



# ARIZONA STATE RETIREMENT SYSTEM

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*Paul Matson*  
Director

## MINUTES PUBLIC MEETING ARIZONA STATE RETIREMENT SYSTEM BOARD

Friday, January 30, 2015  
8:30 A.M., MST

The Arizona State Retirement System (ASRS) Board met in the 10th Floor Board Room, 3300 N. Central Avenue, Phoenix, Arizona. Mr. Kevin McCarthy, Chair of the ASRS Board, called the meeting to order at 8:30 A.M., Arizona Time.

The meeting was teleconferenced to the ASRS office at 7660 E. Broadway, Tucson, Arizona 85710.

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

Present: Mr. Kevin McCarthy, Chair  
Mr. Jeff Tyne  
Mr. Tom Manos  
Mr. Tom Connelly  
Professor Dennis Hoffman (arrived at 8:32 a.m.)  
Dr. Richard Jacob  
Mr. Brian McNeil

A quorum was present for the purpose of conducting business.

### 2. Presentation Regarding PRIDE Award for Excellence

Mr. Anthony Guarino, Deputy Director and Chief Operations Officer, recognized the following nominees for the PRIDE Excellence award: Courtney Micheau, Marina Keith, Dave King and Sarah Korish, Liz Rozzell, Erin Higbee, Tanya Wright, Nancy Bennett, LaToya Charles, Pam Voza, and Bernie Glick (GASB Team), Erin Higbee, Tonia Nemecek and Rebecca Fox (Stale Checks Team).

The nominees were recognized by their peers as exemplifying the following PRIDE qualities of diversity:

- Surpass member, stakeholder and associate expectations
- Embrace positive changes in a manner which inspires others
- Demonstrate a willingness to go the extra mile to engender a positive public image that solidifies the perception the ASRS is a trusted brand that members, stakeholders and associates will recognize
- Create a motivated, healthy and productive work environment that celebrates and rewards the accomplishments and contributions of others
- Take a personal interest in promoting teamwork through effective use of communication methods within the ASRS to ensure the effective flow of information and knowledge (This includes verbal, non-verbal, written and technological communication techniques)
- Accept personal responsibility and challenges with enthusiasm

Mr. Guarino presented the PRIDE Award for Excellence to the award winner, Courtney Micheau.

**3. Approval of the Minutes of the December 5, 2014 Public Meeting and the October 24, 2014 Public Meeting and Executive Sessions of the ASRS Board**

**Motion:** Mr. Tom Manos moved to approve the Minutes of the October 24, 2014 Public Meeting of the ASRS Board. Prof. Dennis Hoffman seconded the motion.

By a vote of 7 in favor, 0 opposed, and 0 abstentions, the motion was approved.

*This item was placed on the January 30, 2015, Board agenda for an amended motion of approval due to the December 5, 2014 motion including an incorrect meeting date (by staff), which was not discovered until after the December meeting was adjourned.*

**Motion:** Mr. Tom Manos moved to approve the Minutes of the October 24, 2014 Executive Sessions of the ASRS Board. Prof. Dennis Hoffman seconded the motion.

By a vote of 7 in favor, 0 opposed, and 0 abstentions, the motion was approved.

**Motion:** Mr. Tom Manos moved to approve the Minutes of the December 5, 2014 Public Meeting of the ASRS Board. Prof. Dennis Hoffman seconded the motion.

By a vote of 7 in favor, 0 opposed, and 0 abstentions, the motion was approved.

**4. Approval, Modification, or Rejection of Recommended Administrative Law Judge's Decision Regarding Ms. Sharon Di Giacinto's Appeal Regarding the ASRS's Determination that the Domestic Relations Order Requirement Sharon Di Giacinto Remain the contingent Annuitant on ASRS Member Richard Hillis' Joint and Survivor 100% Annuity Option is an Impermissible Domestic Relations Order Term**

Mr. Chris Munns, Assistant Attorney General, Solicitor General Section, was present for agenda item #4, to provide legal advice to the Board, if requested.

Ms. Jothi Beljan, Assistant Attorney General, made note to the Board that although the appellant in this case is Ms. Sharon Di Giacinto, Dr. Richard Hillis is the member and this decision directly and financially impacts him; therefore, Dr. Hillis was permitted to present his own case to the Office of Administrative Hearings (OAH). This will allow Dr. Hillis, if he is dissatisfied with the Board's decision, to have standing to appeal it to Superior Court.

