

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 213

SENATE BILL 1095

AN ACT

AMENDING SECTIONS 38-738, 38-746, 38-747, 38-766, 38-769 AND 38-770, ARIZONA REVISED STATUTES; AMENDING SECTION 38-747, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; REPEALING LAWS 2000, CHAPTER 132, SECTION 4; MAKING AN APPROPRIATION; 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 38-738, Arizona Revised Statutes, is amended to
3 read:

4 38-738. Adjustment and refund

5 A. If more than the correct amount of employer or member contributions
6 is paid into ASRS by an employer through a mistake of fact, ASRS shall return
7 those contributions to the employer if the employer requests return of the
8 contributions within one year after the date of overpayment. ASRS shall not
9 pay an employer earnings attributable to excess contributions but shall
10 reduce the amount returned to an employer pursuant to this section by the
11 amount of losses attributable to the excess contributions.

12 B. If less than the correct amount of employer or member contributions
13 is paid into ASRS by an employer, the following apply:

14 1. The member shall pay an amount that is equal to the amount that
15 would have been paid in member contributions for the period in question. The
16 member's payments shall be made as provided in section 38-747.

17 2. If the member contributions to ASRS made pursuant to this
18 subsection exceed the limits prescribed in section 38-747, subsection E when
19 taking into account other annual additions of the member for the limitation
20 year, the amount to be paid by the member shall be adjusted as provided in
21 section 38-747.

22 3. The employer shall pay to ASRS an amount equal to the amount that
23 would have been paid in employer contributions for the period in question
24 together with accumulated interest that would have accrued on both the
25 employer and member contributions due at the interest rate assumption
26 approved by the board for actuarial equivalency for the period in question
27 to the date payment is received.

28 4. On satisfaction of the requirements of this subsection, the
29 member's salary history on the records of ASRS shall be adjusted and any
30 additional service credits acquired by the member shall be reinstated.

31 5. If the member retires before all contributions are made pursuant
32 to this subsection, the member's benefits shall be calculated only based on
33 the contributions actually made.

34 6. Annual additions shall be determined as provided in section 38-747,
35 subsection M- O.

36 7. "Limitation year" has the same meaning prescribed in section
37 38-769.

38 Sec. 2. Section 38-746, Arizona Revised Statutes, is amended effective
39 from and after June 30, 2002, to read:

40 38-746. Compensation limitation; adjustments

41 A. Except as provided in subsection E, beginning on July 1, 1996 2002,
42 the annual compensation of each employee taken into account under ASRS for
43 any fiscal year or for any other specified twelve consecutive month period
44 shall not exceed one TWO hundred fifty thousand dollars. IN DETERMINING
45 BENEFIT ACCRUALS UNDER ASRS FOR FISCAL YEARS BEGINNING AFTER DECEMBER 31,

1 2001 AND EXCEPT AS PROVIDED FOR IN SUBSECTION E, THE ANNUAL COMPENSATION
2 LIMIT UNDER THIS SUBSECTION FOR FISCAL YEARS BEGINNING BEFORE JANUARY 1, 2002
3 IS TWO HUNDRED THOUSAND DOLLARS.

4 B. If compensation under ASRS is determined on a period of time that
5 contains fewer than twelve calendar months, the compensation limit for that
6 period of time is equal to the dollar limit for the calendar year during
7 which the period of time begins, multiplied by the fraction in which the
8 numerator is the number of full months in that period of time and the
9 denominator is twelve.

10 C. For fiscal years beginning before July 1, 1997, the annual
11 compensation limit prescribed in this section also applies to the combined
12 compensation of a member who is a member of the group of ten highly
13 compensated employees, as defined in section 414(q) of the internal revenue
14 code, and who is paid the highest compensation during the fiscal year and any
15 family member of the member who is either the member's spouse or the member's
16 lineal descendant and who has not attained the age of nineteen before the
17 close of the fiscal year. If the maximum compensation is adjusted pursuant
18 to subsection D, the adjusted limitation shall be prorated among the affected
19 members' compensation determined pursuant to this section before application
20 of the adjusted limitation to the other provisions of this article.

