

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2058

AN ACT

AMENDING SECTIONS 38-747, 38-757 AND 38-769, ARIZONA REVISED STATUTES;
RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-747, Arizona Revised Statutes, is amended to
3 read:

4 38-747. Purchase of credited service; payment; limitations;
5 definitions

6 A. A member who purchases credited service pursuant to section 38-738,
7 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

8 1. Make payments directly to ASRS as provided in subsection H of this
9 section.

10 2. Elect to have the member's employer make payments as provided in
11 subsection B of this section.

12 B. A member may elect to have the member's employer make payments for
13 all or any portion of the amounts payable for the member's purchase of
14 credited service pursuant to the sections prescribed in subsection A of this
15 section through a salary reduction program in accordance with the following:

16 1. The amounts paid pursuant to a salary reduction program are in lieu
17 of contributions by the electing member. The electing member's salary or
18 other compensation shall be reduced by the amount paid by the employer
19 pursuant to this subsection. For the purposes of this paragraph, "other
20 compensation" includes a member's termination pay.

21 2. The member shall make an election pursuant to this subsection at
22 any time on or after the date the member elects to purchase credited service
23 pursuant to the sections prescribed in subsection A of this section and
24 before the member's termination of employment. The election shall specify
25 the number of payroll periods that deductions will be made from the member's
26 compensation and the dollar amount of deductions for each payroll period
27 during the specified number of payroll periods. In the case of an election
28 to utilize all or any part of the member's termination pay to purchase
29 credited service, the member's election shall be made at least three full
30 calendar months before the date of the member's termination of employment and
31 entitlement to receive the termination pay. After an election is made
32 pursuant to this subsection, the election is binding on and irrevocable for
33 the member and the member's employer during the member's remaining period of
34 current employment. After a member makes an irrevocable election pursuant to
35 this subsection, the member does not have the option of choosing to receive
36 the contributed amounts directly. For the purposes of this paragraph,
37 "termination pay" means any lump sum that is paid at the member's termination
38 of employment for accrued vacation, sick leave or overtime pay.

39 3. A member who makes an irrevocable election pursuant to this
40 subsection to have the member's employer make payments for less than all of
41 the amounts payable for the member's purchase of credited service may
42 irrevocably elect to have the member's employer make payments for all or any
43 portion of the remaining amounts payable for the member's purchase of
44 credited service. A member who makes one or more irrevocable elections
45 pursuant to this subsection may also make other contributions to ASRS

1 pursuant to subsection H of this section to the extent of any remaining
2 amounts payable for which the member has not made an election pursuant to
3 this subsection. An additional election or contribution with respect to a
4 portion of the amounts payable for the member's purchase of credited service
5 does not alter, amend or revoke an irrevocable election already made pursuant
6 to this subsection for any other portion of the amounts payable for the
7 member's purchase of credited service.

8 4. If on termination of the member's employment with an ASRS employer
9 all amounts have not been paid to ASRS pursuant to the member's irrevocable
10 election pursuant to this subsection, the member may pay ASRS, within thirty
11 days after the member's termination of employment and subject to other
12 limitations prescribed in this section, all or any portion of the unpaid
13 amounts as provided in subsection H of this section. These payments do not
14 alter, amend or revoke any irrevocable election already made pursuant to this
15 subsection with respect to any amount to be paid by the member's employer
16 while the member is employed by the member's employer.

17 5. Amounts paid by an employer pursuant to this subsection shall be
18 treated as employer contributions for the purpose of determining tax
19 treatment under the internal revenue code. The effective date of employer
20 payments pursuant to this subsection shall not be before the date ASRS
21 receives notification from the United States internal revenue service that
22 pursuant to section 414(h)(2) of the internal revenue code the amounts paid
23 by an employer pursuant to this subsection will not be included in the
24 member's gross income for income tax purposes until those amounts are
25 distributed by refund or retirement benefit payments.

26 6. Unless otherwise provided, member contributions paid by an employer
27 pursuant to this subsection are treated for all other purposes under ASRS in
28 the same manner and to the same extent as member contributions that are not
29 paid by an employer pursuant to this subsection. ASRS shall not grant
30 credited service for contributions made pursuant to this subsection until
31 those contributions are received by ASRS. ASRS may assess interest or
32 administrative charges attributable to any salary reduction election made
33 pursuant to this subsection. The interest or administrative charges shall be
34 added to the amount of contributions that is made to ASRS by the member each
35 payroll period and that is paid by the member's employer. The interest or
36 administrative charges shall not be treated as member contributions for any
37 purposes under this article and a member or a member's beneficiary does not
38 have a right to the return of the interest or administrative charges pursuant
39 to any other provision of this article. Interest assessed pursuant to this
40 subsection shall be at the rate specified by the board pursuant to section
41 38-711, paragraph 2.

42 7. If a member transfers employment from one participating employer
43 with which the member has made an irrevocable election pursuant to this
44 subsection to another participating employer, the member and the successor

1 participating employer shall complete the terms of the irrevocable election
2 that the member made with the original participating employer.

3 C. A member who elects before July 1, 1999 to receive retirement
4 benefits based on section 38-771, subsection C, paragraph 2 or a member who
5 elects to make contributions to ASRS pursuant to section 38-771.01,
6 subsection F, paragraph 4 shall either make the member's additional
7 contributions required pursuant to section 38-771, subsection E or allowed
8 pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as
9 provided in subsection H of this section or shall elect to have the member's
10 employer make payments for those additional contributions as provided in
11 subsection D of this section. A member who elected to be covered or who was
12 deemed to be covered by section 38-771 on or before December 31, 1995 or who
13 elects to make member contributions pursuant to section 38-771.01, subsection
14 F, paragraph 3 is deemed to have made an irrevocable election pursuant to
15 subsection D of this section to make the member's contributions to ASRS that
16 are required by section 38-771, subsection D or allowed by section 38-771.01,
17 subsection F, paragraph 3.

18 D. Any member contributions that are required by section 38-771,
19 subsection D or that are allowed pursuant to section 38-771.01, subsection F,
20 paragraph 3 are deemed to be made by the member to ASRS through a salary
21 reduction program in accordance with the following:

22 1. A member may make member contributions pursuant to section 38-771,
23 subsection E or section 38-771.01, subsection F, paragraph 4 through a salary
24 reduction program elected pursuant to this subsection. If a member makes an
25 irrevocable election pursuant to this subsection before July 1, 1999 to have
26 the member's employer make payments for additional contributions pursuant to
27 section 38-771, subsection E, the election continues in effect from and after
28 June 30, 1999 and shall not be revoked, amended or altered by any election
29 made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant
30 to a salary reduction program are in lieu of contributions by the electing
31 member. The member's salary or other compensation shall be reduced by the
32 amount paid by the employer pursuant to this subsection.

33 2. Before a member's termination of employment, the member may make an
34 election pursuant to this subsection at any time after the date the member
35 elects to receive retirement benefits based on section 38-771, subsection C,
36 paragraph 2 but before July 1, 1999 or at any time after the member elects to
37 make member contributions pursuant to section 38-771.01, subsection F,
38 paragraph 4. The election shall specify the number of payroll periods that
39 deductions will be made from the member's compensation and the dollar amount
40 of deductions for each payroll period during the specified number of payroll
41 periods. After an election is made pursuant to this subsection, the election
42 is binding on and irrevocable for the member and the member's employer during
43 the member's remaining period of employment.

