



NOTICES OF PROPOSED RULEMAKING

This section of the Arizona Administrative Register contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same Register issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the Register within three weeks of filing. See the publication schedule in the back of each issue of the Register for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 1. RULES AND THE RULEMAKING PROCESS

CHAPTER 1. SECRETARY OF STATE – RULES AND RULEMAKING

[R16-05]

PREAMBLE

- 1. Articles, Parts, or Sections Affected (as applicable) Rulemaking Action
R1-1-107 Amend
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 41-1011
Implementing statute: A.R.S. §§ 41-1012 and 41-1013
3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:
Notice of Rulemaking Docket Opening: 22 A.A.R. 121, January 22, 2016 (in this issue)
4. The agency's contact person who can answer questions about the rulemaking:
Name: Scott Cancelosi, Public Services Director
Mailing Address: Arizona Department of State
Office of the Secretary of State
1700 W. Washington St., Fl. 7
Phoenix, AZ 85007
In-Person: Public Services Division
State Capitol, Executive Tower
1700 W. Washington St., Suite 220
Phoenix, AZ
Telephone: (602) 542-0223
E-mail: scancelosi@azsos.gov
Web site: www.azsos.gov
5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:
The Public Services Division office location is moving. These rules update the physical office location for in-person filings.
6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
The Division did not review and does not propose to rely on any study in its evaluation of or justification for these rules.



- 7. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 8. **The preliminary summary of the economic, small business, and consumer impact:**  
Not applicable
- 9. **The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**  
Not applicable
- 10. **The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**  
An oral proceeding will not be conducted. Written comments will be accepted at the Office, Monday through Friday from 8 a.m. to 5 p.m. except for state holidays.
- 11. **All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**
  - a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**  
Not applicable
  - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**  
Not applicable
  - c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**  
Not applicable
- 12. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**  
Not applicable
- 13. **The full text of the rules follows:**

**TITLE 2. RULES AND THE RULEMAKING PROCESS**  
**CHAPTER 1. SECRETARY OF STATE – RULES AND RULEMAKING**

**ARTICLE 1. GENERAL PROVISIONS**

Section  
R1-1-107. Filing Location

**ARTICLE 1. GENERAL PROVISIONS**

**R1-1-107. Filing Location**

- A.** ~~An agency, the Council, or the Attorney General shall either file rules in person with the Office at the~~ The Public Services Division is located at State Capitol Executive Tower, 1700 West W. Washington St., 7th Floor 2nd Floor, Suite 220, Phoenix, Arizona; in the State Capitol Executive Tower. or mail the rules to Our mailing address is: Secretary of State, Public Services Division, 1700 West W. Washington St., 7th Floor Fl. 7, Phoenix, Arizona AZ 85007-2888 85007-2808.
- B.** ~~The Office shall accept a~~ Any document for filing filed or for publication only if it shall meets meet the requirements specified in the Act and this Chapter.



NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

PREAMBLE

[R16-02]

- 1. **Articles, Parts, or Sections Affected (as applicable)**      **Rulemaking Action**  
     R2-8-116      New Section
- 2. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
     Authorizing statute: A.R.S. § 38-714(E)(4)  
     Implementing statutes: A.R.S. §§ 38-711, 38-766, 38-766.01, 38-766.02
- 3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:**  
     Notice of Rulemaking Docket Opening: 21 A.A.R. 2572, October 30, 2015
- 4. **The agency’s contact person who can answer questions about the rulemaking:**  
     Name:            Jessica A. Ross, Rule Writer  
     Address:        Arizona State Retirement System  
                       3300 N. Central Ave., Suite 1400  
                       Phoenix, AZ 85012-0250  
     Telephone:    (602) 240-2039  
     E-mail:         JessicaR@azasrs.gov
- 5. **An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**  
     Currently, R2-8-116 is expired. The ASRS needs to establish R2-8-116 as a new section to clarify that pursuant to A.R.S. § 38-766.02, an ASRS employer that employs a retiree must remit contributions to the ASRS at an alternate contribution rate (ACR) for the retiree regardless whether the retiree is directly employed by the employer, either as a direct hire employee or an independent contractor, or leased to the employer by a third party.  
  
