

REFERENCE TITLE: CORP; judiciary; other designated positions

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

HB 2118

Introduced by
Representative McClure

AN ACT

AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 87, SECTION 5; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 87, SECTION 6; AMENDING SECTION 38-891, ARIZONA REVISED STATUTES; RELATING TO THE CORRECTIONS OFFICER RETIREMENT PLAN; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 38-881, Arizona Revised Statutes, as amended by
3 Laws 2007, chapter 87, section 5, is amended to read:
4 38-881. Definitions
5 In this article, unless the context otherwise requires:
6 1. "Accidental disability" means a physical or mental condition that
7 the local board finds totally and permanently prevents an employee from
8 performing a reasonable range of duties within the employee's department, was
9 incurred in the performance of the employee's duties and was the result of
10 any of the following:
11 (a) Physical contact with inmates, prisoners, parolees or persons on
12 probation.
13 (b) Responding to a confrontational situation with inmates, prisoners,
14 parolees or persons on probation.
15 (c) A job related motor vehicle accident while on official business
16 for the employee's employer. A job related motor vehicle accident does not
17 include an accident that occurs on the way to or from work. Persons found
18 guilty of violating a personnel rule, a rule established by the employee's
19 employer or a state or federal law in connection with a job related motor
20 vehicle accident do not meet the conditions for accidental disability.
21 2. "Accumulated member contributions" means the sum of all member
22 contributions deducted from a member's salary and paid to the fund, plus
23 member contributions transferred to the fund by another retirement plan
24 covering public employees of this state, plus previously withdrawn
25 accumulated member contributions ~~which~~ THAT are repaid to the fund in
26 accordance with this article, minus any benefits paid to or on behalf of a
27 member.
28 3. "Alternate payee" means the spouse or former spouse of a
29 participant as designated in a domestic relations order.
30 4. "Alternate payee's portion" means benefits that are payable to an
31 alternate payee pursuant to a plan approved domestic relations order.
32 5. "Average monthly salary" means one-thirty-sixth of the aggregate
33 amount of salary that is paid a member by a participating employer during a
34 period of thirty-six consecutive months of service in which the member
35 received the highest salary within the last one hundred twenty months of
36 service. Average monthly salary means the aggregate amount of salary that is
37 paid a member divided by the member's months of service if the member has
38 less than thirty-six months of service. In the computation under this
39 paragraph, a period of nonpaid or partially paid industrial leave shall be
40 considered based on the salary the employee would have received in the
41 employee's job classification if the employee was not on industrial leave.
42 6. "Beneficiary" means an individual who is being paid or who has
43 entitlement to the future payment of a pension on account of a reason other
44 than the individual's membership in the retirement plan.

- 1 7. "Claimant" means a member, beneficiary or estate that files an
2 application for benefits with the retirement plan.
- 3 8. "Credited service" means credited service transferred to the
4 retirement plan from another retirement system or plan for public employees
5 of this state, plus those compensated periods of service as a member of the
6 retirement plan for which member contributions are on deposit in the fund.
- 7 9. "Cure period" means the ninety-day period in which a participant or
8 alternate payee may submit an amended domestic relations order and request a
9 determination, calculated from the time the plan issues a determination
10 finding that a previously submitted domestic relations order did not qualify
11 as a plan approved domestic relations order.
- 12 10. "Designated position" means:
- 13 (a) For a county:
- 14 (i) A county detention officer.
- 15 (ii) A nonuniformed employee of a sheriff's department whose primary
16 duties require direct contact with inmates.
- 17 (b) For the state department of corrections and the department of
18 juvenile corrections, only the following specifically designated positions:
- 19 (i) Food service.
- 20 (ii) Nursing personnel.
- 21 (iii) Corrections physician assistant.
- 22 (iv) Therapist.
- 23 (v) Corrections dental assistant.
- 24 (vi) Hygienist.
- 25 (vii) Corrections medical assistant.
- 26 (viii) Correctional service officer, including assistant deputy
27 warden, deputy warden, warden and superintendent.
- 28 (ix) State correctional program officer.
- 29 (x) Parole or community supervision officers.
- 30 (xi) Investigators.
- 31 (xii) Teachers.
- 32 (xiii) Institutional maintenance workers.
- 33 (xiv) Youth corrections officer.
- 34 (xv) Youth program officer.
- 35 (xvi) Behavioral health treatment unit managers.
- 36 (xvii) The director and assistant directors of the department of
37 juvenile corrections and the superintendent of the state educational system
38 for committed youth.
- 39 (xviii) The director, deputy directors and assistant directors of the
40 state department of corrections.
- 41 (xix) Other positions designated by the local board of the state
42 department of corrections or the local board of the department of juvenile
43 corrections pursuant to section 38-891, ~~subsection E~~.
- 44 (c) For a city or town, a city or town detention officer.

