

# HOW...

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## **ASRS Employees Deliver Service With PRIDE!**

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### **PROFESSIONALISM**

*We promote, strive for and expect individuals, teams, and divisions to possess professional qualities and skills to lead the organization.*

- Displays a friendly, respectful and courteous demeanor even when confronted by adversity
- Has proactive and responsive approach to internal and external customer needs
- Possesses good communication and active listening skills
- Is a trusted contributor (manager, leader, SME, analyst, teammate)
- Takes personal accountability • Has subject matter expertise
- Has critical thinking skills • Has an honest, fair, non-judgmental mind-set
- Is adaptable to beneficial change • Adheres to the ASRS Code of Conduct

### **RESULTS**

*We treasure the achievements of individuals, teams, divisions and the agency that energize the organization.*

- Meets goals and objectives
- Completes projects
- Produces quality work products
- Satisfies customers
- Attains individual accomplishments
- Manages risks successfully

### **IMPROVEMENT**

*We appreciate individuals, teams or divisions who drive the agency forward with new, innovative ideas and solutions.*

- Promotes new ideas
- Enhances outcomes and performance
- Solves problems
- Enhances morale
- Improves relationships
- Increases efficiency, effectiveness or reduces costs

### **DIVERSITY**

*We recognize that utilizing different talents, strengths and points of view, strengthens the agency and helps propel outcomes greater than the sum of individual contributors.*

- Encourages an attitude of openness and a free flow of ideas and opinions
- Treats others with dignity and respect
- Works effectively to accomplish goals with teams comprised of dissimilar individuals
- Recognizes and promotes skills in others attained on and off the job

### **EXCELLENCE**

*We celebrate individuals, teams and divisions who exceed expectations and deliver service with a PRIDE that permeates the organization.*

- Surpasses member, stakeholder and associate expectations
- Demonstrates a willingness to go the extra mile to engender a positive public image
- Embraces change in a manner that inspires others
- Accepts responsibility and challenges with enthusiasm
- Takes a personal interest in promoting teamwork through effective use of communication (verbal, non-verbal, written and technological techniques)
- Creates a motivated, healthy and productive work environment that celebrates and rewards the accomplishments of others



**ARIZONA STATE  
RETIREMENT SYSTEM**



# ARIZONA STATE RETIREMENT SYSTEM

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*Paul Matson  
Director*

## AGENDA

### NOTICE OF COMBINED PUBLIC MEETING AND POSSIBLE EXECUTIVE SESSION OF THE ARIZONA STATE RETIREMENT SYSTEM EXTERNAL AFFAIRS COMMITTEE

3300 North Central Avenue, 14<sup>th</sup> Floor Conference Room  
Phoenix, AZ 85012

October 14, 2016  
10:30 a.m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Trustees of the Arizona State Retirement System (ASRS) External Affairs Committee (EAC) and to the general public that the EAC will meet on Friday, October 14, 2016 beginning at 10:30 a.m. in the 14<sup>th</sup> Floor Conference Room of the ASRS office, 3300 North Central Avenue, Phoenix, AZ, 85012. Trustees of the Committee may attend either in person or by telephone conference call.

This is a regularly scheduled meeting of the EAC; however, due to possible attendance by other ASRS Board Trustees, this meeting may technically become a meeting of the Board or one of its committees. Actions taken will be consistent with EAC governance procedures, and no business of the Board will be transacted. Actions taken will be consistent with EAC governance procedures. Actions requiring Board authority will be presented to the full Board for final decision.

The Chair may take public comment during any agenda item. If any member of the public wishes to speak to a particular agenda item, they should complete a "Request to Speak" form indicating the item and provide it to the Committee Administrator.

Pursuant to A.R.S. § 38-431.03(A)(3), the EAC may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item on the Agenda.

This meeting will be teleconferenced to the ASRS Tucson office at 4400 East Broadway Boulevard, Suite 200, Tucson, Arizona 85711. The conference call to Tucson will be disconnected after 15 minutes if there are no attendees in the Tucson audience.

