

House Engrossed

ASRS; contribution prepayment

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

## **CHAPTER 46**

# **HOUSE BILL 2008**

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

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

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

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

36 1. 401(a) pension contributions that the employer prepays according  
37 to this subsection may be deposited, as determined by the employer and  
38 managed by ASRS, directly in either the ASRS trust fund established by  
39 section 38-712 or a section 115 trust.

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

42 (a) The amortization time periods.

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

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

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

3 3. The earnings accrual rate shall be the ASRS total 401(a) pension  
4 fund rate of return, OR THE ACTUAL RATE OF RETURN OF A SHORT-TERM  
5 INVESTMENT THROUGH ASRS, AS REQUESTED BY THE EMPLOYER AND AGREED TO BY  
6 ASRS.

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

10 5. 401(a) pension contributions that the employer prepays and  
11 accrued earnings may be used solely to reduce the employer's future 401(a)  
12 pension contributions as required from the employer pursuant to this  
13 section and section 38-735.

14 6. The employer shall determine when to use the 401(a) pension  
15 contributions the employer prepays and the accrued earnings from those  
16 401(a) pension contributions.

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

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

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

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

29 ~~9. Notwithstanding any other provision of this subsection, the~~  
30 ~~employer shall elect an amortization schedule by written agreement with~~  
31 ~~ASRS, and the amortization period shall begin in the fiscal year following~~  
32 ~~the occurrence of the earlier of:~~

33 ~~(a) The employer's net pension liability is zero or less as~~  
34 ~~reflected by ASRS in its most recent applicable governmental accounting~~  
35 ~~standards report.~~

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

40 ~~10.~~ 9. After an employer elects amortization terms, ASRS shall  
41 provide the employer an amortization schedule annually that is current and  
42 based on the employer's election.

43 ~~11.~~ 10. If ASRS determines to no longer offer the option of  
44 prepaying the employer's 401(a) pension contributions directly to ASRS,  
45 any 401(a) pension contributions the employer prepays and the accrued

1 earnings remaining on account shall be used for future obligations  
2 according to the written agreement between the employer and ASRS.

3 ~~12.~~ 11. Assets transferred in or out of or held in the ASRS trust  
4 fund established by section 38-712, or a section 115 trust, and the  
5 accrued earnings are exempt from state, county and municipal taxes.

6 ~~13.~~ 12. The legislature intends that the accrued earnings not be  
7 subject to federal income tax. ASRS may adopt additional rules, policies  
8 and procedures as ASRS deems necessary or appropriate to fulfill the  
9 legislature's intent that the accrued earnings not be subject to federal  
10 income tax.

11 ~~14.~~ 13. If ASRS receives notification from the United States  
12 internal revenue service that this subsection or any portion of this  
13 subsection will jeopardize the tax-exempt status of the 401(a) pension  
14 contributions the employer prepays according to this subsection and the  
15 accrued earnings, the portion of this subsection that will cause the  
16 disqualification does not apply.

17 E. IN ADDITION TO THE REQUIREMENTS OF SUBSECTION D OF THIS SECTION,  
18 ANY PREPAYMENT AGREEMENT MADE BETWEEN ASRS AND THIS STATE OR ANY STATE  
19 AGENCY IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

20 1. ANY PREPAYMENT AMOUNTS DEPOSITED WITH ASRS MUST BE FROM AN  
21 APPROPRIATION SPECIFICALLY FOR THAT PURPOSE THAT IS PASSED BY THE  
22 LEGISLATURE AND SIGNED BY THE GOVERNOR.

23 2. ANY PREPAYMENT AMOUNTS OR ACCRUED EARNINGS USED TO REDUCE THE  
24 EMPLOYER'S 401(a) PENSION CONTRIBUTIONS MUST BE AUTHORIZED FOR A SPECIFIC  
25 FISCAL YEAR BY LEGISLATION THAT IS PASSED BY THE LEGISLATURE AND SIGNED BY  
26 THE GOVERNOR.

27 ~~E.~~ F. For the purposes of this section:

28 1. "401(a) pension contributions" means the portion of an  
29 employer's pension contribution that is specific to the retirement program  
30 established under this article and qualified under section 401(a) of the  
31 internal revenue code.

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

APPROVED BY THE GOVERNOR APRIL 13, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2023.