1 (d) For an employer of an eligible group as defined in section 38-842,
2 full-time dispatchers.

3 (e) For the judiciary, probation, surveillance and juvenile detention
4 officers AND THOSE POSITIONS DESIGNATED BY THE LOCAL BOARD OF THE JUDICIARY
5 PURSUANT TO SECTION 38-891.

6 11. "Determination" means a written document that indicates to a
7 participant and alternate payee whether a domestic relations order qualifies
8 as a plan approved domestic relations order.

9 12. "Determination period" means the ninety-day period in which the
10 plan must review a domestic relations order that is submitted by a
11 participant or alternate payee to determine whether the domestic relations
12 order qualifies as a plan approved domestic relations order, calculated from
13 the time the plan mails a notice of receipt to the participant and alternate
14 payee.

15 13. "Domestic relations order" means an order of a court of this state
16 that is made pursuant to the domestic relations laws of this state and that
17 creates or recognizes the existence of an alternate payee's right to, or
18 assigns to an alternate payee the right to, receive a portion of the benefits
19 payable to a participant.

20 14. "Employee" means a person determined by the local board to be
21 employed by a participating employer in a designated position.

22 15. "Employer" means an agency or department of this state or a
23 political subdivision of this state ~~which~~ THAT has one or more employees in a
24 designated position.

25 16. "Fund" means the corrections officer retirement plan fund.

26 17. "Fund manager" means the fund manager of the public safety
27 personnel retirement system.

28 18. "Juvenile detention officer" means a juvenile detention officer
29 responsible for the direct custodial supervision of juveniles who are
30 detained in a county juvenile detention center.

31 19. "Local board" means the retirement board of the employer that
32 consists of persons appointed or elected to administer the plan as it applies
33 to the employer's members in the plan.

34 20. "Member" means any employee who meets all of the following
35 qualifications:

36 (a) Who is a full-time paid person employed by a participating
37 employer in a designated position.

38 (b) Who is receiving salary for personal services rendered to a
39 participating employer or would be receiving salary except for an authorized
40 leave of absence.

41 (c) Whose customary employment is at least forty hours each week and
42 for more than six months in a calendar year.

43 21. "Normal retirement date" means the first day of the calendar month
44 immediately following an employee's completion of twenty years of service or,
45 in the case of a dispatcher, twenty-five years of service, the employee's

1 sixty-second birthday and completion of ten years of service or the month in
2 which the sum of the employee's age and years of credited service equals
3 eighty.

4 22. "Notice of receipt" means a written document that is issued by the
5 plan to a participant and alternate payee and that states that the plan has
6 received a domestic relations order and a request for a determination that
7 the domestic relations order is a plan approved domestic relations order.

8 23. "Participant" means a member who is subject to a domestic relations
9 order.

10 24. "Participant's portion" means benefits that are payable to a
11 participant pursuant to a plan approved domestic relations order.

12 25. "Participating employer" means an employer ~~which~~ THAT the fund
13 manager has determined to have one or more employees in a designated position
14 or a county, city or town ~~which~~ THAT has entered into a joinder agreement
15 pursuant to section 38-902.

16 26. "Pension" means a series of monthly payments by the retirement
17 plan.

18 27. "Personal representative" means the personal representative of a
19 deceased alternate payee.

20 28. "Plan approved domestic relations order" means a domestic relations
21 order that the plan approves as meeting all the requirements for a plan
22 approved domestic relations order as otherwise prescribed in this article.