The Agenda for the meeting is as follows:

1. Call to Order; Roll Call; Opening Remarks ..... Dr. Richard Jacob  
Chair, External Affairs Committee
2. Approval of the Minutes of the September 14, 2016 Public Meeting of the ASRS EAC Meeting ..... Dr. Richard Jacob



# Agenda Item #2



# ARIZONA STATE RETIREMENT SYSTEM

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*Paul Matson*  
Director

## MINUTES OF THE PUBLIC MEETING OF THE ARIZONA STATE RETIREMENT SYSTEM EXTERNAL AFFAIRS COMMITTEE

HELD ON  
**September 14, 2016**  
**1:30 p.m., Arizona Time**

The External Affairs Committee (EAC) of the Arizona State Retirement System (ASRS) met in the 14th Floor Conference Room of the ASRS Office, 3300 North Central Avenue, Phoenix, AZ, 85012. Dr. Richard Jacob, Chair, called the meeting to order at 1:30 p.m., Arizona Time.

This meeting was teleconferenced to the ASRS Tucson office at 4400 East Broadway Boulevard, Suite 200, Tucson, Arizona, 85711.

### **1. Call to Order; Roll Call; Opening Remarks**

Present: Dr. Richard Jacob, Chair  
Mr. Kevin McCarthy – Via Teleconference  
Mr. Tom Manos – Via Teleconference

Absent: Mr. Lorenzo Romero

A quorum was present for the purpose of conducting business.

### **2. Approval of the Public Meeting Minutes of the May 13, 2016 EAC Meeting**

Motion: Mr. Tom Manos moved to approve the minutes of the May 13, 2016 Public EAC meeting. Mr. Kevin McCarthy seconded the motion.

By a vote of 3 in favor, 0 opposed, 0 abstained, 1 excused, the minutes were approved.

### **3. Presentation, Discussion and Appropriate Action Regarding 2017 Legislative Initiatives and Legislation affecting the ASRS**

Mr. Nick Ponder stated that in July of this year the ASRS staff requested legislative suggestions and throughout August and September, staff determined what legislative suggestions were to be presented to the EAC for approval. Mr. Ponder noted that, as in the past years, the information presented is a conceptualization of the language and not the final version. The ASRS is currently working on the language of the legislation to be presented to Legislative Counsel. The recommended ASRS initiatives for the 2017 Legislative Session, which begins January 9, 2017, are as follows:

**Statute 38-711(7):** Proposed by Assistant Attorney General – Clarify that employer remitted contributions toward an alternative retirement account for the purposes of employment negotiations are not to be included in retirement calculations.

Mr. Ponder stated the ASRS intends to clarify the definition of “compensation” for the purpose of calculating an individual’s retirement benefits. The EAC agreed to possibly proceed with this item in the 2017 Legislative Session.

**Statute 38-766.02:** Proposed by Legislative Liaison - Retired members; return to work; employer contribution payments; definitions. The ASRS learned that employers were contemplating to migrate all their substitute teachers to contractors like ESI and SmartSchools. The employers believe that by migrating all substitutes to contract positions, e.g., they would have moved an “entire class” of employees to leased positions, therefore, they believe they would not owe an Alternate Contribution Rate (ACR) for those individuals.

There is nothing in statute identifying “class” of employees; however, historically the ASRS has not charged an ACR in circumstances where a class (i.e. cafeteria workers, janitorial staff, bus drivers) were leased or contracted. It is the position of the ASRS that substitute teachers are teachers. They fundamentally share the same responsibilities as a full-time teacher, are in a classroom, and are educating children. As a result, a substitute teacher is filling the role of a teacher, and thus, a retired substitute teacher is filling a position “ordinarily filled by an employee of an employer” and the employer would owe an ACR.

Mr. Manos raised a concern with regards to hours worked in order to pay or collect the ACR. Mr. Ponder clarified that regardless of hours worked, an employer must still pay an ACR on any retiree returning to work for an ASRS employer. As a result, the recommended change in the language clarifies the statute and eliminates loopholes in the intent of the law.

**Statute: 38-738(A)&(B)** Proposed by Attorney General -

Part 1: To codify in statute current practice as it relates to employer credits under A.R.S. §38-738. Currently, the statute indicates that employers are permitted to take a credit within one year of the overpaid contributions. However, the ASRS allows these credits into perpetuity so long as there are employer monies still on account. Additionally, the statute indicates that the ASRS will charge interest on these credits if the ASRS does not meet the 8% return. However, we do not charge interest in these scenarios.

