

Senate Engrossed

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

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

# SENATE BILL 1081

AN ACT

AMENDING SECTION 38-848, 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 38-848, Arizona Revised Statutes, is amended to  
3 read:

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

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

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

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

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

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

44 5. One member who is appointed by the governor from a list of three  
45 nominees forwarded by the board. The board shall select the nominees to

1 forward to the governor from a list of at least five nominees received  
2 from the advisory committee.

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

21 1. Is absent without excuse from three consecutive regular meetings  
22 of the board.

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

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

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

31 2. A securities analyst.

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

35 4. A chartered financial analyst in good standing as determined by  
36 the chartered financial analyst institute.

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

40 6. An economist.

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

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

35           F. The board shall have the full power in its sole discretion to  
36 invest and reinvest, alter and change the monies accumulated under the  
37 system and other retirement plans and trusts that the board administers as  
38 provided in this article. In addition to its power to make investments  
39 managed by others, the board may delegate the authority the board deems  
40 necessary and prudent to investment management pursuant to section  
41 38-848.03, as well as to the administrator, employed by the board pursuant  
42 to subsection M, paragraph 6 of this section, and any deputy or assistant  
43 administrators to invest the monies of the system and other retirement  
44 plans and trusts that the board administers if the administrator,  
45 investment management and any deputy or assistant administrators follow

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

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

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

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

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

32 (a) Listed or approved on issuance for listing on an exchange  
33 registered under the securities exchange act of 1934, as amended  
34 (15 United States Code sections 78a through 78pp).

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

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

41 (d) Listed or approved on issuance for listing on an exchange of a  
42 foreign country with which the United States is maintaining diplomatic  
43 relations at the time of purchase, except that not more than twenty  
44 percent of the combined assets of the system and other plans that the

1 board manages is invested in foreign securities, based on the cost value  
2 of the stocks irrespective of capital appreciation.

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

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

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

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

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

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

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

- 1           3. Also:
- 2           (a) Vote on any stocks, bonds or other securities.
- 3           (b) Give general or special proxies or powers of attorney with or
- 4 without power of substitution.
- 5           (c) Exercise any conversion privileges, subscription rights or
- 6 other options and make any payments incidental to the exercise of the
- 7 conversion privileges, subscription rights or other options.
- 8           (d) Consent to or otherwise participate in corporate
- 9 reorganizations or other changes affecting corporate securities, delegate
- 10 discretionary powers and pay any assessments or charges in connection
- 11 therewith.
- 12           (e) Generally exercise any of the powers of an owner with respect
- 13 to stocks, bonds, securities or other investments held in or owned by the
- 14 system or other plans whose assets the board administers.
- 15           4. Make, execute, acknowledge and deliver any other instruments
- 16 that may be necessary or appropriate to carry out the powers granted in
- 17 this section.
- 18           5. Register any investment held by the system or other plans whose
- 19 assets the board administers in the name of the system or plan or in the
- 20 name of a nominee or trust.
- 21           6. At the expense of the system or other plans that the board
- 22 administers, enter into an agreement with any bank or banks for the
- 23 safekeeping and handling of securities and other investments coming into
- 24 the possession of the board. The agreement shall be entered into under
- 25 terms and conditions that secure the proper safeguarding, inventory,
- 26 withdrawal and handling of the securities and other investments. Access
- 27 to and deposit or withdrawal of the securities from any place of deposit
- 28 selected by the board is not allowed and may not be made except as the
- 29 terms of the agreement provide.
- 30           7. Appear before local boards and the courts of this state and
- 31 political subdivisions of this state through counsel or an appointed
- 32 representative to protect the fund or the assets of other plans that the
- 33 board administers. The board is not responsible for the actions or
- 34 omissions of the local boards under this system but may require a review
- 35 or rehearing of actions or omissions of local boards. A limitation period
- 36 does not prohibit the board or administrator from contesting or require
- 37 the board or administrator to implement or comply with a local board
- 38 decision that violates the internal revenue code or that threatens to
- 39 impair the tax-qualified status of the system or any plan administered by
- 40 the board or administrator.
- 41           8. Empower the fund administrator to take actions on behalf of the
- 42 board that are necessary for the protection and administration of the fund
- 43 or the assets of other plans that the board administers pursuant to the
- 44 guidelines of the board.

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

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

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

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

14           1. A balance sheet.

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

16           3. A report on an actuarial valuation of its assets and  
17 liabilities.

18           4. A list of investments owned.

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

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

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

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

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

39           (a) Department of liquor licenses and control.

40           (b) Department of public safety.

41           (c) Northern Arizona university.

42           (d) University of Arizona.

43           (e) Arizona state university.

44           (f) Arizona game and fish department.

45           (g) Department of law.



1 (h) Department of emergency and military affairs.

2 (i) Arizona state parks board.

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

6 (a) State department of corrections.

7 (b) Department of public safety.

8 (c) The judiciary.

9 (d) Department of juvenile corrections.

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

13 M. The board shall:

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

17 2. Report the results of the actuarial valuations to the local  
18 boards and employers.

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

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

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

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

35 7. Establish procedures and guidelines for contracts with  
36 actuaries, auditors, investment counsel and legal counsel and for  
37 safeguarding of securities.

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

41 9. Develop a policy regarding routine stress testing of the  
42 retirement systems and plans administered by the board at the employer  
43 level and system level. The stress test shall use industry standards,  
44 such as the inclusion of assumptions regarding investment returns,  
45 inflation, population growth, payroll growth and employer contributions.

1 For the purposes of this paragraph, "stress test" means an assessment of  
2 the risk exposure of the retirement system or plan, including scenario  
3 analysis, simulation analysis and sensitivity analysis.

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

5 1. Administer this article.

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

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

12 4. Establish and maintain an adequate system of accounts and  
13 records for the system and other plans that the board administers, which  
14 shall be integrated with the accounts, records and procedures of the  
15 employers so that the system and other plans that the board administers  
16 operate most effectively and at minimum expense and that duplication of  
17 records and accounts is avoided.

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

23 6. Be responsible for income, the collection of the income and the  
24 accuracy of all expenditures.

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

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

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

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

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

- 10 1. Administrator.
- 11 2. Deputy or assistant administrator.
- 12 3. Chief investment officer.
- 13 4. Deputy chief investment officer.
- 14 5. Fiduciary or investment counsel.

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

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

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

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

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

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

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

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