Mr. Thomas Griffin, attorney for Ms. Di Giacinto, and Dr. Richard Hillis introduced themselves to the Board.

Mr. Griffin referred to his submission to the Board that outlined the specific amendments he is requesting on behalf of Ms. Di Giacinto and highlighted case law he believes supports this request. Specifically, Ms. Di Giacinto is requesting modifications to Conclusions of Law #14 and #15, of the Administrative Law Judge's Decision, to state that Ms. Di Giacinto has established a valid claim of equitable estoppel against the ASRS and because of that, Ms. Di Giacinto has met her burden of establishing that ASRS' June 2014 determination was improper or contrary to law.

Prior to presenting her position, Ms. Beljan requested that the Board not consider Dr. Richard Hillis' submission when making their decision on the basis that it is irrelevant to the case and Dr. Hillis had the opportunity to provide the supporting documents to the OAH prior to the hearing and he did not. Ms. Beljan proceeded in presenting her position while citing case law she believes contradicts Mr.

Griffin's conclusions, in addition to current statute, A.R.S. § 38-773 that does not provide any exceptions for the ASRS to grant Ms. Di Giacinto's request.

Prior to Dr. Hillis being provided an opportunity to address the Board, Mr. Munns advised the Board that they are limited to considering only the information that was presented for the OAH hearing; therefore, any new information received cannot be considered when making a decision.

Dr. Hillis advised the Board that he did not have a clear understanding that he would be allowed to participate in the OAH hearing based on the language in the letter from Ms. Beljan indicating that it would be up to the ALJ to determine if Dr. Hillis could participate. Based on this, Dr. Hillis believes the Board should be able to consider his submission. Dr. Hillis proceeded to address the Board providing background regarding the Domestic Relations Order (DRO) and his attempts to request a change to a straight life annuity.

Ms. Beljan requested to address some of Dr. Hillis' comments. Ms. Beljan stated that she advised Dr. Hillis approximately two months prior to the hearing date that there is not typically three parties involved in an appeal and she was unsure how the ALJ would handle the issue but that he should be prepared to present three copies of exhibits he wished to present at the hearing. She further stated that Dr. Hillis had the ability to file a motion with OAH and seek clarification. Ms. Beljan responded to questions from the Board.

**Motion:** Mr. Brian McNeil moved to go into Executive Session. Dr. Richard Jacob seconded the motion.

By a vote of 7 in favor, 0 opposed, and 0 abstentions, the motion was approved.

The Board convened to Executive Session at 9:21 a.m.

The Board reconvened to Public Session at 10:09 a.m.

**Motion:** Mr. Brian McNeil moved to reject the ruling of the Administrative Law Judge's Recommended Decision and modify the Decision pursuant to the appellant's request. The basis for the motion is the belief there was a reasonable reliance on what the parties were told by ASRS when accepting the Domestic Relations Order. Dr. Richard Jacob seconded the motion.

*Prior to the vote, Mr. McNeil stated that although he made the motion, he did not feel it was complete. His intention is to reject only the portion of the ALJ Decision that address the issue of estoppel, specifically paragraph #14, page 7 and would be open to retracting his motion to present more specific modifications to the Decision. Mr. Munns advised the Board that they could vote on the motion before them and then make additional motions to clarify the modifications. Mr. Munns also provided the Board with some guidance regarding the language for the modifications based on their discussion.*

**Motion:** Mr. Brian McNeil amended his motion and moved to reject the ruling of the Administrative Law Judge's Recommended Decision with respect to paragraphs #14 and #15, beginning with line 2, page 7, to add a period after "agency" and strike the remainder of the line, strike lines 3 and 4 in their entirety, and strike "not" in line 5. Additionally, strike "though" from line 1 of paragraph #14 to read, "It was acknowledged that equitable estoppel is a possible argument against a governmental agency." Paragraph #15 would read, "Therefore, Ms. Di Giacinto has met her burden to establish that the ASRS determination that the DRO was unacceptable was improper contrary to law."

*Prior to a second to the amended motion, Mr. Munns advised that in order for paragraph #15 to read as dictated, paragraph #14 would need to be amended to reflect that equitable estoppel was established.*

Mr. McNeil withdrew his motions. Dr. Jacob withdrew his second to the first motion.

