NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Sections Affected	Rulemaking Action
R2-8-123	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 38-714(F)(5)

Implementing statutes: A.R.S. §§ 38-711(2), 38-711(24), 38-714(H)(3), and 38-737

3. The effective date of the rule:

August 21, 2003. The rule shall be effective immediately on filing in the Office of the Secretary of State and the time and date are affixed as provided in A.R.S. § 41-1031. The rule is a renewal of an emergency rule that will expire on August 22, 2003. The Board submitted a final rule to the Governor's Regulatory Review Council (G.R.R.C.) on August 19, 2003. G.R.R.C. will not review and approve the final rule until sometime after the emergency rule has expired. Participating ASRS employers have prepared their budgets for fiscal year 2004 and must plan for their budgets for fiscal year 2005 based on the expiring emergency rule. Employer contribution rates based on the expiring emergency rule, therefore, must continue in place until a final rule (to make the emergency rule permanent) is filed in the Office of the Secretary of State. The renewal of the emergency rule, therefore, must become effective immediately.

4. Is this rulemaking a renewal of a previous emergency rulemaking?

Yes. The original emergency rulemaking was filed with the Secretary of State on February 24, 2003 and published at 9 A.A.R. 1006, March 21, 2003.

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Fred Stork

Address: 3300 N. Central Avenue
P. O. Box 33910
Phoenix, AZ 85067-3910

Telephone: (602) 240-2052

6. An explanation of the rule, including the agency's reasons for initiating the rule:

This is a renewal of an Emergency Rulemaking filed with the Secretary of State on February 24, 2003. As indicated in that Notice of Emergency Rulemaking, the State Retirement System Board ("Board") is only changing subsection (2) of this rule. Prior to the emergency rulemaking, this subsection established the actuarial value of the retirement system defined benefit plan ("plan") assets as equal to the market value of assets less a five-year phase-in of the difference between expected and actual investment returns. Subsection (2) further restricted the resulting value to not less than 80% or more than 120% (a 20% corridor) of the market value of assets.

A substantial portion of plan assets is invested in securities. Although investing in securities is a sound long-term investment strategy, the value of such securities is subject to more short-term, sudden, and wide swings. The Board's actuaries determine the amount of annual contributions that are required to maintain the actuarial soundness of the plan. The actuaries' determinations of necessary contributions are a function of the actuarial value of plan assets (including market gains and losses) and liabilities. Prior to the emergency rulemaking, the Board's actuaries recognized investment gains and losses actuarially over a five-year period for "smoothing" the annual changes in contribution rates resulting from market gains and losses. The actuarial valuation of plan assets and liabilities as of June 30, 2002, using the five-year smoothing and 20% corridor, would have resulted in an increase of employer and member contribution rates from 2.00% to 6.17% of compensation on July 1, 2003.

The Board and its consulting actuary concluded that an increase in contributions of that magnitude was not necessary to maintain the actuarial soundness of the plan and was not appropriate under existing economic conditions and budgetary restraints. The actuary recommended that the Board repeal the 20% corridor and extend the smoothing period from five years to ten years in the emergency rulemaking.

This action resulted in the total contribution rate, effective July 1, 2003, declining from 12.34% of employees' compensation (6.17% employers and 6.17% employees) to 10.40% of employees' compensation (5.2% employers and 5.2% employees).

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The summary of the economic, small business, and consumer impact:

Contributions to the ASRS plan are made by both public employers and employees. The difference between the 6.17% contribution rate required under the rule prior to the emergency, and 5.2% under the emergency rule, is .97% of the $6.989 billion dollar payroll. This amounts to a reduction for FY 2004 of $67.8 million for public employers and $67.8 for employees. The state's portion of this difference is about 24% or about $16.3 million for FY 2004.

When the market turns upward again, this longer smoothing method will keep the contribution rate higher for a longer period, thereby stabilizing the fund. The effect of market changes will be more gradual in the future. This will result in more stable contribution rates for employers and employees.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

10. Incorporations by reference and their location in the rules:

None

11. An explanation of the situation justifying the rule's adoption as an emergency rule:

Participating ASRS employers have prepared their budgets for fiscal year 2004 based on the Emergency Rulemaking filed with the Secretary of State on February 24, 2003. The emergency rule will expire on August 22, 2003. Contribution rates based on the Emergency Rulemaking must continue in place until the Board adopts a final rule. A Notice of Proposed Rulemaking for R2-8-123 was published at 9 A.A.R. 1450, May 16, 2003, and the close of record for comments on the rule was July 3, 2003. G.R.R.C.'s staff has suggested some minor changes that the Board approved on August 15, 2003. On August 19, 2003, the Board submitted the final rule to G.R.R.C. for placement on its monthly agenda. Therefore, it is necessary to renew the Emergency Rulemaking for R2-8-123 so that the current contribution rate remains in effect until the Notice of Final Rulemaking is filed with the Secretary of State.

12. The date of the Attorney General's approval of the emergency rule:

August 20, 2003

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. SOCIAL SECURITY DIVISION

ARTICLE 1. SOCIAL SECURITY DIVISION

R2-8-123. Actuarial Assumptions and Actuarial Value of Assets

The Board adopts the following for actuarial valuations as of June 30, 1996, and thereafter:

1. No change
    a. No change
    b. No change
    c. No change
    d. No change

e. No change
f. No change
g. No change
h. No change

2. Actuarial Value of Assets: Effective for the fiscal year of 2002 valuation and thereafter, ~~The~~ the actuarial value of assets is equal to the market value of assets less a ~~5-year~~ 10-year phase-in of the excess ~~(shortfall) between~~ of actual over expected investment return ~~and actual income with the resulting value not being less than 80% or more than 120% of the market value of assets.~~ for fiscal years 2002 and later years, and a five-year phase-in of such excess for fiscal years before 2002.