44 3. After a member makes or is deemed to have made an irrevocable
45 election pursuant to this subsection, the member does not have the option of

1 choosing to receive the contributed amounts directly. A member who makes an
2 irrevocable election pursuant to this subsection to have the member's
3 employer make payments for less than all of the amounts payable for the
4 member's additional contributions allowed by section 38-771.01, subsection F,
5 paragraph 4 may irrevocably elect to have the member's employer make payments
6 for all or any portion of the remaining amounts payable for the member's
7 additional contributions. A member who makes one or more irrevocable
8 elections pursuant to this subsection may also make other contributions to
9 ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to
10 subsection H of this section to the extent of any remaining amounts payable
11 for which the member has not made an election pursuant to this subsection.
12 An additional election or contribution with respect to a portion of the
13 amounts payable for the member's additional contributions pursuant to section
14 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an
15 irrevocable election already made pursuant to this subsection for any other
16 portion of the amounts payable for the member's additional contributions
17 allowed by section 38-771.01, subsection F, paragraph 4.

18 4. If on termination of the member's employment all amounts have not
19 been paid to ASRS pursuant to the member's irrevocable election pursuant to
20 this subsection, the member may pay ASRS, within thirty days after the
21 member's termination of employment and subject to other limitations
22 prescribed in this section, all or any portion of the unpaid amounts as
23 provided in subsection H of this section. These payments do not alter, amend
24 or revoke any irrevocable election already made pursuant to this subsection
25 with respect to any amount to be paid by the member's employer while the
26 member is employed by the member's employer.

27 5. Amounts paid by an employer pursuant to this subsection shall be
28 treated as employer contributions for the purpose of determining tax
29 treatment under the internal revenue code. The effective date of employer
30 payments pursuant to this subsection shall not be before the date ASRS
31 receives notification from the United States internal revenue service that
32 pursuant to section 414(h)(2) of the internal revenue code the amounts paid
33 by an employer pursuant to this subsection will not be included in the
34 member's gross income for income tax purposes until those amounts are
35 distributed by refund or retirement benefit payments.

36 6. Unless otherwise provided, member contributions paid by an employer
37 pursuant to this subsection are treated for all other purposes under ASRS in
38 the same manner and to the same extent as member contributions that are not
39 paid by an employer pursuant to this subsection.

40 7. If a member transfers employment from one participating employer
41 with which the member has made an irrevocable election pursuant to this
42 subsection to another participating employer, the member and the successor
43 participating employer shall complete the terms of the irrevocable election
44 that the member made with the original participating employer.

1 E. The following limits apply to contributions to ASRS:

2 1. Except to the extent paragraphs 2 and 3 of this subsection apply to
3 certain contributions made by a member to ASRS and to the extent permitted
4 under section 414(v) of the internal revenue code, if applicable, in any one
5 limitation year, the annual additions contributed or allocated to ASRS for or
6 on behalf of a member shall not exceed the lesser of either:

7 (a) Forty thousand dollars or a larger amount that is prescribed by
8 the board and that is due to any cost of living adjustment announced by the
9 United States secretary of the treasury pursuant to section 415(d) of the
10 internal revenue code. The board shall increase the amount prescribed by
11 this subdivision as of the effective date of the increase announced by the
12 United States secretary of the treasury.

13 (b) One hundred per cent of the member's compensation for the
14 limitation year. The compensation limit prescribed in this subdivision does
15 not apply to any contribution to ASRS for medical benefits after a member's
16 separation from service, within the meaning prescribed in section 401(h) or
17 419A(f)(2) of the internal revenue code, that is otherwise treated as an
18 annual addition.

19 2. Unless paragraph 4 of this subsection applies, for plan years
20 beginning on or after July 1, 1998, in any one limitation year, the annual
21 additions credited to ASRS for or on behalf of a member who makes
22 contributions to ASRS to purchase credited service pursuant to section
23 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable
24 election has not been made pursuant to subsection B of this section shall not
25 exceed the greater of either:

26 (a) The requirements of section 38-769. For the purposes of applying
27 the limits prescribed in section 38-769 under this subdivision, the accrued
28 benefit derived from the contributions shall be treated as an annual benefit
29 and the reduced limit for certain early retirement in section 38-769,
30 subsection C, paragraph 2 does not apply.

31 (b) Except as provided in paragraph 3 of this subsection, the
32 requirements of paragraph 1 of this subsection. The contributions shall be
33 treated as annual additions and any of the member's other annual additions
34 for the limitation year shall be taken into account. For the purposes of
35 applying the requirements of paragraph 1 of this subsection under this
36 subdivision, the percentage of compensation limit in paragraph 1, subdivision
37 (b) of this paragraph does not apply.

38 3. For plan years beginning on or after July 1, 1998, the requirements
39 of paragraph 1 of this subsection shall not be applied to reduce the amount
40 of credited service that may be purchased by an eligible member pursuant to
41 section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the
42 amount of credited service allowed to be purchased pursuant to those sections
43 on August 5, 1997 without the application of any of the limits prescribed in
44 this section or section 415 of the internal revenue code. For the purposes

1 of this paragraph, "eligible member" means a person who first becomes a
2 member of ASRS before July 1, 1999.

3 4. Member contributions to ASRS to purchase credited service pursuant
4 to section 38-743, 38-744 or 38-922 shall not be made by a member if
5 recognition of that service would cause a member to receive a retirement
6 benefit for the same service from ASRS and one or more other retirement
7 plans. This paragraph does not apply to either of the following:

8 (a) Contributions made by an eligible member as defined in paragraph 3
9 of this subsection, except that any service purchase by an eligible member is
10 subject to any other limitations, including limitations on duplicative
11 service purchase, otherwise provided in this article.

12 (b) Any member contributions with respect to which an irrevocable
13 election has been made by a member pursuant to subsection B of this section,
14 except that the service purchase is subject to any other limitations,
15 including limitations on duplicative service purchase, otherwise provided in
16 this article.

17 F. If a member's contributions are subject to the limitations of
18 subsection E of this section, the contributions shall be treated as being
19 made to a separate defined contribution plan. If the member's contributions
20 exceed the limits prescribed in subsection E of this section when taking into
21 account other member and employer contributions to ASRS on behalf of the
22 member for the limitation year, the amount to be paid by the member shall be
23 reduced to not exceed the limits prescribed in subsection E of this section
24 and the remaining amount shall be carried forward to the next limitation
25 year, unless the limits are exceeded in the next limitation year. If the
26 limits are exceeded in the next limitation year, the procedure prescribed by
27 this subsection shall be repeated until all payments have been made.

28 G. If, after the application of subsection F of this section, the
29 annual additions on behalf of a member exceed the limitations prescribed in
30 subsection E of this section, ASRS shall dispose of excess amounts by either
31 of the following:

32 1. Returning to the member any contributions that are made by the
33 member and that are nondeductible under the internal revenue code.