Part 2: To clarify that members who are inactive, retired, or on long term disability, can only purchase Contributions Not Withheld (CNW) service with an after-tax check. Currently, the statute just refers to “members” as one group and suggests they can purchase service pursuant to: A.R.S. §38-747 which would include rollovers and payroll deduction agreements.

Part 3: To clarify in law that a person who has forfeited membership in the ASRS, but who returns to work for an ASRS employer, cannot request a CNW for any period of employment prior to the member’s most recent date of membership. Currently, it could be interpreted that by returning to active status, the member has CNW rights in A.R.S. §38-738 for employment prior to the member’s most recent ASRS membership date.

**Statute: 38-742(B)** Proposed by Rules Writer - Clarify any potential confusion in the ASRS reinstatement statute regarding the purchase of forfeited service. Currently, the statute indicates that a member must repay what was received in a refund, plus interest, in order to receive service credit for that period. However, there is potential for confusion in that under a DRO, an ex-spouse may receive a portion of the member’s benefit that was assigned to the ex-spouse. One could argue that the statute only suggests the member repay what the member had received and not the total amount paid.

**Statute: 38-760(B)(3)** Proposed by Benefits Accounting - Incorporate into statute the authority of the ASRS to deny a PLS rollover in the event the member has an overpayment or estimated overpayment.

According to the ASRS Tax Attorney, federal law precludes the ASRS from withholding all or a portion of the PLS in order for the ASRS to collect the owed portion of the overpayment. The proposal would deny a PLS rollover distribution to a retiree who has an overpayment or estimated overpayment.

**Statute: 38-751** Proposed by Staff - Clarify permutations of a nonparticipatory employer not previously contemplated at the time the statute was drafted.

Mr. Manos raised a concern with regards to the portion of the statute that would include new language. Mr. Matson and Mr. Ponder clarified that the ASRS would be keeping much of the language, but possibly add some bullet points such as defining what is "no longer participating," who has the authority, and how the calculation methodology is done.

**Motion:** Mr. Kevin McCarthy moved to have the External Affairs Committee accept the proposed 2017 legislative initiatives as discussed, and recommend them to the full Board for further discussion and consideration. Mr. Tom Manos seconded the motion

By a vote of 3 in favor, 0 opposed, 0 abstained, 1 excused, the motion was approved.

#### **4. Call to the Public**

There were no requests to speak from the members of the public.

#### **5. Adjournment of the ASRS External Affairs Committee Meeting.**

Motion: Mr. Kevin McCarthy moved to adjourn the September 14, 2016 EAC meeting. Mr. Tom Manos seconded the motion.

By a vote of 3 in favor, 0 opposed, 0 abstained, 1 excused, the meeting was adjourned.

Dr. Jacob adjourned the public meeting at 2:06 p.m.

Respectfully Submitted by,

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Alicia Guzman  
Committee Administrator

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Paul Matson  
Director

# Agenda Item #3



# ARIZONA STATE RETIREMENT SYSTEM

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*Paul Matson*  
Director

**TO:** The Arizona State Retirement System (ASRS) External Affairs Committee

**FROM:** Mr. Patrick M. Klein, Assistant Director, External Affairs Division  
Ms. Jessica Thomas, Rules Writer

**DATE:** October 7, 2016

**RE:** **AGENDA ITEM NO. 3:** Presentation, Discussion and Appropriate Action Regarding ASRS Rulemaking

**Purpose:**

To provide an update on the rulemaking activities listed on the 2015 and 2016 Regulatory Agendas.

**Recommendation:**

Information only; no action is recommended.

**Background:**

Arizona Revised Statutes § 41-1021.02 State agencies; annual regulatory agenda requires each agency to post its agenda for the coming calendar year. The attached 2015 Regulatory Agenda was approved by the Committee on December 12, 2014 and lists the rulemakings the ASRS anticipated promulgating during the during the 2015 calendar year. The attached 2016 Regulatory Agenda was approved by the Committee on November 13, 2015 and lists the rulemakings the ASRS anticipates completing during the 2016 calendar year.

Ms. Jessica Thomas, ASRS Rules Writer, will provide a brief update of the status of the 2015 Regulatory Agenda and each rulemaking listed on the 2016 Regulatory Agenda.

