START\_STATUTE38-737.  Employer contributions; prepayment; definitions

A.  Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements contained in this article, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001‑2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers.  Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method.  Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38‑714.  The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards.

B.  All contributions made by the employer and allocated to the fund established by section 38‑712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C.  The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries.  ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten‑year rate of return as of June 30 of the prior fiscal year.

D.  Notwithstanding any other provision of this article, an employer may prepay the employer's 401(a) pension contributions directly to ASRS according to a written agreement between the employer and ASRS as follows:

1.  401(a) pension contributions that the employer prepays according to this subsection may be deposited, as determined by the employer and managed by ASRS, directly in either the ASRS trust fund established by section 38‑712 or a section 115 trust.

2.  ASRS shall determine the following options available to the employer:

(a)  The amortization time periods.

(b)  The frequency and dates that prepayments can be made.

(c)  The maximum and minimum amounts of 401(a) pension contributions that the employer can prepay.

(d)  Any other options or obligations that the employer may have when entering into this written agreement.

3.  The earnings accrual rate shall be the ASRS total 401(a) pension fund rate of return, or the actual rate of return of a short-term investment through ASRS, as requested by the employer and agreed to by ASRS.

4.  The 401(a) pension contributions the employer prepays and the accrued earnings shall be managed at the discretion of ASRS subject to section 38‑718.

5.  401(a) pension contributions that the employer prepays and accrued earnings may be used solely to reduce the employer's future 401(a) pension contributions as required from the employer pursuant to this section and section 38‑735.

6.  The employer shall determine when to use the 401(a) pension contributions the employer prepays and the accrued earnings from those 401(a) pension contributions.

7.  ASRS shall provide the employer an annual statement of 401(a) pension contributions the employer prepaid and the accrued earnings.

8.  Notwithstanding any other provision of this subsection, an employer may not prepay 401(a) pension contributions according to this subsection either:

(a)  In an amount greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.

(b)  After the total of the unamortized prepaid 401(a) pension contributions and the accrued earnings is equal to or greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.

9.  After an employer elects amortization terms, ASRS shall provide the employer an amortization schedule annually that is current and based on the employer's election.

10.  If ASRS determines to no longer offer the option of prepaying the employer's 401(a) pension contributions directly to ASRS, any 401(a) pension contributions the employer prepays and the accrued earnings remaining on account shall be used for future obligations according to the written agreement between the employer and ASRS.

11.  Assets transferred in or out of or held in the ASRS trust fund established by section 38‑712, or a section 115 trust, and the accrued earnings are exempt from state, county and municipal taxes.

12.  The legislature intends that the accrued earnings not be subject to federal income tax. ASRS may adopt additional rules, policies and procedures as ASRS deems necessary or appropriate to fulfill the legislature's intent that the accrued earnings not be subject to federal income tax.

13.  If ASRS receives notification from the United States internal revenue service that this subsection or any portion of this subsection will jeopardize the tax‑exempt status of the 401(a) pension contributions the employer prepays according to this subsection and the accrued earnings, the portion of this subsection that will cause the disqualification does not apply.

E.  In addition to the requirements of subsection D of this section, any prepayment agreement made between ASRS and this state or any state agency is subject to the following requirements:

1.  Any prepayment amounts deposited with ASRS must be from an appropriation specifically for that purpose that is passed by the legislature and signed by the governor.

2.  Any prepayment amounts or accrued earnings used to reduce the employer's 401(a) pension contributions must be authorized for a specific fiscal year by legislation that is passed by the legislature and signed by the governor.

F.  For the purposes of this section:

1.  "401(a) pension contributions" means the portion of an employer's pension contribution that is specific to the retirement program established under this article and qualified under section 401(a) of the internal revenue code.

2.  "Section 115 trust" means a trust whose income is exempt from gross income pursuant to section 115 of the internal revenue code for essential government functions integral to this state and its political subdivisions. END\_STATUTE