34 2. Holding the amounts in a suspense account established pursuant to
35 subsection L of this section and allocating the amounts as either member or
36 employer contributions for the benefit of the member in the next limitation
37 year and before any further member or employer contributions are made that
38 would constitute annual additions made to a defined contribution plan
39 pursuant to section 415 of the internal revenue code. ASRS shall allocate
40 contributions as prescribed in this section, and the amount allocated shall
41 reduce the amount of the member or employer contributions for the limitation
42 year in which the allocation is made.

43 H. To the extent that a payment under this subsection does not alter,
44 amend or revoke any one or more currently effective irrevocable elections
45 made by the member pursuant to subsection B or D of this section, the board

1 may accept contributions made pursuant to section 38-771 or member
2 contributions for the payment for credited service purchases pursuant to
3 section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions
4 made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in
5 part, by any one or a combination of the following methods:

6 1. In lump sum payments.

7 2. Subject to the limitations prescribed in sections 401(a)(31) and
8 402(c) of the internal revenue code and subsection J of this section,
9 accepting a direct transfer of any eligible rollover distribution or a
10 contribution by a member of an eligible rollover distribution from one or
11 more:

12 (a) Retirement programs that are qualified under section 401(a) or
13 403(a) of the internal revenue code.

14 (b) Annuity contracts described in section 403(b) of the internal
15 revenue code.

16 (c) Eligible deferred compensation plans described in section 457(b)
17 of the internal revenue code that are maintained by a state, a political
18 subdivision of a state or any agency or instrumentality of a state or a
19 political subdivision of a state.

20 3. Subject to the limitations prescribed in section 408(d)(3)(A)(ii)
21 of the internal revenue code, accepting from a member a rollover contribution
22 of that portion of a distribution from an individual retirement account or
23 individual retirement annuity described in section 408(a) or 408(b) of the
24 internal revenue code that is eligible to be rolled over and would otherwise
25 be includable as gross income.

26 4. Providing by rule that the contributions may be made in installment
27 payments over a period of time.

28 I. To the extent that a payment under this subsection does not alter,
29 amend or revoke any one or more currently effective irrevocable elections
30 made by a member pursuant to subsection B or D of this section, the board may
31 accept a direct trustee-to-trustee transfer from retirement programs that are
32 qualified under section 401(a) or 403(a) of the internal revenue code, an
33 annuity contract described in section 403(b) of the internal revenue code or
34 an eligible deferred compensation plan described in section 457(b) of the
35 internal revenue code for the payment for credited service purchases pursuant
36 to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct
37 trustee-to-trustee transfer is from a retirement program that is qualified
38 under section 401(a) of the internal revenue code and that includes a cash or
39 deferred arrangement described in section 401(k) of the internal revenue
40 code, the member on whose behalf the transfer was made is not eligible to
41 retire under section 38-764, subsection I before the date the member attains
42 fifty-nine and one-half years of age.

43 J. ASRS shall separately account for all amounts rolled over or
44 directly transferred to ASRS. Subject to the limitations contained in the
45 internal revenue code applicable to the type of plan from which an eligible

1 rollover distribution is transferred, to the extent any eligible rollover
2 distribution that is directly transferred to ASRS consists wholly or
3 partially of amounts that would otherwise not be included in the member's
4 gross income if not so transferred, ASRS shall separately account for the
5 amounts so transferred, and earnings on those amounts, including separately
6 accounting for the portion of the amount that is includable in gross income
7 and the portion of the amount that is not includable in gross income.

8 K. ASRS shall not grant credited service under section 38-738, 38-742,
9 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of
10 this section until the contributions are received by ASRS. ASRS may assess
11 interest or administrative charges attributable to any installment payment
12 made pursuant to subsection H, paragraph 4 of this section to purchase
13 credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or
14 38-922. The interest or administrative charges shall be added to the amount
15 of contributions made to ASRS by the member. The interest or administrative
16 charges shall not be treated as member contributions for any purposes under
17 this article, and a member or a member's beneficiary does not have a right to
18 the return of the interest or administrative charges pursuant to any other
19 provision of this article. Interest assessed pursuant to this subsection
20 shall be at the rate specified by the board pursuant to section 38-711,
21 paragraph 2.

22 ~~L. ASRS shall establish a suspense account that conforms with 26 Code~~
23 ~~of Federal Regulations section 1.415-6(b)(6) regarding excess annual~~
24 ~~additions.~~

25 L. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, IF
26 THE ANNUAL ADDITIONS CREDITED ON BEHALF OF AN ASRS MEMBER DURING ANY
27 LIMITATION YEAR EXCEED THE LIMITS OF SECTION 415(c) OF THE INTERNAL REVENUE
28 CODE AND SUBSECTION E OF THIS SECTION, ASRS MAY ONLY CORRECT THE EXCESS
29 PURSUANT TO THE EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM PRESCRIBED IN
30 INTERNAL REVENUE SERVICE REVENUE PROCEDURE 2008-50 OR ANY FUTURE GUIDANCE
31 ISSUED BY THE INTERNAL REVENUE SERVICE, INCLUDING THE PREAMBLE OF THE FINAL
32 TREASURY REGULATIONS ISSUED UNDER SECTION 415 OF THE INTERNAL REVENUE CODE.

33 M. If the member retires before all payments are made pursuant to this
34 section, ASRS shall calculate the member's benefits based only on the
35 payments actually made.

36 N. On satisfaction of the requirements of this section, ASRS shall
37 adjust the member's credited service history and add any additional service
38 credits acquired.

39 O. Annual additions on behalf of a member in any limitation year shall
40 be the sum of:

41 1. The amount of the member contributions made to ASRS to purchase
42 credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922
43 and with respect to which an irrevocable election made pursuant to subsection
44 B of this section is not in effect.

1 2. The amount of member and employer contributions made to ASRS on
2 behalf of a member who elected or was deemed to have elected to receive
3 retirement benefits pursuant to section 38-771 or who is entitled to benefits
4 pursuant to section 38-771.01, except that, other than as provided in
5 subsection P of this section, corrective contributions shall be considered
6 annual additions for the limitation years to which the contributions relate
7 and interest and gains shall not be considered as annual additions for the
8 purpose of any limitation prescribed in this article or in section 415 of the
9 internal revenue code. If the corrective contributions exceed the limit on
10 annual additions for a limitation year prior to the limitation year in which
11 the corrective contributions are contributed by the employer to ASRS, the
12 retirement benefit attributable to the excess corrective contributions shall
13 be treated as an excess benefit and shall be payable to the member as any
14 other excess benefit is payable pursuant to section 38-774, and the employer
15 shall pay the excess corrective contributions to the separate unfunded
16 governmental excess benefit arrangement administered by the board pursuant to
17 section 38-774.

18 3. Any member or employer contributions made to ASRS or any other plan
19 that are treated as being made to a defined contribution plan maintained by
20 an employer of the member.

21 4. Any forfeitures, including any income attributable to forfeitures,
22 allocated for or on behalf of a member of ASRS or any other plan that are
23 treated as being allocated under a defined contribution plan maintained by an
24 employer of the member.