23 29. "Probation or surveillance officer" means an officer appointed
24 pursuant to section 8-203, 12-251 or 12-259 but does not include other
25 personnel, office assistants or support staff.

26 30. "Retired member" means an individual who is being paid a pension on
27 account of the individual's membership in the retirement plan.

28 31. "Retirement" means termination of employment after a member has
29 fulfilled all requirements for a pension.

30 32. "Retirement plan" or "plan" means the corrections officer
31 retirement plan established by this article.

32 33. "Salary" means the base salary, shift differential pay and holiday
33 pay paid a member in a designated position for personal services rendered to
34 a participating employer on a regular monthly, semimonthly or biweekly
35 payroll basis. Salary includes amounts that are subject to deferred
36 compensation or tax shelter agreements. Salary does not include payment for
37 any remuneration or reimbursement other than as prescribed by this
38 paragraph. For the purposes of this paragraph, "base salary" means the
39 amount of compensation each member is regularly paid for personal services
40 rendered to an employer before the addition of any extra monies, including
41 overtime pay, shift differential pay, holiday pay, fringe benefit pay and
42 similar extra payments.

43 34. "Segregated funds" means the amount of benefits that would
44 currently be payable to an alternate payee pursuant to a domestic relations
45 order under review by the plan, or a domestic relations order submitted to

1 the plan that failed to qualify as a plan approved domestic relations order,
2 if the domestic relations order were determined to be a plan approved
3 domestic relations order.

4 35. "Service" means employment rendered to a participating employer as
5 an employee in a designated position. Any absence that is authorized by an
6 employer, including any periods during which the employee is on an employer
7 sponsored long-term disability program, is considered as service if the
8 employee returns or is deemed by the employer to have returned to a
9 designated position within the period of the authorized absence.

10 36. "Total and permanent disability" means a physical or mental
11 condition that is not an accidental disability, that the local board finds
12 totally and permanently prevents a member from engaging in any gainful
13 employment and that is the direct and proximate result of the member's
14 performance of the member's duty as an employee of a participating employer.

15 Sec. 2. Section 38-881, Arizona Revised Statutes, as amended by Laws
16 2007, chapter 87, section 6, is amended to read:

17 38-881. Definitions

18 In this article, unless the context otherwise requires:

19 1. "Accidental disability" means a physical or mental condition that
20 the local board finds totally and permanently prevents an employee from
21 performing a reasonable range of duties within the employee's department, was
22 incurred in the performance of the employee's duties and was the result of
23 any of the following:

24 (a) Physical contact with inmates, prisoners, parolees or persons on
25 probation.

26 (b) Responding to a confrontational situation with inmates, prisoners,
27 parolees or persons on probation.

28 (c) A job related motor vehicle accident while on official business
29 for the employee's employer. A job related motor vehicle accident does not
30 include an accident that occurs on the way to or from work. Persons found
31 guilty of violating a personnel rule, a rule established by the employee's
32 employer or a state or federal law in connection with a job related motor
33 vehicle accident do not meet the conditions for accidental disability.

34 2. "Accumulated member contributions" means the sum of all member
35 contributions deducted from a member's salary and paid to the fund, plus
36 member contributions transferred to the fund by another retirement plan
37 covering public employees of this state, plus previously withdrawn
38 accumulated member contributions ~~which~~ **THAT** are repaid to the fund in
39 accordance with this article, minus any benefits paid to or on behalf of a
40 member.

41 3. "Alternate payee" means the spouse or former spouse of a
42 participant as designated in a domestic relations order.

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44 alternate payee pursuant to a plan approved domestic relations order.

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2 amount of salary that is paid a member by a participating employer during a
3 period of thirty-six consecutive months of service in which the member
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5 service. Average monthly salary means the aggregate amount of salary that is
6 paid a member divided by the member's months of service if the member has
7 less than thirty-six months of service. In the computation under this
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9 considered based on the salary the employee would have received in the
10 employee's job classification if the employee was not on industrial leave.

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12 entitlement to the future payment of a pension on account of a reason other
13 than the individual's membership in the retirement plan.

