as to the administrator, employed by the board pursuant
10 to subsection M, paragraph 6 of this section, and any deputy or assistant
11 administrators to invest the monies of the system and other retirement
12 plans and trusts that the board administers if the administrator,
13 investment management and any deputy or assistant administrators follow the
14 investment policies that are adopted by the board. The board may commingle
15 securities and monies of the fund, the elected officials' retirement plan,
16 the corrections officer retirement plan and other plans or monies entrusted
17 to its care, subject to the crediting of receipts and earnings and charging
18 of payments to the account of the appropriate employer, system or plan. In
19 making every investment, the board shall exercise the judgment and care
20 under the circumstances then prevailing that persons of ordinary prudence,
21 discretion and intelligence exercise in the management of their own
22 affairs, not in regard to speculation but in regard to the permanent
23 disposition of their funds, considering the probable income from their
24 funds as well as the probable safety of their capital, if:

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

29 2. Not more than five percent of the combined assets of the system
30 or other plans that the board manages is invested in corporate stock issued
31 by any one corporation, other than corporate stock issued by corporations

1 chartered by the United States government or corporate stock issued by a
2 bank or insurance company.

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

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

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

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

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

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

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

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

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

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

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

31 1. Invest and reinvest the principal and income of all assets that
32 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 other
10 options and make any payments incidental to the exercise of the conversion
11 privileges, subscription rights or other options.

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

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

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

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

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

1 7. Appear before local boards and the courts of this state and
2 political subdivisions of this state through counsel or an appointed
3 representative to protect the fund or the assets of other plans that the
4 board administers. The board is not responsible for the actions or
5 omissions of the local boards under this system but may require a review or
6 rehearing of actions or omissions of local boards. A limitation period
7 does not prohibit the board or administrator from contesting or require the
8 board or administrator to implement or comply with a local board decision
9 that violates the internal revenue code or that threatens to impair the
10 tax-qualified status of the system or any plan administered by the board or
11 administrator.

12 8. Empower the fund administrator to take actions on behalf of the
13 board that are necessary for the protection and administration of the fund
14 or the assets of other plans that the board administers pursuant to the
15 guidelines of the board.

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

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

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

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

- 29 1. A balance sheet.
- 30 2. A statement of income and expenditures for the year.
- 31 3. A report on an actuarial valuation of its assets and liabilities.

1 4. A list of investments owned.

2 5. The total rate of return, yield on cost, and percentage of cost
3 to market value of the fund and the assets of other plans that the board
4 administers.

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

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

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

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

22 (a) Department of liquor licenses and control.

23 (b) Department of public safety.

24 (c) Northern Arizona university.

25 (d) University of Arizona.

26 (e) Arizona state university.

27 (f) Arizona game and fish department.

28 (g) Department of law.

29 (h) Department of emergency and military affairs.

30 (i) Arizona state parks board.

1 10. An estimate of the employer contribution rates for the next ten
2 fiscal years for each of the following employers within the corrections
3 officer retirement plan:

- 4 (a) State department of corrections.
- 5 (b) Department of public safety.
- 6 (c) The judiciary.
- 7 (d) Department of juvenile corrections.

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

11 M. The board shall:

12 1. Maintain the accounts of the system and other plans that the
13 board administers and issue statements to each employer annually and to
14 each member who requests a statement.

15 2. Report the results of the actuarial valuations to the local
16 boards and employers.

17 3. Contract on a fee basis with an independent investment counsel to
18 advise the board in the investment management of the fund and assets of
19 other plans that the board administers and with an independent auditing
20 firm to audit the board's accounting.

21 4. Allow the auditor general to make an annual audit and transmit
22 the results to the governor and the legislature.

23 5. Contract on a fee basis with an actuary who shall make actuarial
24 valuations of the system and other plans that the board administers, be the
25 technical adviser of the board on matters regarding the operation of the
26 funds created by the provisions of the system, the elected officials'
27 retirement plan, the corrections officer retirement plan and the public
28 safety cancer insurance policy program and perform other duties required in
29 connection therewith. The actuary must be a member of a nationally
30 recognized association or society of actuaries.

31 6. Employ, as administrator, a person, state department or other
32 body to serve at the pleasure of the board.

1 7. Establish procedures and guidelines for contracts with actuaries,
2 auditors, investment counsel and legal counsel and for safeguarding of
3 securities.

4 8. Issue a request for proposals every five years for an external
5 auditor. The board is not required to change its auditor after issuing the
6 request for proposals.

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

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

16 1. Administer this article.

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

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

23 4. Establish and maintain an adequate system of accounts and records
24 for the system and other plans that the board administers, which shall be
25 integrated with the accounts, records and procedures of the employers so
26 that the system and other plans that the board administers operate most
27 effectively and at minimum expense and that duplication of records and
28 accounts is avoided.

29 5. In accordance with the board's governance policy and procedures
30 and the budget adopted by the board, hire employees and services the
31 administrator deems necessary and prescribe their duties, including the

1 hiring of one or more deputy or assistant administrators to manage the
2 system's operations, investments and legal affairs.

3 6. Be responsible for income, the collection of the income and the
4 accuracy of all expenditures.

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

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

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

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

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

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

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

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

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

29 U. Neither the board nor any member or employee of the board shall
30 directly or indirectly, for the board, the member or the employee or as an
31 agent, in any manner use the monies or deposits of the fund except to make
32 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 plans
3 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 with
6 investments in which the board has invested or investments the board has
7 considered for investment is confidential, proprietary and not a public
8 record if the information is information that would customarily not be
9 released to the public by the person or entity from whom the information
10 was obtained.

11 W. A person who is a dealer as defined in section 44-1801 and who is
12 involved in securities or investments related to the board's investments is
13 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 committee
18 one member ~~who is either a legislator or a legislative staff member~~. The
19 remaining members of the committee shall be appointed by the chairperson of
20 the board from names submitted to the chairperson by associations
21 representing law enforcement, firefighters, state government, counties,
22 cities and towns and tribal governments. The committee shall select a
23 chairperson from among its members each calendar year. The committee
24 members appointed by the chairperson of the board shall consist of the
25 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.

Senate Amendments to S.B. 1081

- 1 7. A representative from a county in this state.
- 2 8. A representative from a fire district in this state.
- 3 9. A representative from a state employer.
- 4 10. A representative from a tribal government located in this
- 5 state."
- 6 Amend title to conform

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