Attachments

**ARIZONA STATE RETIREMENT SYSTEM (ASRS)  
REGULATORY AGENDA FOR 2015**

Pursuant to A.R.S. § 41-1021.02, the ASRS prepared a regulatory agenda for the 2015 calendar year. Pursuant to A.R.S. § 41-1021.02(D), the ASRS may undertake a rulemaking even if the rulemaking is not included in the annual regulatory agenda.

**Rulemakings Expected During 2015**

Identification of Rulemaking	Notice of Docket Opening (Expected)	Notice of Proposed Rulemaking (Expected)	Notice of Final Rulemaking (Expected)
<u>2 A.A.C. 8, Art. 1</u> R2-8-104. Definitions	1/6/2015	1/9/2015	5/5/2015
<u>2 A.A.C. 8, Art. 1</u> R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member	3/3/2015	3/6/2015	7/7/2015
<u>2 A.A.C. 8, Art. 1</u> R2-8-116. Reemployment After Retirement	4/1/2015	4/3/2015	9/1/2015
<u>2 A.A.C. 8, Art. 1,</u> <u>Retirement System;</u> <u>Defined Benefit Plan</u>	5/27/2015	5/29/2015	9/1/2015
<u>2 A.A.C. 8, Art. 2, State Retirement Defined Contribution Program</u>	2/4/2015	2/6/2015	6/2/2015
<u>2 A.A.C. 8, Art. 4,</u> <u>Practice and Procedure Before the Board</u>	7/9/2015	7/10/2015	11/3/2015
<u>2 A.A.C. 8, Art. 5,</u> <u>Purchasing Service Credit</u>	8/5/2015	8/7/2015	12/1/2015

**Existing Rules Scheduled for Review During 2015**

Rules Being Reviewed	Due Date
2 A.A.C. 8, Articles 1, 2, 4, and 5	May 2015

**ARIZONA STATE RETIREMENT SYSTEM (ASRS)  
REGULATORY AGENDA FOR 2016**

Pursuant to A.R.S. § 41-1021.02, the ASRS prepared a regulatory agenda for the 2016 calendar year. Pursuant to A.R.S. § 41-1021.02(D), the ASRS may undertake a rulemaking even if the rulemaking is not included in the annual regulatory agenda.

**Rulemakings Expected During 2016**

<b>Identification of Rulemaking</b>	<b>Notice of Docket Opening (Expected)</b>	<b>Notice of Proposed Rulemaking (Expected)</b>	<b>Notice of Final Rulemaking (Expected)</b>
<u>2 A.A.C. 8, Art. 1</u> R2-8-116. Working After Retirement <ul style="list-style-type: none"> <li>• RTW guide in rule?</li> </ul>	2/5/2016	2/12/2016	5/3/2016
<u>2 A.A.C. 8, Art. 7</u> Contributions Not Withheld	3/11/2016	3/18/2016	6/7/2016
<u>2 A.A.C. 8, Art. 2 (expired)</u> <u>Health Insurance</u> <ul style="list-style-type: none"> <li>• Long-Term Disability</li> <li>• Premium Benefit Eligibility</li> </ul>	4/15/2016	4/22/2016	7/6/2016
<u>2 A.A.C. 8, Art. 6</u> Public Participation in Rulemaking	5/13/2016	5/20/2016	8/2/2016
<u>2 A.A.C. 8, Art. 8</u> Overpayments	6/10/2016	6/17/2016	9/7/2016
<u>2 A.A.C. 8, Art. 3 (reserved)</u> <u>Membership</u> <ul style="list-style-type: none"> <li>• Contributions</li> <li>• Accrual of credited service (higher education credited service)</li> <li>• Apportionment</li> <li>• Delinquency</li> <li>• Compensation</li> <li>• 20/20 criteria and status changes— “intent” / “engaged”</li> </ul>	10/7/2016	10/21/2016	1/4/2017

**Existing Rules Scheduled for Review During 2016**

<b>Rules Being Reviewed</b>	<b>Due Date</b>
2 A.A.C. 8, Article 6	March 2016
2 A.A.C. 8, Article 7	December 2016



# Agenda Item #4



# ARIZONA STATE RETIREMENT SYSTEM

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*Paul Matson*  
Director

**TO:** The Arizona State Retirement System (ASRS) External Affairs Committee

**FROM:** Mr. Patrick M. Klein, Assistant Director, External Affairs Division  
Mr. Nick Ponder, Government Relations Officer

**DATE:** October 6, 2016

**RE:** **AGENDA ITEM NO. 4:** Presentation, Discussion and Appropriate Action Regarding  
2017 Legislative Initiatives and Legislation affecting the ASRS

**Purpose:**

Discuss the ASRS initiatives for the 2017 legislative session.