**Motion:** Mr. Kevin McCarthy moved to modify the ruling of the Administrative Law Judge to specifically replace the phrase “is no longer financially feasible” with “may no longer be financially feasible” in Conclusion of Law #11 and correct Finding of Fact #11 to read, “An acceptable DRO is defined as an order that does not require the ASRS to provide any type, form, or time of payment of retirement benefit or retirement benefit option that is not provided under ASRS statutes and administrative rules.” Prof. Dennis Hoffman seconded the motion.

By a vote of 4 in favor, 3 opposed, and 0 abstentions, the motion was approved.

*Mr. McNeil expressed that additional oversight by staff might be necessary.*

## **5. Presentation, Discussion, and Appropriate Action Regarding 2015 ASRS Legislative Initiatives and Legislative Update**

Mr. Pat Klein, Assistant Director, External Affairs, and Mr. Nicholas Ponder, Government Relations Officer, addressed the Board regarding the 2015 Legislative Session and the ASRS Legislative initiatives. Mr. Klein and Mr. Ponder presented the Bill Tracker, which summarizes ASRS 2015 legislative initiatives as well as other bills affecting the ASRS. Mr. Ponder advised the Board that the ASRS has secured sponsorship of its six bills.

The following bills have been assigned to the Government and Higher Education Committee:

- HB2338, ASRS; Disability Program – to remove “total” as it precedes “disability” to reduce confusion to members who may think they must be totally disabled to qualify for disability benefits. Currently there is not a meeting date set for this bill.
- HB2339, ASRS; Rules – ASRS 2015 Legislative Initiatives – remove “provided in rules” in A.R.S. § 38-703 due to this being related to something that the Social Security Administration has jurisdiction over, not the ASRS. Strike “subject to rules prescribed by the Board” in A.R.S. § 38-755. Currently there is not a meeting date set for this bill.
- HB2340 - ASRS 2015 Legislative Initiatives – protects the ASRS or the LTD Program from bad faith claims and requests the ASRS have the same protection from liability as ERISA Plans. Currently there is not a meeting date set for this bill.

The following Senate bills passed out of the Senate Finance Committee:

- SB1095, Community Colleges; Optional Retirement Plans – to specify the ASRS transfer member accounts of NON-RETIRED members only. The ASRS currently does not have a method for transferring the account of a retired member.
- SB1096 – ASRS 2015 Legislative Initiatives – to allow the ASRS to change its actuarial evaluation methods from Projected Unit Credit to Entry Age Normal or some other method as determined by the Board.
- SB1097 – ASRS; Health Insurance Benefits - ASRS 2015 Legislative Initiatives – a conforming legislation bill.

The following are bills that affect the ASRS but not initiated by the ASRS:

- HB2137, sponsored by Rep. McCune Davis, was presented last year as HB2212 and attached to HB2058 as an amendment which failed last year. This bill, if passed, would reduce the threshold from 30% to 15% and define “promotion”. Rep. McCune Davis believes this will address salary spiking.
- HB2351, sponsored by Rep. Fann, would change the definition of a member of PSPRS as it relates to fire chiefs based on whether they are regularly assigned to hazardous duty, as determined by that individual’s local board.
- SB1121, sponsored by Sen. Lesko, to strike the language “before July 1, 2015” from the statute thereby allowing anyone 65 and older to opt-out as long as they have not had prior ASRS membership and there will be an emergency effective date.

Mr. Ponder presented the Board with two newly proposed 2015 legislative initiatives as recommended by the External Affairs Committee (EAC). The first proposal addresses issues that arose from the 2011 SB1609, as well as the 2009 HB2118 regarding service purchase. The second proposal requests a modification to A.R.S. § 38-765 to not require the ASRS to pay interest on overpayments or underpayments to an individual.

**Motion:** Dr. Richard Jacob moved to approve the two additional 2015 legislative initiatives presented by staff. Permit staff to make all language changes and negotiate as necessary to obtain the most effective and efficient legislative provisions within the construct of today's discussion. Prof. Dennis Hoffman seconded the motion.

By a vote of 7 in favor, 0 opposed, and 0 abstentions, the motion was approved.

## **6. Presentation, Discussion, and Appropriate Action Regarding the Current Performance and Future Strategic Priorities of the Member Services Division (a FY15 Strategic Topic)**

Mr. Dave King, Assistant Director, Member Services and Mr. Jeremiah Scott, Management Analyst, were present to discuss the current performance and strategic priorities of the Member Services Division (MSD) with the Board. They discussed the three program areas within the MSD, the accomplishments, challenges and efforts to continue to improve work processes and service level of the MSD.

