



NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

PREAMBLE

[R16-02]

1. **Articles, Parts, or Sections Affected (as applicable)** **Rulemaking Action**
 R2-8-116 New Section
2. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 38-714(E)(4)
 Implementing statutes: A.R.S. §§ 38-711, 38-766, 38-766.01, 38-766.02
3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
 Notice of Rulemaking Docket Opening: 21 A.A.R. 2572, October 30, 2015
4. **The agency’s contact person who can answer questions about the rulemaking:**
 Name: Jessica A. Ross, Rule Writer
 Address: Arizona State Retirement System
 3300 N. Central Ave., Suite 1400
 Phoenix, AZ 85012-0250
 Telephone: (602) 240-2039
 E-mail: JessicaR@azasrs.gov
5. **An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 Currently, R2-8-116 is expired. The ASRS needs to establish R2-8-116 as a new section to clarify that pursuant to A.R.S. § 38-766.02, an ASRS employer that employs a retiree must remit contributions to the ASRS at an alternate contribution rate (ACR) for the retiree regardless whether the retiree is directly employed by the employer, either as a direct hire employee or an independent contractor, or leased to the employer by a third party.

 The rule will reflect that employers cannot avoid paying an ACR to the ASRS merely by claiming that a worker is leased; rather, the employer must show that the entire class of positions performing substantially similar functions, to which the retiree belongs, has been properly leased as well. If the employer is unable to show that the *entire* class of positions performing substantially similar functions has been properly leased, then the employer must pay an ACR to the ASRS for all retirees employed in those positions performing substantially similar functions, whether the individual retiree is leased or not. For example, an ASRS employer that directly hires employees to teach students must pay an ACR to the ASRS for any retiree it also hires to teach students, whether the retiree is leased from a third party and whether the retiree is teaching students under an arbitrary status such as “part-time” or “substitute.”
6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.**
 None
7. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
 Not applicable
8. **The preliminary summary of the economic, small business, and consumer impact:**
 There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. If an employer chooses to hire a retired member and claim that the ACR is not owed for the retired member, then there may be some economic impact to provide the documentation necessary for the ASRS to determine whether the employer has properly leased the class of positions, such that an ACR is not owed for the retired member. Clarifying that an employer must pay the ACR for all retired members unless the entire class of positions has been properly leased, will increase understandability of the statutory requirements in A.R.S. § 38-766.02, thereby reducing the regulatory burden imposed on the public. This clarification will

ensure that ASRS employers have notice about which personnel require the employer to remit an ACR to the ASRS. Thus, the economic impact is minimized.

9. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Jessica A. Ross, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: JessicaR@azasrs.gov

10. The time, place, and nature of the proceedings for to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request and oral proceedings on the proposed rule:

An oral proceeding regarding the proposed rule will be held as follows:

Date: March 9, 2016
Time: 9:00 a.m.
Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012-0250

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law applies to retirement programs, but no federal law specifically applies to this rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact on the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-116. Alternate Contribution Rate

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-116. Alternate Contribution Rate

A. For purposes of this section, the following definitions apply:

1. “ACR” means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee’s compensation.
2. “Class of positions” means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
3. “Compensation” has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
4. “Leased from a third party” means:
 - a. The employee is not employed by an employer; and
 - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.

B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:

1. The retired member is leased from a third party; and