**Recommendation:**

Information only; no action recommended.

**Background:**

The 2017 Legislative Session will begin on January 9, 2017. The Board approved the ASRS legislative initiatives at its September 30, 2016 public meeting. Staff will work with the agency's two designated legislative committees and legislative counsel to move the initiatives forward. During

Attachments

## 2017 LEGISLATIVE SUGGESTIONS

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**STATUTE:** 38-766.02

**PROPOSED BY:** Legislative Liaison

**PROPOSAL:** The ASRS learned that employers were contemplating migrating all their substitute teachers to contractors like ESI and SmartSchools. The employer believes by migrating all substitutes to contract positions that they have moved an “entire class” of employees to leased positions they would not owe an ACR for those individuals.

There is nothing in statute identifying “class” of employees; however, historically the ASRS has not charged an ACR in circumstances where a class (cafeteria workers, janitorial staff, bus drivers) was leased or contracted. It is the position of the ASRS that substitute teachers are teachers. They fundamentally share the same responsibilities as a full-time teacher, are in a classroom, and are educating children. As a result, a substitute teacher is filling the role of a teacher and thus a retired substitute teacher is filling a position “ordinarily filled by an employee of an employer” and the ER would owe an ACR.

**LANGUAGE:** [38-766.02. Retired members; return to work; employer contribution payments; definitions](#)

A. Notwithstanding section 38-766.01, subsection E, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work **WITH AN ASRS EMPLOYER** in any capacity ~~in a position ordinarily filled by an employee of the employer~~. This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

## 2017 LEGISLATIVE SUGGESTIONS

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**STATUTE:** 38-738(A)&(B)

**PROPOSED BY:** Assistant Attorney General

**HISTORY:** Sponsored by Senator Lesko in 2016. Passed Senate Finance committee, Senate 3<sup>rd</sup> read, and House Government & Higher Education committee without dissent. Failed to pass House 3<sup>rd</sup> read night of sine die.

**PROPOSAL:** Part 1: To codify in statute current practice as it relates to employer credits under A.R.S. 38-738. Currently the statute indicates that employers are permitted to take a credit within one year of the overpaid contributions. However, the ASRS allows these credits into perpetuity so long as there are employer monies still on account. Additionally, the statute indicates that the ASRS will charge interest on these credits if the ASRS does not meet the 8% return. However, we do not charge interest in these scenarios.

Part 2: To clarify that members who are inactive, retired, or on long term disability can only purchase CNW service with an after tax check. Currently, the statute just refers to “members” as one group and suggests they can purchase service pursuant to 38-747 which would include rollovers and payroll deduction agreements.

Part3: To clarify in law that a person who has forfeited membership in ASRS but who returns to work for an ASRS employed cannot request a Contributions Not Withheld for any period of employment prior to the member’s most recent date of membership. Currently, it could be interpreted that by returning to active status, the member has CNW rights in A.R.S. 38-738 for employment prior to the member’s most recent ASRS membership date.

**LANGUAGE:** 38-738. Adjustment and refund

(Part 1) A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall return those contributions to the employer if the employer requests return of the contributions **THROUGH AN EMPLOYER CREDIT OR** within one year after the date of overpayment **BY CHECK ON REQUEST OF THE EMPLOYER**. ASRS shall not pay an employer earnings attributable to excess contributions. ~~but shall reduce the amount returned to an employer pursuant to this section by the amount of losses attributable to the excess contributions.~~ **IF MORE THAN THE CORRECT AMOUNT OF EMPLOYER OR MEMBER CONTRIBUTIONS IS PAID INTO ASRS BY AN EMPLOYER THROUGH A MISTAKE OF LAW, ASRS SHALL RETURN THOSE CONTRIBUTIONS TO THE EMPLOYER IF THE EMPLOYER REQUESTS RETURN OF THE CONTRIBUTIONS THROUGH AN EMPLOYER CREDIT.**