Accomplishments that were highlighted were: the cross-training of staff within MSD in order to fill voids when necessary, service level goals continuously being met, and implementation of online processes and interactive tools for ASRS members to include the GPS, which is the first of its kind for public retirement systems in the nation. Mr. King and Mr. Scott also shared with the Board that the ASRS was recently honored with two Showcase in Excellence Awards from the Southwest Alliance for Excellence for the online refund process improvements and the online member statement processing improvements.

The challenges the MSD faces are: the shifting of more member contacts to online and lower-cost services, retaining a knowledgeable workforce and the shortage of the Technical Services Division development hours. Mr. King and Mr. Scott also identified efforts the MSD currently has underway: ASRS forms online initiative, MAC improvement plan and retiree secure site enhancements.

Mr. King addressed the strategic priorities for the MSD over the next three to five years. The top focus is to review how the ASRS uses Personal Identifying Information (PII) and how to move away from using social security numbers of its members, when not required, to improve auditing efforts with regard to member contacts and continue to get more members online.

Mr. King and Mr. Scott responded to questions from the Board. Mr. Tom Manos extended his appreciation for the efforts of the MSD and shared that he receives nothing but positive feedback from his employees regarding their experience with the ASRS.

## **7. Presentation, Discussion, and Appropriate Action Regarding the Director's Report as well as Current Events**

Mr. Paul Matson provided a summary of the internal audit reports and the cash flow reports in the Director's Report, noting there were no errors or concerns found.

Mr. Matson advised the Board that Mike Smarik's last day as a Trustee was January 19, 2015, as he opted not to seek re-appointment due to his extremely heavy work load, with respect to a project that is of critical importance to the State. Mr. Matson stated that Mr. Smarik served the ASRS Board from March 21, 2012 to January 19, 2015. During his term, Mr. Smarik served three terms as Vice-Chair of the Board, three terms as Vice-Chair of the Operations and Audit committee, both from 2012-2015 and served one term on the Investment Committee. Mr. Matson expressed that Mr. Smarik has been a tremendous asset to the ASRS and has always acted in an extremely ethical and diligent manner during his tenure with the ASRS Board. Mr. Matson shared the following comments by himself and staff:

*"The impact of Mr. Smarik's efforts significantly and positively affected the performance of a \$34 billion dollar fund, the Pension Fund, Health Insurance and Disability and the wellbeing of over half a million individuals and their families, and as a result assisted the overall health of the State."*

*"Mike was a soft spoken leader who earned the respect of staff and fellow Trustees with the unobtrusive way he added clarity and value to every discussion he participated in. He was a consistent proponent, and always supportive of efforts to raise the caliber of the agency's productivity, sustainability, customer service, risk management and overall effectiveness, in order that the ASRS remain a trusted State institution."*

*"Mike's involvement on the Operations and Audit Committee as well as the ASRS Board provided a practical and business-oriented knowledge base that was truly appreciated by staff. Mike offered insights that were specific to our employer-partners' needs that helped staff identify inclusive approaches to problem solving. Mike consistently presented a calm, professional, and credible demeanor in all situations and his business expertise will be missed by the Board and this agency."*

*"As a result and on behalf of the staff, I [Mr. Paul Matson] would like to say that it has been a tremendous pleasure to have worked with Mike and the ASRS will wish him well in the future and look forward to our continuing relationship."*

The Board thanked Mr. Matson for his comments and shared his sentiments. Mr. Matson advised the Board that he does not have an indication regarding when the Trustees vacancies will be filled at this time.

## **8. Presentation and Discussion with Respect to Informational Updates from Prior and Upcoming Committee Meetings**

### **a. Operations and Audit Committee (OAC)**

Mr. Jeff Tyne announced that the next OAC meeting will be held on March 10, 2015 at 10:30 a.m. in the 14<sup>th</sup> floor conference room and will focus on the five-year strategic initiatives plan.

### **b. External Affairs Committee (EAC)**

Mr. Brian McNeil announced that the next EAC meeting will be held on February 13, 2015 at 10:30 a.m. in the 14<sup>th</sup> floor conference room and will include updates regarding the legislative session and initiatives.

### **c. Investment Committee (IC)**

Tom Connelly announced that the next IC meeting will be held on February 23, 2015 at 2:30 p.m. in the 14<sup>th</sup> floor conference room and will focus on the strategic asset allocation plan.