14 7. "Claimant" means a member, beneficiary or estate that files an
15 application for benefits with the retirement plan.

16 8. "Credited service" means credited service transferred to the
17 retirement plan from another retirement system or plan for public employees
18 of this state, plus those compensated periods of service as a member of the
19 retirement plan for which member contributions are on deposit in the fund.

20 9. "Cure period" means the ninety-day period in which a participant or
21 alternate payee may submit an amended domestic relations order and request a
22 determination, calculated from the time the plan issues a determination
23 finding that a previously submitted domestic relations order did not qualify
24 as a plan approved domestic relations order.

25 10. "Designated position" means:

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29 duties require direct contact with inmates.

30 (b) For the state department of corrections and the department of
31 juvenile corrections, only the following specifically designated positions:

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39 (viii) Correctional service officer, including assistant deputy
40 warden, deputy warden, warden and superintendent.

41 (ix) State correctional program officer.

42 (x) Parole or community supervision officers.

43 (xi) Investigators.

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45 (xiii) Institutional maintenance workers.

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4 (xvii) The director and assistant directors of the department of
5 juvenile corrections and the superintendent of the state educational system
6 for committed youth.
7 (xviii) The director, deputy directors and assistant directors of the
8 state department of corrections.
9 (xix) Other positions designated by the local board of the state
10 department of corrections or the local board of the department of juvenile
11 corrections pursuant to section 38-891, ~~subsection E~~.
12 (c) For a city or town, a city or town detention officer.
13 (d) For an employer of an eligible group as defined in section 38-842,
14 full-time dispatchers.
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26 payee.
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28 that is made pursuant to the domestic relations laws of this state and that
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31 payable to a participant.
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33 employed by a participating employer in a designated position.
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36 designated position.
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38 17. "Fund manager" means the fund manager of the public safety
39 personnel retirement system.
40 18. "Juvenile detention officer" means a detention officer responsible
41 for the direct custodial supervision of juveniles who are detained in a
42 county juvenile detention center.
43 19. "Local board" means the retirement board of the employer that
44 consists of persons appointed or elected to administer the plan as it applies
45 to the employer's members in the plan.

1 20. "Member" means any employee who meets all of the following
2 qualifications:

3 (a) Who is a full-time paid person employed by a participating
4 employer in a designated position.

5 (b) Who is receiving salary for personal services rendered to a
6 participating employer or would be receiving salary except for an authorized
7 leave of absence.

8 (c) Whose customary employment is at least forty hours each week and
9 for more than six months in a calendar year.

10 21. "Normal retirement date" means the first day of the calendar month
11 immediately following an employee's completion of twenty years of service or,
12 in the case of a dispatcher, twenty-five years of service, the employee's
13 sixty-second birthday and completion of ten years of service or the month in
14 which the sum of the employee's age and years of credited service equals
15 eighty.

16 22. "Notice of receipt" means a written document that is issued by the
17 plan to a participant and alternate payee and that states that the plan has
18 received a domestic relations order and a request for a determination that
19 the domestic relations order is a plan approved domestic relations order.

20 23. "Participant" means a member who is subject to a domestic relations
21 order.

22 24. "Participant's portion" means benefits that are payable to a
23 participant pursuant to a plan approved domestic relations order.

24 25. "Participating employer" means an employer ~~which~~ THAT the fund
25 manager has determined to have one or more employees in a designated position
26 or a county, city or town ~~which~~ THAT has entered into a joinder agreement
27 pursuant to section 38-902.

28 26. "Pension" means a series of monthly payments by the retirement
29 plan.

30 27. "Personal representative" means the personal representative of a
31 deceased alternate payee.

32 28. "Plan approved domestic relations order" means a domestic relations
33 order that the plan approves as meeting all the requirements for a plan
34 approved domestic relations order as otherwise prescribed in this article.

35 29. "Probation or surveillance officer" means an officer appointed
36 pursuant to section 8-203, 12-251 or 12-259 but does not include other
37 personnel, office assistants or support staff.

38 30. "Retired member" means an individual who is being paid a pension on
39 account of the individual's membership in the retirement plan.

40 31. "Retirement" means termination of employment after a member has
41 fulfilled all requirements for a pension.