21 D. The board shall adjust the maximum compensation under subsection
22 A at the same time and in the same manner as adjusted by the United States
23 secretary of the treasury under section 401(a)(17)(B) of the internal revenue
24 code. THE ADJUSTMENT UNDER THIS SUBSECTION FOR A CALENDAR YEAR APPLIES TO
25 ANNUAL COMPENSATION FOR THE FISCAL YEAR OF ASRS THAT BEGINS WITH OR WITHIN
26 THE CALENDAR YEAR.

27 E. The dollar limitation prescribed in subsection A does not apply to
28 an eligible member to the extent that the annual compensation of an eligible
29 member taken into account by ASRS for any fiscal year or for any other
30 specified twelve consecutive month period would be reduced below two hundred
31 thirty-five thousand eight hundred forty dollars. This was the amount OF
32 COMPENSATION ~~allowed to be~~ taken into account by ASRS as of July 1,
33 1993. The board shall adjust this amount as of the effective date of the
34 increase prescribed by the United States secretary of the treasury. For the
35 purposes of this subsection, "eligible member" means a person who first
36 became a member of ASRS before July 1, 1996.

37 Sec. 3. Section 38-747, Arizona Revised Statutes, is amended to read:

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

40 A. A member who purchases credited service pursuant to section 38-738,
41 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

42 1. Make payments directly to ASRS as provided in subsection H of this
43 section.

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

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

5 1. The amounts paid pursuant to a salary reduction program are in lieu
6 of contributions by the electing member. The electing member's salary or
7 other compensation shall be reduced by the amount paid by the employer
8 pursuant to this subsection.

9 2. The member shall make an election pursuant to this subsection at
10 any time on or after the date the member elects to purchase credited service
11 pursuant to the sections prescribed in subsection A of this section and
12 before the member's termination of employment. The election shall specify
13 the number of payroll periods that deductions will be made from the member's
14 compensation and the dollar amount of deductions for each payroll period
15 during the specified number of payroll periods. After an election is made
16 pursuant to this subsection, the election is binding on and irrevocable for
17 the member and the member's employer during the member's remaining period of
18 current employment. After a member makes an irrevocable election pursuant
19 to this subsection, the member does not have the option of choosing to
20 receive the contributed amounts directly.

21 3. A member who makes an irrevocable election pursuant to this
22 subsection to have the member's employer make payments for less than all of
23 the amounts payable for the member's purchase of credited service may
24 irrevocably elect to have the member's employer make payments for all or any
25 portion of the remaining amounts payable for the member's purchase of
26 credited service. A member who makes one or more irrevocable elections
27 pursuant to this subsection may also make other contributions to ASRS
28 pursuant to subsection H of this section to the extent of any remaining
29 amounts payable for which the member has not made an election pursuant to
30 this subsection. An additional election or contribution with respect to a
31 portion of the amounts payable for the member's purchase of credited service
32 does not alter, amend or revoke an irrevocable election already made pursuant
33 to this subsection for any other portion of the amounts payable for the
34 member's purchase of credited service.

35 4. If on termination of the member's current employment all amounts
36 have not been paid to ASRS pursuant to the member's irrevocable election
37 pursuant to this subsection, the member may pay ASRS, within thirty days
38 after the member's termination of employment and subject to other limitations
39 prescribed in this section, all or any portion of the unpaid amounts as
40 provided in subsection H of this section. These payments do not alter, amend
41 or revoke any irrevocable election already made pursuant to this subsection
42 with respect to any amount to be paid by the member's employer while the
43 member is employed by the member's employer.

44 5. Amounts paid by an employer pursuant to this subsection shall be
45 treated as employer contributions for the purpose of determining tax

1 treatment under the internal revenue code. The effective date of employer
2 payments pursuant to this subsection shall not be before the date ASRS
3 receives notification from the United States internal revenue service that
4 pursuant to section 414(h)(2) of the internal revenue code the amounts paid
5 by an employer pursuant to this subsection will not be included in the
6 member's gross income for income tax purposes until those amounts are
7 distributed by refund or retirement benefit payments.

