

REFERENCE TITLE: ASRS; employer contributions; prepayment

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1082

Introduced by
Senator Livingston

AN ACT

AMENDING SECTION 38-737, 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 38-737, Arizona Revised Statutes, is amended to
3 read:

4 38-737. Employer contributions; prepayment; definitions

5 A. Employer contributions shall be a percentage of compensation of
6 all employees of the employers, excluding the compensation of those
7 employees who are members of the defined contribution program administered
8 by ASRS, as determined by the ASRS actuary pursuant to this section for
9 June 30 of the fiscal year immediately preceding the preceding fiscal
10 year, except that beginning with fiscal year 2001-2002 the contribution
11 rate shall not be less than two percent of compensation of all employees
12 of the employers. Beginning July 1, 2011 through June 29, 2016, the total
13 employer contribution shall be determined on the projected unit credit
14 method. Beginning June 30, 2016, the board shall determine the actuarial
15 cost method pursuant to section 38-714. The total employer contributions
16 shall be equal to the employer normal cost plus the amount required to
17 amortize the past service funding requirement over a period that is
18 determined by the board and consistent with generally accepted actuarial
19 standards. In determining the past service funding period, the board
20 shall seek to improve the funded status whenever the ASRS trust fund is
21 less than one hundred percent funded.

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

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

34 D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, AN EMPLOYER
35 MAY PREPAY THE EMPLOYER'S 401(a) PENSION CONTRIBUTIONS DIRECTLY TO ASRS
36 ACCORDING TO A WRITTEN AGREEMENT BETWEEN THE EMPLOYER AND ASRS AS FOLLOWS:

37 1. 401(a) PENSION CONTRIBUTIONS THAT THE EMPLOYER PREPAYS ACCORDING
38 TO THIS SUBSECTION MAY BE DEPOSITED, AS DETERMINED BY THE EMPLOYER AND
39 MANAGED BY ASRS, DIRECTLY IN EITHER THE ASRS TRUST FUND ESTABLISHED BY
40 SECTION 38-712 OR A SECTION 115 TRUST.

41 2. ASRS SHALL DETERMINE THE FOLLOWING OPTIONS AVAILABLE TO THE
42 EMPLOYER:

- 43 (a) THE EARNINGS ACCRUAL RATE.
- 44 (b) THE AMORTIZATION TIME PERIODS.
- 45 (c) THE FREQUENCY AND DATES THAT PREPAYMENTS CAN BE MADE.

1 (d) THE MAXIMUM AND MINIMUM AMOUNT OF 401(a) PENSION CONTRIBUTIONS
2 THAT THE EMPLOYER CAN PREPAY.

3 (e) ANY OTHER OPTIONS OR OBLIGATIONS THAT THE EMPLOYER MAY HAVE
4 WHEN ENTERING INTO THIS WRITTEN AGREEMENT.

5 3. THE 401(a) PENSION CONTRIBUTIONS THE EMPLOYER PREPAYS AND THE
6 ACCRUED EARNINGS SHALL BE MANAGED AT THE DISCRETION OF ASRS SUBJECT TO
7 SECTION 38-718.

8 4. 401(a) PENSION CONTRIBUTIONS THAT THE EMPLOYER PREPAYS AND
9 ACCRUED EARNINGS MAY BE USED SOLELY TO REDUCE THE EMPLOYER'S FUTURE 401(a)
10 PENSION CONTRIBUTIONS AS REQUIRED FROM THE EMPLOYER PURSUANT TO THIS
11 SECTION AND SECTION 38-735.

12 5. THE EMPLOYER SHALL DETERMINE WHEN TO USE THE 401(a) PENSION
13 CONTRIBUTIONS THE EMPLOYER PREPAYS AND THE ACCRUED EARNINGS FROM THOSE
14 401(a) PENSION CONTRIBUTIONS.

15 6. ASRS SHALL PROVIDE THE EMPLOYER AN ANNUAL STATEMENT OF 401(a)
16 PENSION CONTRIBUTIONS THE EMPLOYER PREPAID AND THE ACCRUED EARNINGS.