42 32. "Retirement plan" or "plan" means the corrections officer
43 retirement plan established by this article.

44 33. "Salary" means the base salary, overtime pay, shift differential
45 pay and holiday pay paid a member in a designated position for personal

1 services rendered to a participating employer on a regular monthly,
2 semimonthly or biweekly payroll basis, except that for the purposes of this
3 paragraph the amount of overtime included shall not include payments to the
4 member for the sale of compensatory time. Salary includes amounts that are
5 subject to deferred compensation or tax shelter agreements. Salary does not
6 include payment for any remuneration or reimbursement other than as
7 prescribed by this paragraph. For the purposes of this paragraph, "base
8 salary" means the amount of compensation each member is regularly paid for
9 personal services rendered to an employer before the addition of any extra
10 monies, including overtime pay, shift differential pay, holiday pay, payments
11 for the sale of compensatory time, fringe benefit pay and similar extra
12 payments.

13 34. "Segregated funds" means the amount of benefits that would
14 currently be payable to an alternate payee pursuant to a domestic relations
15 order under review by the plan, or a domestic relations order submitted to
16 the plan that failed to qualify as a plan approved domestic relations order,
17 if the domestic relations order were determined to be a plan approved
18 domestic relations order.

19 35. "Service" means employment rendered to a participating employer as
20 an employee in a designated position. Any absence that is authorized by an
21 employer, including any periods during which the employee is on an employer
22 sponsored long-term disability program, is considered as service if the
23 employee returns or is deemed by the employer to have returned to a
24 designated position within the period of the authorized absence.

25 36. "Total and permanent disability" means a physical or mental
26 condition that is not an accidental disability, that the local board finds
27 totally and permanently prevents a member from engaging in any gainful
28 employment and that is the direct and proximate result of the member's
29 performance of the member's duty as an employee of a participating employer.

30 Sec. 3. Section 38-891, Arizona Revised Statutes, is amended to read:

31 38-891. Employer and member contributions

32 A. As determined by actuarial valuations reported to the employers and
33 the local boards by the fund manager, each employer shall make level per cent
34 of salary contributions sufficient under the actuarial valuations to meet
35 both the normal cost plus the actuarially determined amount required to
36 amortize the unfunded accrued liability over, beginning July 1, 2005 a
37 rolling period of at least twenty and not more than thirty years that is
38 established by the fund manager taking into account the recommendation of the
39 plan's actuary, except that, beginning with fiscal year 2006-2007, except as
40 otherwise provided, the employer contribution rate shall not be less than six
41 per cent of salary. For any employer whose actual contribution rate is less
42 than six per cent of salary for fiscal year 2006-2007 and each year
43 thereafter, that employer's contribution rate shall be at least five per cent
44 and not more than the employer's actual contribution rate. An employer may
45 pay a higher level per cent of salary thereby reducing its unfunded past

1 service liability. All contributions made by the employers and all state
 2 taxes allocated to the fund shall be irrevocable and shall be used to pay
 3 benefits under the plan or to pay expenses of the plan and fund. The minimum
 4 employer contribution that is paid and that is in excess of the normal cost
 5 plus the actuarially determined amount required to amortize the unfunded
 6 accrued liability as calculated pursuant to this subsection shall be used to
 7 reduce future employer contribution increases and shall not be used to pay
 8 for an increase in benefits that are otherwise payable to members. The fund
 9 manager shall separately account for these monies in the fund. Forfeitures
 10 arising because of severance of employment before a member becomes eligible
 11 for a pension or for any other reason shall be applied to reduce the cost to
 12 the employer, not to increase the benefits otherwise payable to members.
 13 After the close of any fiscal year, if the plan's actuary determines that the
 14 actuarial valuation of an employer's account contains excess valuation assets
 15 other than excess valuation assets that were in the employer's account as of
 16 fiscal year 2004-2005 and is more than one hundred per cent funded, the fund
 17 manager shall account for fifty per cent of the excess valuation assets in a
 18 stabilization reserve account. After the close of any fiscal year, if the
 19 plan's actuary determines that the actuarial valuation of an employer's
 20 account has a valuation asset deficiency and an unfunded actuarial accrued
 21 liability, the fund manager shall use any valuation assets in the
 22 stabilization reserve account for that employer, to the extent available, to
 23 limit the decline in that employer's funding ratio to not more than two per
 24 cent.