8 6. Unless otherwise provided, member contributions paid by an employer
9 pursuant to this subsection are treated for all other purposes under ASRS in
10 the same manner and to the same extent as member contributions that are not
11 paid by an employer pursuant to this subsection. ASRS shall not grant
12 credited service for contributions made pursuant to this subsection until
13 those contributions are received by ASRS. ASRS may assess interest or
14 administrative charges attributable to any salary reduction election made
15 pursuant to this subsection. The interest or administrative charges shall
16 be added to the amount of contributions that is made to ASRS by the member
17 each payroll period and that is paid by the member's employer. The interest
18 or administrative charges shall not be treated as member contributions for
19 any purposes under this article and a member or a member's beneficiary does
20 not have a right to the return of the interest or administrative charges
21 pursuant to any other provision of this article. Interest assessed pursuant
22 to this subsection shall be at the rate specified by the board pursuant to
23 section 38-711, paragraph 2.

24 C. A member who elects before July 1, 1999 to receive retirement
25 benefits based on section 38-771, subsection C, paragraph 2 or a member who
26 elects to make contributions to ASRS pursuant to section 38-771.01,
27 subsection F, paragraph 4 shall either make the member's additional
28 contributions required pursuant to section 38-771, subsection E or allowed
29 pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as
30 provided in subsection H of this section or shall elect to have the member's
31 employer make payments for those additional contributions as provided in
32 subsection D of this section. A member who elected to be covered or who was
33 deemed to be covered by section 38-771 on or before December 31, 1995 or who
34 elects to make member contributions pursuant to section 38-771.01, subsection
35 F, paragraph 3 is deemed to have made an irrevocable election pursuant to
36 subsection D of this section to make the member's contributions to ASRS that
37 are required by section 38-771, subsection D or allowed by section 38-771.01,
38 subsection F, paragraph 3.

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

43 1. A member may make member contributions pursuant to section 38-771,
44 subsection E or section 38-771.01, subsection F, paragraph 4 through a salary
45 reduction program elected pursuant to this subsection. If a member makes an

1 irrevocable election pursuant to this subsection before July 1, 1999 to have
2 the member's employer make payments for additional contributions pursuant to
3 section 38-771, subsection E, the election continues in effect from and after
4 June 30, 1999 and shall not be revoked, amended or altered by any election
5 made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant
6 to a salary reduction program are in lieu of contributions by the electing
7 member. The member's salary or other compensation shall be reduced by the
8 amount paid by the employer pursuant to this subsection.

9 2. Before a member's termination of employment, the member may make
10 an election pursuant to this subsection at any time after the date the member
11 elects to receive retirement benefits based on section 38-771, subsection C,
12 paragraph 2 but before July 1, 1999 or at any time after the member elects
13 to make member contributions pursuant to section 38-771.01, subsection F,
14 paragraph 4. The election shall specify the number of payroll periods that
15 deductions will be made from the member's compensation and the dollar amount
16 of deductions for each payroll period during the specified number of payroll
17 periods. After an election is made pursuant to this subsection, the election
18 is binding on and irrevocable for the member and the member's employer during
19 the member's remaining period of current employment.

20 3. After a member makes or is deemed to have made an irrevocable
21 election pursuant to this subsection, the member does not have the option of
22 choosing to receive the contributed amounts directly. A member who makes an
23 irrevocable election pursuant to this subsection to have the member's
24 employer make payments for less than all of the amounts payable for the
25 member's additional contributions allowed by section 38-771.01, subsection
26 F, paragraph 4 may irrevocably elect to have the member's employer make
27 payments for all or any portion of the remaining amounts payable for the
28 member's additional contributions. A member who makes one or more
29 irrevocable elections pursuant to this subsection may also make other
30 contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph
31 4 or pursuant to subsection H of this section to the extent of any remaining
32 amounts payable for which the member has not made an election pursuant to
33 this subsection. An additional election or contribution with respect to a
34 portion of the amounts payable for the member's additional contributions
35 pursuant to section 38-771.01, subsection F, paragraph 4 does not alter,
36 amend or revoke an irrevocable election already made pursuant to this
37 subsection for any other portion of the amounts payable for the member's
38 additional contributions allowed by section 38-771.01, subsection F,
39 paragraph 4.

40 4. If on termination of the member's current employment all amounts
41 have not been paid to ASRS pursuant to the member's irrevocable election
42 pursuant to this subsection, the member may pay ASRS, within thirty days
43 after the member's termination of employment and subject to other limitations
44 prescribed in this section, all or any portion of the unpaid amounts as
45 provided in subsection H of this section. These payments do not alter, amend

1 or revoke any irrevocable election already made pursuant to this subsection
2 with respect to any amount to be paid by the member's employer while the
3 member is employed by the member's employer.