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

(Part 2) 1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. ~~The member’s~~ **FOR ACTIVE MEMBERS**, payments shall be made as provided in section 38-747. **FOR MEMBERS WHO ARE INACTIVE, RETIRED OR ON LONG-TERM DISABILITY, PAYMENTS SHALL BE MADE**

## 2017 LEGISLATIVE SUGGESTIONS

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USING AFTER-TAX INCOME AND A PERSONAL CHECK, CASHIER'S CHECK OR MONEY ORDER. If the member does not make the payment within ninety days ~~of~~ AFTER being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

(Part 3)

8. A MEMBER WHO PREVIOUSLY RECEIVED A RETURN OF CONTRIBUTIONS PURSUANT TO SECTION 38-740 MAY RECEIVE AN ADJUSTMENT OF EMPLOYER CONTRIBUTIONS OR SERVICE CREDITS PURSUANT TO THIS SECTION ONLY FOR QUALIFYING EMPLOYMENT AND COMPENSATION THAT OCCURRED AFTER THE MEMBER'S MOST RECENT RETURN OF CONTRIBUTIONS PURSUANT TO SECTION 38-742.

## 2017 LEGISLATIVE SUGGESTIONS

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**STATUTE:** 38-742(B)

**PROPOSED BY:** Rules Writer

**HISTORY:** Sponsored by Senator Lesko in 2016. Passed Senate Finance committee, Senate 3<sup>rd</sup> read, and House Government & Higher Education committee without dissent. Failed to pass House 3<sup>rd</sup> read night of sine die.

**PROPOSAL:** To clarify any potential confusion in our reinstatement statute regarding the purchase of forfeited service. Currently the statute indicates a member must repay what was received in a refund, plus interest, in order to receive service credit for that period. However, there is potential for confusion in that under a DRO, an ex-spouse may receive a portion of the member's benefit that was assigned to the ex-spouse. One could argue that the statute only suggests the member repay what the member had received and not the total amount paid, and would receive full service credit once that amount was repaid.

**LANGUAGE:** **38-742. Reinstatement**

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions ~~the member received~~ **THE ASRS PAID** at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

## 2017 LEGISLATIVE SUGGESTIONS

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**STATUTE:** 38-760(B)(3)

**PROPOSED BY:** Benefits Accounting

**PROPOSAL:** Incorporate into statute the authority of the ASRS to deny a PLS rollover in the event the member has an overpayment or estimated overpayment.

According to Chuck Whetstine, federal law precludes the ASRS from withholding all or a portion of the PLS in order for the ASRS to collect the owed portion of the overpayment. The proposal would be to be able to deny a PLS rollover distribution to a retiree who has an overpayment or estimated overpayment.

**LANGUAGE:** 38-760. [Optional forms of retirement benefits](#)

B. The optional retirement benefits available under this section include the following:

3. Beginning on July 1, 2002, a lump sum payment equal to not more than thirty-six months of the member's retirement benefits based on the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The member's benefit shall be actuarially reduced to provide for the lump sum payment. The lump sum payment shall be made at the time of retirement. **IF A MEMBER HAS AN OVERPAYMENT PURSUANT TO A.R.S. 38-765 OR A.R.S. 38-797.08 THE ASRS SHALL DENY DISTRIBUTION OF A PARTIAL LUMP SUM ROLLOVER AND OFFER DISTRIBUTION WITH AN AFTER-TAX PAYMENT.** Any benefit increase granted to a member who elects a lump sum payment pursuant to this paragraph is subject to the following conditions:

(a) If the benefit increase is a percentage increase of the member's retirement benefit, the increase shall be based on the actuarially reduced retirement benefit of the member.

(b) If the benefit increase is pursuant to section 38-767, the amount of the member's benefit increase shall be calculated without regard to the lump sum payment pursuant to this paragraph.

## 2017 LEGISLATIVE SUGGESTIONS

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**STATUTE:** 38-751

**PROPOSED BY:** Staff

**PROPOSAL:** Clarify permutations of a nonparticipatory employer not previously contemplated at the time the statute was drafted. Additionally, clarify sections B and C regarding schedules and methods of payment, who will be responsible for calculating the liability, and precisely how the liability will be calculated.