25 P. To the extent any portion of the subject benefits, if treated as
26 subject to the benefit limitations of section 415(b) of the internal revenue
27 code, exceed the applicable limitation on benefits pursuant to section 38-769
28 for the form of distribution, a percentage of corrective contributions and
29 interest and gains shall be treated as annual additions for the limitation
30 year in which contributed by the employer to ASRS. This percentage of
31 corrective contributions and interest and gains shall be equal to the
32 percentage determined by dividing the subject benefits that exceed the
33 limitation on benefits pursuant to section 38-769 by the subject benefits.
34 If the corrective contributions and interest and gains that are treated as
35 annual additions for the limitation year in which the corrective
36 contributions and interest and gains are contributed by the employer to ASRS
37 exceed the limit on annual additions for the limitation year, the retirement
38 benefit attributable to the excess shall be treated as an excess benefit and
39 shall be payable to the member as any other excess benefit is payable
40 pursuant to section 38-774, and the employer shall pay the excess to the
41 separate unfunded governmental excess benefit arrangement administered by the
42 board pursuant to section 38-774.

43 Q. Subsection O of this section shall be construed and interpreted in
44 accordance with ~~26 Code of Federal Regulations section 1.415-6 to the extent~~

1 ~~that section is applicable~~ SECTION 415 OF THE INTERNAL REVENUE CODE AND THE
2 FINAL TREASURY REGULATIONS ISSUED UNDER THAT SECTION.

3 R. For the purposes of this section:

4 1. "Compensation" has the same meaning prescribed in section 38-769.

5 2. "Corrective contributions" means any contributions that are paid by
6 an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that
7 are attributable to employer contributions that should have been made for
8 prior limitation years.

9 3. "Defined contribution plan" has the same meaning prescribed in
10 section 38-769.

11 4. "Eligible rollover distribution" has the same meaning prescribed in
12 section 38-770.

13 5. "Interest and gains" means employer contributions to ASRS pursuant
14 to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are
15 attributable to earnings and supplemental credits that would have been earned
16 or added to a member's annuity payment.

17 6. "Limitation year" has the same meaning prescribed in section
18 38-769.

19 7. "Participating employer" means an employer that participates in
20 ASRS.

21 8. "Subject benefits" means the retirement benefit received by a
22 member pursuant to section 38-771.01 minus the sum of the portion of such
23 retirement benefit attributable to contributions that were made by or on
24 behalf of the member to the defined contribution program administered by ASRS
25 for periods before July 1, 1981 and contributions that were made by the
26 member after June 30, 1981 and that were not picked up as provided in section
27 414(h)(2) of the internal revenue code.

28 Sec. 2. Section 38-757, Arizona Revised Statutes, is amended to read:

29 38-757. Normal retirement

30 A. After application on a form prescribed by the director, a member
31 may retire on reaching the member's normal retirement date. **EXCEPT AS
32 PROVIDED IN SECTION 13-713, A MEMBER'S RIGHT TO THE MEMBER'S NORMAL
33 RETIREMENT BENEFIT AS DESCRIBED IN SUBSECTION B OF THIS SECTION IS
34 NONFORFEITABLE BY AN EMPLOYER OR ASRS ON ATTAINMENT OF THE MEMBER'S NORMAL
35 RETIREMENT DATE.**

36 B. Except as provided in section 38-768, a member who meets the
37 requirements for retirement benefits at normal retirement shall receive a
38 monthly life annuity that equals the result of paragraph 1 **OF THIS SUBSECTION**
39 multiplied by paragraph 2 **OF THIS SUBSECTION** when those paragraphs are
40 defined as follows:

41 1. The number of whole and fractional years of credited service times
42 the following:

43 (a) 2.10 per cent if the member does not have more than 19.99 years of
44 credited service.

1 (b) 2.15 per cent if the member has at least 20.00 years of credited
2 service but not more than 24.99 years of credited service.

3 (c) 2.20 per cent if the member has at least 25.00 years of credited
4 service but not more than 29.99 years of credited service.

5 (d) 2.30 per cent if the member has at least 30.00 years of credited
6 service.

7 2. The member's average monthly compensation.

8 C. Employers shall provide evidence of, and certify to, in a manner
9 provided by the board, the member's average monthly compensation if that
10 information is not already available from the records of ASRS.

11 Sec. 3. Section 38-769, Arizona Revised Statutes, is amended to read:
12 38-769. Maximum retirement benefits; termination; definitions

13 A. Notwithstanding any other provision of this article, except as
14 provided in subsection C of this section, the employer provided portion of a
15 member's annual benefit payable in the form of a straight life annuity, at
16 any time within a limitation year, shall not exceed one hundred sixty
17 thousand dollars or a larger amount that is effective as of January 1 of each
18 calendar year, is prescribed by the board and is due to any cost of living
19 adjustment announced by the United States secretary of the treasury pursuant
20 to section 415(d) of the internal revenue code. The board shall increase the
21 amount pursuant to this subsection as of the effective date of the increase
22 as prescribed by the United States secretary of the treasury. Benefit
23 increases provided in this section resulting from the increase in the
24 limitations of section 415(b) of the internal revenue code as amended by the
25 economic growth and tax relief reconciliation act of 2001 shall be provided
26 to all current and former members who have benefits that are limited by
27 section 415(b) of the internal revenue code and who have an accrued benefit
28 under ASRS immediately before July 1, 2001, other than an accrued benefit
29 resulting from a benefit increase solely as a result of the increases
30 provided by this section resulting from the increase in the limitations of
31 section 415(b) of the internal revenue code as amended by the economic growth
32 and tax relief reconciliation act of 2001.

33 B. Notwithstanding the limitations of subsection A of this section,
34 the benefits payable to a member are deemed not to exceed the limitations
35 determined under subsection A of this section if the retirement benefits
36 payable to the member under this article do not exceed ten thousand dollars
37 for the limitation year and if an employer has not at any time maintained a
38 defined contribution plan in which the member has participated.

39 C. The limitations determined under subsection A of this section are
40 subject to the following adjustments:

41 1. If a member has less than ten years of membership in ASRS, the
42 maximum dollar limitation determined under subsection A of this section shall
43 be multiplied by a fraction, the numerator of which is the number of years,
44 or partial years, of membership in ASRS and the denominator of which is ten.
45 The reduction provided in this paragraph also applies to the ten thousand

1 dollar floor limitation provided in subsection B of this section, except that
2 the reduction applies to years of service with an employer rather than to
3 years of membership in ASRS. The reduction in this paragraph does not reduce
4 the limitations determined under subsection A of this section to an amount
5 less than one-tenth of the limitations as determined without regard to this
6 paragraph.