25 B. Each member shall contribute eight and one-half per cent of the
 26 member's salary to the retirement plan. Member contributions shall be made
 27 by payroll deduction. Continuation of employment by the member constitutes
 28 consent and agreement to the deduction of the applicable member contribution.
 29 Payment of the member's salary less the deducted contributions constitutes
 30 full and complete discharge and satisfaction of all claims and demands of the
 31 member relating to salary for services rendered during the period covered by
 32 the payment.

33 C. Each participating employer shall cause the member contributions to
 34 be deducted from the salary of each member. The deducted member
 35 contributions shall be paid to the retirement plan within five working days
 36 and shall be credited to the member's individual account.

37 D. During a period when an employee is on industrial leave and the
 38 employee elects to continue contributions during the period of industrial
 39 leave, the employer and employee shall make contributions based on the salary
 40 the employee would have received in the employee's job classification if the
 41 employee was in normal employment status.

42 E. The local board of the state department of corrections or the local
 43 board of the department of juvenile corrections may specify a position within
 44 that department as a designated position if the position is filled by an
 45 employee who has at least five years of credited service under the plan, who

1 is transferred to temporarily fill the position and who makes a written
2 request to the local board to specify the position as a designated position
3 within ninety days of being transferred. On the employee leaving the
4 position, the position is no longer a designated position.

5 F. The local board of the state department of corrections or the local
6 board of the department of juvenile corrections may specify a designated
7 position within the department as a nondesignated position if the position is
8 filled by an employee who has at least five years of credited service under
9 the Arizona state retirement system and who makes a written request to the
10 local board to specify the position as a nondesignated position within ninety
11 days of accepting the position. On the employee leaving the position, the
12 position reverts to a designated position.

13 G. THE LOCAL BOARD OF THE JUDICIARY MAY SPECIFY POSITIONS WITHIN THE
14 ADMINISTRATIVE OFFICE OF THE COURTS THAT REQUIRE DIRECT CONTACT WITH AND
15 PRIMARILY PROVIDE TRAINING OR TECHNICAL EXPERTISE TO COUNTY PROBATION,
16 SURVEILLANCE OR JUVENILE DETENTION OFFICERS AS A DESIGNATED POSITION IF THE
17 POSITION IS FILLED BY AN EMPLOYEE WHO IS A MEMBER OF THE PLAN CURRENTLY
18 EMPLOYED IN A DESIGNATED POSITION AS A PROBATION, SURVEILLANCE OR JUVENILE
19 DETENTION OFFICER AND WHO HAS AT LEAST FIVE YEARS OF CREDITED SERVICE UNDER
20 THE PLAN. AN EMPLOYEE WHO FILLS SUCH A POSITION SHALL MAKE A WRITTEN REQUEST
21 TO THE LOCAL BOARD TO SPECIFY THE POSITION AS A DESIGNATED POSITION WITHIN
22 NINETY DAYS OF ACCEPTING THE POSITION. ON THE EMPLOYEE LEAVING THE POSITION,
23 THE POSITION REVERTS TO A NONDESIGNATED POSITION.

24 ~~G.~~ H. If the aggregate computed employer contribution rate that is
25 calculated pursuant to subsection A is less than six per cent of salary,
26 beginning on July 1 of the following fiscal year the member contribution rate
27 prescribed in subsection B is permanently reduced by an amount that is equal
28 to the difference between six per cent and the aggregate computed employer
29 contribution rate. Notwithstanding this subsection, the member contribution
30 rate shall not be less than 7.65 per cent of the member's salary.

31 Sec. 4. Conditional enactment

32 Section 38-881, Arizona Revised Statutes, as amended by Laws 2007,
33 chapter 87, section 6 and this act, becomes effective on the date prescribed
34 by Laws 2005, chapter 324, section 2 but only on the occurrence of the
35 condition prescribed by Laws 2005, chapter 324, section 2.