**LANGUAGE:** Proposed statutory language is currently being drafted and therefore not available at the time of this meeting. Below is the current drafting of A.R.S. § 38-751:

**38-751. Nonparticipatory employer liability allocation; definitions**

A. ASRS shall allocate a liability to an employer that is no longer participating in ASRS if that nonparticipation is based on any of the following:

1. The character of the employer changes from a public entity to a private entity.
2. An employer, other than this state or a charter school, files for bankruptcy or otherwise dissolves.
3. An employer is no longer participating.
4. For this state, the character of a state agency, board or commission changes from public to private.

B. ASRS shall determine the schedule and method of payment of the allocated liability.

C. The liability allocated to an employer under this section is equal to the sum of the following:

1. The plan employer actuarial accrued liability multiplied by the plan total deficit percentage.
2. The LTD program employer actuarial accrued liability multiplied by the LTD program total deficit percentage.

D. This section does not permit an employer to alter the irrevocable agreement approved by the board under section 38-729.

## 2017 LEGISLATIVE SUGGESTIONS

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**STATUTE:** 38-714

**PROPOSED BY:** Assistant Attorney General

**PROPOSAL:** Add clarifying language regarding the Appeals Committee of the Board which was permitted with the passage of SB1037 in the 2016 Legislative Session.

**LANGUAGE:** [38-714. Powers and duties of ASRS and board](#)

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article, [ARTICLE 2.1 AND ARTICLE 7](#) and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.
2. Determine the amount, manner and time of payment of any benefits under this article.
3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.
4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

## 2017 LEGISLATIVE SUGGESTIONS

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**STATUTE:** 38-711(7)

**PROPOSED BY:** Assistant Attorney General

**PROPOSAL:** *(Contingent upon an outcome from ASRS petition for review to the Supreme Court)*  
Clarify, prospectively, that employer remitted contributions toward an alternative retirement account for the purposes of employment negotiations are not to be included in retirement calculations.

**LANGUAGE:** 38-711. [Definitions](#)

In this article, unless the context otherwise requires:

7. "Compensation" means the gross amount paid to a member by an employer as salary or wages, ~~including amounts that are subject to deferred compensation or tax shelter agreements,~~ for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer.

Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(a) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(c) Payment **FOR ANY EMPLOYMENT OR FRINGE BENEFIT INCLUDING BUT NOT LIMITED TO PAYMENTS**, ~~at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer~~ **FOR UNUSED VACATION OR SICK LEAVE PRIOR TO TERMINATION OF EMPLOYMENT AND TRAVEL, CAR AND PHONE ALLOWANCES.**

(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

## 2017 LEGISLATIVE SUGGESTIONS

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(e) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(f) COMPENSATION, AS PROVIDED IN PARAGRAPH 5, SUBDIVISION (C) OF THIS SECTION, FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JANUARY 1, 2018 DOES NOT INCLUDE:

(i) EMPLOYER CONTRIBUTIONS TO A QUALIFIED PLAN, TAX SHELTERED ANNUITY, INDIVIDUAL RETIREMENT ACCOUNT, DEFERRED COMPENSATION PLAN OR ANY OTHER SIMILAR TYPE OF ARRANGEMENT PROVIDING FOR THE DEFERRAL OF COMPENSATION, INCLUDING BUT NOT LIMITED TO PLANS, ANNUITIES OR ACCOUNTS DESCRIBED IN SECTION 401(a), 401(k), 403(b), 408, 408A OR 457(b) OF THE UNITED STATES INTERNAL REVENUE CODE, THAT ARE MADE BY THE EMPLOYER FROM ITS OWN FUNDS AND NOT PURSUANT TO A LEGAL REQUIREMENT OR THE ELECTION BY THE MEMBER TO CONTRIBUTE THE MEMBER'S COMPENSATION TO THE PLAN, ACCOUNT, ANNUITY OR ANY OTHER SIMILAR TYPE OF ARRANGEMENT.

(ii) PAYMENTS MADE DIRECTLY OR INDIRECTLY BY THE EMPLOYER TO THE EMPLOYEE FOR WORK PERFORMED FOR A THIRD PARTY ON A CONTRACTED BASIS OR ANY OTHER TYPE OF AGREEMENT UNDER WHICH THE THIRD PARTY PAYS OR REIMBURSES THE EMPLOYER FOR THE WORK PERFORMED BY THE EMPLOYEE FOR THAT THIRD PARTY.