7 ~~2. If a member's annual benefit commences before the member attains~~
8 ~~sixty two years of age, the defined benefit dollar limitation applicable to~~
9 ~~the member at the earlier age is an annual benefit payable in the form of a~~
10 ~~straight life annuity beginning at the earlier age that is the actuarial~~
11 ~~equivalent of the defined benefit dollar limitation applicable to the member~~
12 ~~at age sixty two and that is adjusted under paragraph 1 of this subsection,~~
13 ~~if required. The defined benefit dollar limitation applicable at an age~~
14 ~~before age sixty two is determined as the lesser of:~~

15 ~~(a) The actuarial equivalent at that age of the defined benefit dollar~~
16 ~~limitation computed using the interest rate specified by the board in section~~
17 ~~38-711, paragraph 2 and the mortality table or other tabular factors~~
18 ~~prescribed in paragraph 5 of this subsection.~~

19 ~~(b) The actuarial equivalent at that age of the defined benefit dollar~~
20 ~~limitation computed using a five per cent interest rate and the applicable~~
21 ~~mortality table prescribed in paragraph 5 of this subsection. Any decrease~~
22 ~~in the defined benefit dollar limitation determined in accordance with this~~
23 ~~paragraph shall not reflect a mortality decrement if benefits are not~~
24 ~~forfeited on the death of the member. If any benefits are forfeited on~~
25 ~~death, the full mortality decrement is taken into account.~~

26 ~~3. If a member's annual benefit commences after sixty five years of~~
27 ~~age, the limitation determined under subsection A of this section applicable~~
28 ~~to the member at the later age is the annual benefit payable in the form of a~~
29 ~~straight life annuity beginning at the later age that is actuarially~~
30 ~~equivalent to the defined benefit dollar limitation applicable to the~~
31 ~~participant at age sixty five and that is adjusted under paragraph 1 of this~~
32 ~~subsection, if required. The actuarial equivalent of the defined benefit~~
33 ~~dollar limitation applicable at an age after age sixty five is determined as~~
34 ~~the lesser of:~~

35 ~~(a) The actuarial equivalent at that age of the defined benefit dollar~~
36 ~~limitation computed using the interest rate specified by the board as~~
37 ~~provided in section 38-711, paragraph 2 and the mortality table or other~~
38 ~~tabular factors prescribed in paragraph 5 of this subsection.~~

39 ~~(b) The actuarial equivalent at that age of the defined benefit dollar~~
40 ~~limitation computed using a five per cent interest rate assumption and the~~
41 ~~applicable mortality table prescribed in paragraph 5 of this subsection. For~~
42 ~~the purposes of this subdivision, mortality between age sixty five and the~~
43 ~~age at which benefits commence shall be ignored.~~

1 ~~4. If the member's benefit is paid in a form other than a straight~~
2 ~~life annuity, the benefit paid may not exceed the actuarial equivalent of the~~
3 ~~maximum annual benefit payable as a straight life annuity disregarding the~~
4 ~~portion of any joint and survivor annuity that constitutes a qualified joint~~
5 ~~and survivor annuity as defined in section 417 of the internal revenue code.~~
6 ~~Effective for plan years beginning from and after June 30, 2004, actuarial~~
7 ~~equivalency under this paragraph shall be determined by the use of an~~
8 ~~interest rate assumption equal to one of the following rates:~~

9 ~~(a) For benefits paid under ASRS in a form to which section 417(e)(3)~~
10 ~~of the internal revenue code would apply if that section of the internal~~
11 ~~revenue code were applicable to ASRS, the greater of:~~

12 ~~(i) Five and one-half per cent a year.~~

13 ~~(ii) The rate that provides a benefit of not more than one hundred~~
14 ~~five per cent of the benefit that would be provided if the applicable~~
15 ~~interest rate, as defined in section 417(e)(3) of the internal revenue code,~~
16 ~~were the interest rate assumption.~~

17 ~~(iii) The rate specified by the board as provided in section 38-711,~~
18 ~~paragraph 2.~~

19 ~~(b) For benefits paid under ASRS in a form to which section 417(e)(3)~~
20 ~~of the internal revenue code does not apply if that section of the internal~~
21 ~~revenue code were applicable to ASRS, five per cent per year.~~

22 ~~In the case of any member or beneficiary receiving a distribution from and~~
23 ~~after December 31, 2003 but before January 1, 2005, the amount payable under~~
24 ~~any form of benefit subject to adjustment under this paragraph shall not,~~
25 ~~solely by reason of the interest rate assumptions contained in this~~
26 ~~paragraph, be less than the amount that would have been payable had the~~
27 ~~amount payable been determined using the applicable interest rate in effect~~
28 ~~as of the last day of the plan year beginning July 1, 2003.~~

29 ~~5. For the purposes of adjusting any benefit or limitation under~~
30 ~~paragraph 2, 3 or 4 of this subsection, the board shall use the mortality~~
31 ~~table prescribed by the United States secretary of the treasury as required~~
32 ~~by section 415(b)(2)(E)(v) of the internal revenue code, which, effective for~~
33 ~~distributions with annuity starting dates from and after December 30, 2002,~~
34 ~~shall be the mortality table published by the internal revenue service in~~
35 ~~revenue ruling 2001-62, as modified by the internal revenue service in~~
36 ~~revenue ruling 2007-67, until later changed or modified by the internal~~
37 ~~revenue service.~~

38 **2. IF THE MEMBER'S BENEFIT UNDER ASRS COMMENCES BEFORE THE MEMBER**
39 **REACHES SIXTY-TWO YEARS OF AGE, THE BENEFIT WILL BE LIMITED TO:**

40 **(a) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING**
41 **BEFORE JULY 1, 2007, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A**
42 **STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT**
43 **IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION**
44 **415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS**

1 SECTION, WITH ACTUARIAL EQUIVALENCE COMPUTED USING WHICHEVER OF THE FOLLOWING
2 PRODUCES THE SMALLER ANNUAL AMOUNT:

3 (i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR
4 SPECIFIED BY THE BOARD FOR DETERMINING ACTUARIAL EQUIVALENCE FOR EARLY
5 RETIREMENT PURPOSES.

6 (ii) A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE
7 MORTALITY TABLE.

8 (b) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON
9 OR AFTER JULY 1, 2007 AND ASRS DOES NOT HAVE AN IMMEDIATELY COMMENCING
10 STRAIGHT LIFE ANNUITY PAYABLE AT BOTH AGE SIXTY-TWO AND THE AGE OF BENEFIT
11 COMMENCEMENT, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A
12 STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT
13 IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION
14 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS
15 SECTION, WITH ACTUARIAL EQUIVALENCE COMPUTED USING A FIVE PER CENT INTEREST
16 RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE AND EXPRESSING THE
17 MEMBER'S AGE BASED ON COMPLETED CALENDAR MONTHS AS OF THE ANNUITY START DATE.

18 (c) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON
19 OR AFTER JULY 1, 2007 AND ASRS HAS AN IMMEDIATELY COMMENCING STRAIGHT LIFE
20 ANNUITY PAYABLE AT BOTH AGE SIXTY-TWO AND THE AGE OF BENEFIT COMMENCEMENT,
21 THE LESSER OF:

22 (i) THE ADJUSTED DOLLAR LIMITATION DETERMINED IN ACCORDANCE WITH
23 SUBDIVISION (b) OF THIS PARAGRAPH, DETERMINED WITHOUT APPLYING THE
24 LIMITATIONS OF SECTION 415 OF THE INTERNAL REVENUE CODE.

25 (ii) THE PRODUCT OF THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A)
26 OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION,
27 MULTIPLIED BY THE RATIO OF THE ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING
28 STRAIGHT LIFE ANNUITY UNDER ASRS AT THE MEMBER'S ANNUITY STARTING DATE TO THE
29 ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY UNDER ASRS
30 AT AGE SIXTY-TWO, DETERMINED WITHOUT APPLYING THE LIMITATIONS OF SECTION 415
31 OF THE INTERNAL REVENUE CODE.