     The rule will reflect that employers cannot avoid paying an ACR to the ASRS merely by claiming that a worker is leased; rather, the employer must show that the entire class of positions performing substantially similar functions, to which the retiree belongs, has been properly leased as well. If the employer is unable to show that the *entire* class of positions performing substantially similar functions has been properly leased, then the employer must pay an ACR to the ASRS for all retirees employed in those positions performing substantially similar functions, whether the individual retiree is leased or not. For example, an ASRS employer that directly hires employees to teach students must pay an ACR to the ASRS for any retiree it also hires to teach students, whether the retiree is leased from a third party and whether the retiree is teaching students under an arbitrary status such as “part-time” or “substitute.”
- 6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.**  
     None
- 7. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**  
     Not applicable
- 8. **The preliminary summary of the economic, small business, and consumer impact:**  
     There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. If an employer chooses to hire a retired member and claim that the ACR is not owed for the retired member, then there may be some economic impact to provide the documentation necessary for the ASRS to determine whether the employer has properly leased the class of positions, such that an ACR is not owed for the retired member. Clarifying that an employer must pay the ACR for all retired members unless the entire class of positions has been properly leased, will increase understandability of the statutory requirements in A.R.S. § 38-766.02, thereby reducing the regulatory burden imposed on the public. This clarification will



ensure that ASRS employers have notice about which personnel require the employer to remit an ACR to the ASRS. Thus, the economic impact is minimized.

**9. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Jessica A. Ross, Rules Writer  
 Address: Arizona State Retirement System  
 3300 N. Central Ave., Suite 1400  
 Phoenix, AZ 85012-0250  
 Telephone: (602) 240-2039  
 E-mail: JessicaR@azasrs.gov

**10. The time, place, and nature of the proceedings for to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request and oral proceedings on the proposed rule:**

An oral proceeding regarding the proposed rule will be held as follows:

Date: March 9, 2016  
 Time: 9:00 a.m.  
 Location: Arizona State Retirement System  
 10th Floor Board Room  
 3300 N. Central Ave.  
 Phoenix, AZ 85012-0250

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

None of the rules requires a permit.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law applies to retirement programs, but no federal law specifically applies to this rulemaking.

**c. Whether a person submitted an analysis to the agency that compares the rule’s impact on the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

**ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN**

Section  
R2-8-116. Alternate Contribution Rate

**ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN**

**R2-8-116. Alternate Contribution Rate**

**A. For purposes of this section, the following definitions apply:**

1. “ACR” means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee’s compensation.
2. “Class of positions” means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
3. “Compensation” has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
4. “Leased from a third party” means:
  - a. The employee is not employed by an employer; and
  - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.

**B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:**

1. The retired member is leased from a third party; and





- 9. **The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**  
Not applicable
- 10. **The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**  
An oral proceeding will not be conducted. Written comments will be accepted at the Office, Monday through Friday from 8 a.m. to 5 p.m. except for state holidays.
- 11. **All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**  
Not applicable
  - a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**  
Not applicable
  - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**  
Not applicable
  - c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**  
Not applicable
- 12. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**  
Not applicable
- 13. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 4. NO TRESPASS PUBLIC NOTICE LIST

Section  
R2-12-402. Recording Private Property Rights – Fees

ARTICLE 4. NO TRESPASS PUBLIC NOTICE LIST

**R2-12-402. Recording Private Property Rights – Fees**

- A. No change
  - 1. No change
  - 2. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. The form and fees and supporting documents may be mailed or hand-delivered.
  - 1. Mailing address: Secretary of State, Business Services, 1700 W. Washington St., Fl. 7, Phoenix, AZ 85007-2808.
  - 2. In person:
    - a. Phoenix – State Capitol Executive Tower, 1700 W. Washington St., ~~First 2nd~~ Floor, ~~Room 103~~ Suite 220; or
    - b. Tucson – Arizona State Complex Building, 400 W. Congress, ~~Second~~ 1st Floor, ~~Room 252~~ Suite 141.