17 7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, AN
18 EMPLOYER MAY NOT PREPAY 401(a) PENSION CONTRIBUTIONS ACCORDING TO THIS
19 SUBSECTION AFTER THE EMPLOYER REPORTS ZERO OR LESS THAN ZERO NET PENSION
20 LIABILITY ON THE EMPLOYER'S MOST RECENT APPLICABLE GOVERNMENTAL ACCOUNTING
21 STANDARDS REPORT.

22 8. AFTER THE EMPLOYER REPORTS ZERO OR LESS THAN ZERO NET PENSION
23 LIABILITY ON THE EMPLOYER'S MOST RECENT APPLICABLE GOVERNMENTAL ACCOUNTING
24 STANDARDS REPORT, THE EMPLOYER SHALL ELECT AN AMORTIZATION SCHEDULE BY
25 WRITTEN AGREEMENT WITH ASRS, AND THE AMORTIZATION PERIOD SHALL BEGIN THE
26 FOLLOWING FISCAL YEAR.

27 9. AFTER AN EMPLOYER ELECTS AMORTIZATION TERMS, ASRS SHALL PROVIDE
28 THE EMPLOYER AN ANNUAL AMORTIZATION SCHEDULE THAT IS CURRENT AND BASED ON
29 THE EMPLOYER'S ELECTION.

30 10. IF ASRS DETERMINES TO NO LONGER OFFER THE OPTION OF PREPAYING
31 THE EMPLOYER'S 401(a) PENSION CONTRIBUTIONS DIRECTLY TO ASRS, ANY 401(a)
32 PENSION CONTRIBUTIONS THE EMPLOYER PREPAYS AND THE ACCRUED EARNINGS
33 REMAINING ON ACCOUNT SHALL BE USED FOR FUTURE OBLIGATIONS ACCORDING TO THE
34 WRITTEN AGREEMENT BETWEEN THE EMPLOYER AND ASRS.

35 11. ASSETS TRANSFERRED IN OR OUT OF OR HELD IN THE ASRS TRUST FUND
36 ESTABLISHED BY SECTION 38-712, OR A SECTION 115 TRUST, AND THE ACCRUED
37 EARNINGS ARE EXEMPT FROM STATE, COUNTY AND MUNICIPAL TAXES.

38 12. THE LEGISLATURE INTENDS THAT THE ACCRUED EARNINGS NOT BE
39 SUBJECT TO FEDERAL INCOME TAX. ASRS MAY ADOPT ADDITIONAL RULES, POLICIES
40 AND PROCEDURES AS ASRS DEEMS NECESSARY OR APPROPRIATE TO FULFILL THE
41 LEGISLATURE'S INTENT THAT THE ACCRUED EARNINGS NOT BE SUBJECT TO FEDERAL
42 INCOME TAX.

43 13. IF ASRS RECEIVES NOTIFICATION FROM THE UNITED STATES INTERNAL
44 REVENUE SERVICE THAT THIS SUBSECTION OR ANY PORTION OF THIS SUBSECTION
45 WILL JEOPARDIZE THE TAX-EXEMPT STATUS OF THE 401(a) PENSION CONTRIBUTIONS

1 THE EMPLOYER PREPAYS ACCORDING TO THIS SUBSECTION AND THE ACCRUED
2 EARNINGS, THE PORTION OF THIS SUBSECTION THAT WILL CAUSE THE
3 DISQUALIFICATION DOES NOT APPLY.

4 E. FOR THE PURPOSES OF THIS SECTION:

5 1. "401(a) PENSION CONTRIBUTIONS" MEANS THE PORTION OF AN
6 EMPLOYER'S PENSION CONTRIBUTION THAT IS SPECIFIC TO THE RETIREMENT PROGRAM
7 ESTABLISHED UNDER THIS ARTICLE AND QUALIFIED UNDER SECTION 401(a) OF THE
8 INTERNAL REVENUE CODE.

9 2. "SECTION 115 TRUST" MEANS A TRUST WHOSE INCOME IS EXEMPT FROM
10 GROSS INCOME PURSUANT TO SECTION 115 OF THE INTERNAL REVENUE CODE FOR
11 ESSENTIAL GOVERNMENT FUNCTIONS INTEGRAL TO THIS STATE AND ITS POLITICAL
12 SUBDIVISIONS.

13 Sec. 2. Emergency

14 This act is an emergency measure that is necessary to preserve the
15 public peace, health or safety and is operative immediately as provided by
16 law.