32 3. IF THE RETIREMENT BENEFIT UNDER ASRS COMMENCES AFTER THE MEMBER
33 REACHES SIXTY-FIVE YEARS OF AGE, THE DOLLAR LIMITATION UNDER SECTION
34 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS
35 SECTION ON THAT BENEFIT IS INCREASED TO:

36 (a) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING
37 BEFORE JULY 1, 2007, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A
38 STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT
39 IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION
40 415(b)(1)(A) AS ADJUSTED UNDER SECTION 415(d) OF THE INTERNAL REVENUE CODE,
41 WITH ACTUARIAL EQUIVALENCE COMPUTED USING WHICHEVER OF THE FOLLOWING PRODUCES
42 THE SMALLER ANNUAL AMOUNT:

43 (i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR
44 SPECIFIED BY THE BOARD FOR DETERMINING ACTUARIAL EQUIVALENCE FOR DELAYED
45 RETIREMENT PURPOSES.

1 (ii) A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE
2 MORTALITY TABLE.

3 (b) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON
4 OR AFTER JULY 1, 2007 AND ASRS DOES NOT HAVE AN IMMEDIATELY COMMENCING
5 STRAIGHT LIFE ANNUITY PAYABLE AT BOTH AGE SIXTY-FIVE AND THE AGE OF BENEFIT
6 COMMENCEMENT, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A
7 STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT
8 IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION
9 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS
10 SECTION, WITH ACTUARIAL EQUIVALENCE COMPUTED USING A FIVE PER CENT INTEREST
11 RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE AND EXPRESSING THE
12 MEMBER'S AGE BASED ON COMPLETED CALENDAR MONTHS AS OF THE ANNUITY STARTING
13 DATE.

14 (c) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON
15 OR AFTER JULY 1, 2007 AND ASRS HAS AN IMMEDIATELY COMMENCING STRAIGHT LIFE
16 ANNUITY PAYABLE AT BOTH AGE SIXTY-FIVE AND THE AGE OF BENEFIT COMMENCEMENT,
17 THE LESSER OF:

18 (i) THE ADJUSTED DOLLAR LIMITATION DETERMINED IN ACCORDANCE WITH
19 SUBDIVISION (b) OF THIS PARAGRAPH, DETERMINED WITHOUT APPLYING THE
20 LIMITATIONS OF SECTION 415 OF THE INTERNAL REVENUE CODE.

21 (ii) THE PRODUCT OF THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A)
22 OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION,
23 MULTIPLIED BY THE RATIO OF THE ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING
24 STRAIGHT LIFE ANNUITY UNDER ASRS AT THE MEMBER'S ANNUITY STARTING DATE TO THE
25 ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY UNDER ASRS
26 AT AGE SIXTY-FIVE, DETERMINED WITHOUT APPLYING THE LIMITATIONS OF SECTION 415
27 OF THE INTERNAL REVENUE CODE.

28 4. FOR PURPOSES OF APPLYING THE LIMITS OF SECTION 415 OF THE INTERNAL
29 REVENUE CODE, A RETIREMENT BENEFIT THAT IS PAYABLE IN ANY FORM OTHER THAN A
30 STRAIGHT LIFE ANNUITY AND THAT IS NOT SUBJECT TO SECTION 417(e)(3) OF THE
31 INTERNAL REVENUE CODE MUST BE ADJUSTED TO AN ACTUARIALLY EQUIVALENT STRAIGHT
32 LIFE ANNUITY THAT EQUALS EITHER:

33 (a) FOR LIMITATION YEARS BEGINNING ON OR AFTER JULY 1, 2007, THE
34 GREATER OF THE ANNUAL AMOUNT OF THE STRAIGHT LIFE ANNUITY, IF ANY, PAYABLE
35 UNDER ASRS AT THE SAME ANNUITY STARTING DATE, AND THE ANNUAL AMOUNT OF A
36 STRAIGHT LIFE ANNUITY COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS
37 THE SAME ACTUARIAL PRESENT VALUE AS THE MEMBER'S FORM OF BENEFIT COMPUTED
38 USING AN INTEREST RATE OF FIVE PER CENT AND THE APPLICABLE MORTALITY TABLE
39 UNDER SECTION 417(e)(3) OF THE INTERNAL REVENUE CODE.

40 (b) FOR LIMITATION YEARS BEGINNING BEFORE JULY 1, 2007, THE ANNUAL
41 AMOUNT OF A STRAIGHT LIFE ANNUITY COMMENCING AT THE SAME ANNUITY STARTING
42 DATE THAT HAS THE SAME ACTUARIAL PRESENT VALUE AS THE MEMBER'S FORM OF
43 BENEFIT COMPUTED USING WHICHEVER OF THE FOLLOWING PRODUCES THE GREATER ANNUAL
44 AMOUNT:

1 (i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR
2 SPECIFIED BY THE BOARD FOR ADJUSTING BENEFITS IN THE SAME FORM.

3 (ii) A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE
4 MORTALITY TABLE.

5 5. FOR THE PURPOSE OF APPLYING THE LIMITS OF SECTION 415 OF THE
6 INTERNAL REVENUE CODE, A RETIREMENT BENEFIT THAT IS PAYABLE IN ANY FORM OTHER
7 THAN A STRAIGHT LIFE ANNUITY TO WHICH SECTION 417(e)(3) OF THE INTERNAL
8 REVENUE CODE WOULD APPLY IF THAT SECTION OF THE INTERNAL REVENUE CODE WERE
9 APPLICABLE TO ASRS MUST BE ADJUSTED TO AN ACTUARIALLY EQUIVALENT STRAIGHT
10 LIFE ANNUITY THAT EQUALS:

11 (a) IF THE ANNUITY STARTING DATE IS IN A PLAN YEAR BEGINNING ON OR
12 AFTER JULY 1, 2006, THE ANNUAL AMOUNT OF THE STRAIGHT LIFE ANNUITY COMMENCING
13 AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME ACTUARIAL PRESENT VALUE
14 AS THE MEMBER'S FORM OF BENEFIT, USING WHICHEVER OF THE FOLLOWING PRODUCES
15 THE GREATER ANNUAL AMOUNT:

16 (i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR
17 SPECIFIED BY THE BOARD FOR ADJUSTING BENEFITS IN THE SAME FORM.

18 (ii) A FIVE AND ONE-HALF PER CENT INTEREST RATE ASSUMPTION AND THE
19 APPLICABLE MORTALITY TABLE.

20 (iii) THE APPLICABLE INTEREST RATE UNDER SECTION 417(e)(3) OF THE
21 INTERNAL REVENUE CODE AND THE APPLICABLE MORTALITY TABLE, DIVIDED BY 1.05.

22 (b) IF THE ANNUITY STARTING DATE IS IN A PLAN YEAR BEGINNING IN JULY
23 1, 2004 OR JULY 1, 2005, THE ANNUAL AMOUNT OF THE STRAIGHT LIFE ANNUITY
24 COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME ACTUARIAL
25 PRESENT VALUE AS THE MEMBER'S FORM OF BENEFIT PAYABLE, USING WHICHEVER OF THE
26 FOLLOWING PRODUCES THE GREATER ANNUAL AMOUNT:

27 (i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR
28 SPECIFIED BY THE BOARD FOR ADJUSTING BENEFITS IN THE SAME FORM.

29 (ii) A FIVE AND ONE-HALF PER CENT INTEREST ASSUMPTION AND THE
30 APPLICABLE MORTALITY TABLE.

31 (c) IF THE ANNUITY STARTING DATE IS ON OR AFTER JULY 1, 2004 AND
32 BEFORE DECEMBER 31, 2004, AND ASRS APPLIES THE TRANSITION RULE IN SECTION
33 101(d)(3) OF THE PENSION FUNDING EQUITY ACT OF 2005 IN LIEU OF THE RULE IN
34 SUBDIVISION (b) OF THIS PARAGRAPH, THE ANNUAL AMOUNT OF THE STRAIGHT LIFE
35 ANNUITY COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME
36 ACTUARIAL PRESENT VALUE AS THE MEMBER'S FORM OF BENEFIT, DETERMINED IN
37 ACCORDANCE WITH INTERNAL REVENUE SERVICE NOTICE 2004-78.

38 6. WHEN CALCULATING THE LIMITATIONS OF PARAGRAPH 4 OR 5 OF THIS
39 SUBSECTION, THE PORTION OF ANY JOINT OR SURVIVOR ANNUITY THAT CONSTITUTES A
40 QUALIFIED JOINT AND SURVIVOR ANNUITY AS DEFINED IN SECTION 417 OF THE
41 INTERNAL REVENUE CODE SHALL BE DISREGARDED.

1 D. Subsection C, paragraphs 1 and 2 of this section do not apply to
2 income received from ASRS as a pension, annuity or similar allowance as a
3 result of the recipient becoming disabled by personal injury or sickness or
4 to amounts received from ASRS by beneficiaries, survivors or the estate of a
5 member as a result of the death of the member.

6 E. Notwithstanding any other provision of this section, the annual
7 benefit payable under this article may be reduced to the extent necessary, as
8 determined by the board, to prevent disqualification of ASRS under section
9 415 of the internal revenue code that imposes additional limitations on the
10 annual benefits payable to members who also may be participating in another
11 tax qualified pension or savings plan of this state. An employer shall not
12 provide employee retirement or deferred benefits if the benefits authorized
13 by this section and as required by federal law result in the failure of ASRS
14 to meet federal qualification standards as applied to public pension plans.
15 The board shall advise affected members of any additional information
16 concerning their annual benefits required by this subsection. All benefits
17 payable pursuant to this subsection shall comply with the limitations of
18 benefits contained in section 415 of the internal revenue code and the final
19 treasury regulations issued under that section. Notwithstanding any
20 provision of this article to the contrary, if the annual benefits within the
21 meaning of section 415 of the internal revenue code ~~are exceeded~~ for any
22 member EXCEED THE LIMITS OF SECTION 415(b) OF THE INTERNAL REVENUE CODE AND
23 THIS SECTION, ASRS may only correct the excess pursuant to the employee plans
24 compliance resolution system prescribed in internal revenue service revenue
25 procedure 2008-50 or any future guidance by the internal revenue service,
26 including the preamble of the final treasury regulations issued under section
27 415 of the internal revenue code.

28 F. If the maximum amount of benefit allowed under section 415 of the
29 internal revenue code is increased after the commencement date of a member's
30 benefit due to any cost of living adjustment announced by the United States
31 secretary of the treasury pursuant to the provisions of section 415(d) of the
32 internal revenue code, the amount of the monthly benefit payable under ASRS
33 to a member whose benefit is restricted due to the provisions of section
34 415(d) of the internal revenue code shall be increased by the board as of the
35 date prescribed by the United States secretary of the treasury on which the
36 increase shall become effective. The increase shall reflect the increase in
37 the amount of retirement income that may be payable under this article as a
38 result of the cost of living adjustment.

39 G. In determining the adjustments to the defined benefit dollar
40 limitation authorized by subsection A of this section, the board shall
41 prescribe a larger defined benefit dollar limitation if prescribed by the
42 United States secretary of the treasury pursuant to section 415(d) of the
43 internal revenue code. An adjustment to the defined benefit dollar
44 limitation prescribed in subsection A of this section is not effective before
45 the first calendar year for which the United States secretary of the treasury

1 publishes the adjustment. After it is prescribed by the board, the new
2 defined benefit dollar limitation applies to the limitation year ending with
3 or within the calendar year for which the secretary of the treasury makes the
4 adjustment.

5 H. For the purposes of the limitations prescribed by this section, all
6 member and employer contributions made to ASRS to provide a member benefits
7 pursuant to section 38-771 or 38-771.01 and all member contributions that are
8 not treated as picked up by the employer under section 414(h)(2) of the
9 internal revenue code shall be treated as made to a separate defined
10 contribution plan.

11 I. On termination **OR PARTIAL TERMINATION** of ASRS, the accrued benefit
12 of each member is, as of the date of termination **OR PARTIAL TERMINATION**,
13 fully vested and nonforfeitable **TO THE EXTENT THEN FUNDED**.

14 J. If ASRS terminates, the benefit of any highly compensated employee
15 as defined in section 414(q) of the internal revenue code and any highly
16 compensated former employee is limited to a benefit that is nondiscriminatory
17 under section 401(a)(4) of the internal revenue code and as follows:

18 1. Benefits distributed to any of the twenty-five active and former
19 highly compensated employees with the greatest compensation in the current or
20 any prior fiscal year are restricted so that the annual payments are no
21 greater than an amount equal to the payment that would be made on behalf of
22 the member under a straight life annuity that is the actuarial equivalent of
23 the sum of the member's accrued benefit, the member's other benefits under
24 ASRS, excluding a social security supplement as defined in 26 Code of Federal
25 Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is
26 entitled to receive under a social security supplement.

27 2. Paragraph 1 of this subsection does not apply if either:

28 (a) After payment of the benefit to a member described in paragraph 1
29 of this subsection, the value of ASRS assets equals or exceeds one hundred
30 ten per cent of the value of the current liabilities, as defined in section
31 412(l)(7) of the internal revenue code, of ASRS.

32 (b) The value of the benefits for a member described in paragraph 1 of
33 this subsection is less than one per cent of the value of the current
34 liabilities, as defined in section 412(l)(7) of the internal revenue code, of
35 ASRS before distribution.

36 (c) The value of the benefits payable by ASRS to a member described in
37 paragraph 1 of this subsection does not exceed three thousand five hundred
38 dollars.

39 K. For the purposes of subsection J of this section, "benefit"
40 includes loans in excess of the amount prescribed in section 72(p)(2)(A) of
41 the internal revenue code, any periodic income, any withdrawal values payable
42 to a living member and any death benefits not provided for by insurance on
43 the member's life.

1 L. On retirement of a member who was a retired member, who resumed
2 active membership and who subsequently retires, the limitations of this
3 section in effect on the member's subsequent retirement apply to the member's
4 retirement benefit payable as recomputed pursuant to section 38-766. In
5 addition, the sum of the present value of the member's recomputed retirement
6 benefits plus the present value of the benefits the member received during
7 the member's prior retirement shall not exceed the present value of the
8 limitations in effect on the member's subsequent retirement. The limitations
9 prescribed in this subsection shall not reduce a member's retirement benefit
10 below the retirement benefit the member was receiving before the member
11 resumed active membership. For the purposes of determining present value
12 under this subsection, the board shall use the actuarial equivalent
13 assumptions provided in section 38-711, paragraph 2.

14 M. For the purposes of this section:

15 1. The following adjustments shall be made to the definition of
16 compensation prescribed in subsection 0 of this section:

17 (a) Compensation shall be adjusted for the types of compensation that
18 are prescribed in this paragraph and that are paid after a member's severance
19 from employment with an employer. Amounts described in subdivisions (b), (c)
20 and (d) **OF THIS PARAGRAPH** may be included only as compensation to the extent
21 the amounts are paid by the later of two and one-half months after severance
22 from employment or by the end of the limitation year that includes the date
23 of the severance from employment. Any other payment of compensation paid
24 after severance of employment that is not described in the types of
25 compensation prescribed in this paragraph is not considered compensation for
26 purposes of this section, even if payment is made within the time period
27 prescribed in this subdivision.

28 (b) Compensation shall include regular pay after severance of
29 employment if the payment is regular compensation for services performed
30 during the member's regular working hours or compensation for services
31 performed outside the member's regular working hours, such as overtime or
32 shift differential, commission, bonus or other similar payments, and the
33 payment would have been paid to the member before a severance from employment
34 if the member had continued in employment with the employer.

35 (c) Leave cash-outs shall be included in compensation if those amounts
36 would have been included in compensation if they were paid before the
37 member's severance from employment and the amounts are payment for unused
38 accrued bona fide sick, vacation or other leave, but only if the member would
39 have been able to use the leave if employment had continued.

40 (d) Deferred compensation shall be included in compensation if the
41 compensation would have been included in compensation if it had been paid
42 before the member's severance from employment and the compensation is
43 received pursuant to a nonqualified unfunded deferred compensation plan, but
44 only if the payment would have been paid at the same time if the member had

1 continued in employment with the employer and only to the extent that the
2 payment is includable in the member's gross income.

3 (e) Compensation does include payments to an individual who does not
4 currently perform services for an employer by reason of qualified military
5 service as defined in section 414(u)(5) of the internal revenue code to the
6 extent those payments do not exceed the amounts the individual would have
7 received if the individual had continued to perform services for the employer
8 rather than entering qualified military service.

9 (f) Compensation does not include compensation paid to a member who is
10 permanently and totally disabled as defined in section 22(e)(3) of the
11 internal revenue code.

12 (g) Compensation shall include amounts that are includable in the
13 gross income of a member as required by section 409A or section 457(f)(1)(A)
14 of the internal revenue code or because the amounts are constructively
15 received by the member.

16 2. Compensation for a limitation year shall not include amounts earned
17 but not paid during the limitation year solely because of the timing of pay
18 periods and pay dates.

19 3. Payments awarded by an administrative agency or court or pursuant
20 to a bona fide agreement by an employer to compensate a member for lost wages
21 are compensation for the limitation year to which the back pay relates, but
22 only to the extent the payments represent wages and compensation that would
23 otherwise be included in compensation under this section.

24 N. The definition of limitation year prescribed in subsection 0 of
25 this section may only be changed by an amendment to subsection 0, except that
26 if ASRS is terminated effective as of a date other than the last day of the
27 limitation year, the termination shall be treated as if this section has been
28 amended to change the definition of limitation year.

29 0. For the purposes of this section:

30 1. Annual additions shall be determined as provided in section 38-747,
31 subsection 0.

32 2. "Annual benefit" means a benefit, including any portion of a
33 member's retirement benefit payable to an alternate payee under a qualified
34 domestic relations order that satisfies the requirements prescribed in
35 section 414(p)(1)(A)(i) of the internal revenue code and section 38-773,
36 payable annually in the form of a straight life annuity, disregarding the
37 portion of a joint and survivor annuity that constitutes a qualified joint
38 and survivor annuity as defined in section 417 of the internal revenue code,
39 with no ancillary or incidental benefits or rollover contributions and
40 excluding any portion of the benefit derived from member contributions or
41 other contributions that are treated as a separate defined contribution plan
42 under section 415 of the internal revenue code but including any of those
43 contributions that are picked up by the employer under section 414(h) of the
44 internal revenue code, or that otherwise are not treated as a separate
45 defined contribution plan. If the benefit is payable in another form, the

1 determination as to whether the limitation described in subsection A of this
2 section has been satisfied shall be made by the board by adjusting the
3 benefit so that it is actuarially equivalent to the annual benefit described
4 in this paragraph in accordance with the regulations promulgated by the
5 United States secretary of the treasury. In addition, for determining the
6 annual benefit attributable to member contributions, the factors described in
7 section 411(c)(2)(B) of the internal revenue code and the regulations
8 promulgated under the internal revenue code shall be used by the board
9 regardless of whether section 411 of the internal revenue code applies to
10 ASRS. The factors described in section 411(c)(2)(B) of the internal revenue
11 code shall be those factors described under section 417(e)(3) of the internal
12 revenue code and determined on the basis of the 417(e) mortality table and an
13 interest rate as prescribed in subsection C, ~~paragraphs 4 and~~ PARAGRAPH 5 of
14 this section.

15 3. "APPLICABLE MORTALITY TABLE" MEANS THE MORTALITY TABLE DESCRIBED IN
16 INTERNAL REVENUE SERVICE REVENUE RULING 2001-62.

17 ~~3-~~ 4. "Compensation" means the member's earned income, wages,
18 salaries, fees for professional service and other amounts received for
19 personal services actually rendered in the course of employment with the
20 employer and includes amounts described in sections 104(a)(3) and 105(a) of
21 the internal revenue code, but only to the extent that these amounts are
22 includable in the gross income of the member. Compensation also includes any
23 elective deferral as defined in section 402(g)(3) of the internal revenue
24 code and any amount that is contributed or deferred by an employer at the
25 election of a member and that is not includable in the gross income of the
26 member by reason of section 125, 132(f)(4) or 457 of the internal revenue
27 code. Compensation does not mean:

28 (a) Employer contributions to a plan of deferred compensation to the
29 extent the contributions are not included in the gross income of the employee
30 for the taxable year in which contributed and any distributions from a plan
31 of deferred compensation, regardless of whether the amounts are includable in
32 gross income of the employee when distributed, except that any amount
33 received by a member pursuant to an unfunded nonqualified plan may be
34 considered as compensation for the purposes of this section in the year the
35 amounts are includable in the gross income of the member under the internal
36 revenue code.

37 (b) Other amounts that receive special tax benefits, such as premiums
38 for group term life insurance, but only to the extent that the premiums are
39 not includable in the gross income of the employee, qualified transportation
40 fringe benefits as defined in section 132 of the internal revenue code and,
41 effective for plan years beginning from and after December 31, 1987, any
42 amounts under section 125 of the internal revenue code that are not available
43 to a ~~participant~~ MEMBER in cash in lieu of group health coverage because the
44 member is unable to certify that the member has other health coverage.

1 ~~4.~~ 5. "Defined benefit dollar limitation" means the dollar limitation
2 determined under subsection A of this section.
3 ~~5.~~ 6. "Defined benefit plan" has the same meaning prescribed in
4 section 414(j) of the internal revenue code.
5 ~~6.~~ 7. "Defined contribution plan" has the same meaning prescribed in
6 section 414(i) of the internal revenue code.
7 ~~7.~~ 8. "Limitation year" and "years of service" ~~means~~ MEAN the fiscal
8 year.