4 5. Amounts paid by an employer pursuant to this subsection shall be
5 treated as employer contributions for the purpose of determining tax
6 treatment under the internal revenue code. The effective date of employer
7 payments pursuant to this subsection shall not be before the date ASRS
8 receives notification from the United States internal revenue service that
9 pursuant to section 414(h)(2) of the internal revenue code the amounts paid
10 by an employer pursuant to this subsection will not be included in the
11 member's gross income for income tax purposes until those amounts are
12 distributed by refund or retirement benefit payments.

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

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

18 1. Except to the extent paragraphs 2 and 3 of this subsection apply
19 to certain contributions made by a member to ASRS, in any one limitation
20 year, the annual additions credited CONTRIBUTED OR ALLOCATED to ASRS for or
21 on behalf of a member shall not exceed the lesser of either:

22 (a) Thirty thousand dollars or a larger amount that is prescribed by
23 the board and that is due to any cost of living adjustment announced by the
24 United States secretary of the treasury pursuant to section 415(d) of the
25 internal revenue code. The board shall increase the amount prescribed by
26 this subdivision as of the effective date of the increase announced by the
27 United States secretary of the treasury.

28 (b) Twenty-five per cent of the member's compensation for the
29 limitation year.

30 2. Unless paragraph 4 of this subsection applies, for plan years
31 beginning on or after July 1, 1998, in any one limitation year, the annual
32 additions credited to ASRS for or on behalf of a member who makes
33 contributions to ASRS to purchase credited service pursuant to section
34 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable
35 election has not been made pursuant to subsection B of this section shall not
36 exceed the greater of either:

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

42 (b) Except as provided in paragraph 3 of this subsection, the
43 requirements of paragraph 1 of this subsection. The contributions shall be
44 treated as annual additions and any of the member's other annual additions
45 for the limitation year shall be taken into account. For the purposes of

1 applying the requirements of paragraph 1 of this subsection under this
2 subdivision, the percentage of compensation limit in paragraph 1, subdivision
3 (b) of this paragraph does not apply.

4 3. For plan years beginning on or after July 1, 1998, the requirements
5 of paragraph 1 of this subsection shall not be applied to reduce the amount
6 of credited service that may be purchased by an eligible member pursuant to
7 section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the
8 amount of credited service allowed to be purchased pursuant to those sections
9 on August 5, 1997 without the application of any of the limits prescribed in
10 this section or section 415 of the internal revenue code. For the purposes
11 of this paragraph, "eligible member" means a person who first becomes a
12 member of ASRS before July 1, 1999.

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

18 (a) Contributions made by an eligible member as defined in paragraph
19 3 of this subsection, except that any service purchase by an eligible member
20 is subject to any other limitations, including limitations on duplicative
21 service purchase, otherwise provided in this article.

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

27 F. If a member's contributions are subject to the limitations of
28 subsection E of this section, the contributions shall be treated as being
29 made to a separate defined contribution plan. If the member's contributions
30 exceed the limits prescribed in subsection E of this section when taking into
31 account other member and employer contributions to ASRS on behalf of the
32 member for the limitation year, the amount to be paid by the member shall be
33 reduced to not exceed the limits prescribed in subsection E of this section
34 and the remaining amount shall be carried forward to the next limitation
35 year, unless the limits are exceeded in the next limitation year. If the
36 limits are exceeded in the next limitation year, the procedure prescribed by
37 this subsection shall be repeated until all payments have been made.

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

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

44 2. Holding the amounts in a suspense account established pursuant to
45 subsection J of this section and allocating the amounts as either member

1 or employer contributions for the benefit of the member in the next
2 limitation year and before any further member or employer contributions are
3 made that would constitute annual additions made to a defined contribution
4 plan pursuant to section 415 of the internal revenue code. ASRS shall
5 allocate contributions as prescribed in this section, and the amount
6 allocated shall reduce the amount of the member or employer contributions for
7 the limitation year in which the allocation is made.

8 H. To the extent that a payment under this subsection does not alter,
9 amend or revoke any one or more currently effective irrevocable elections
10 made by the member pursuant to subsection B or D of this section, the board
11 may accept contributions made pursuant to section 38-771 or member
12 contributions for the payment for credited service purchases pursuant to
13 section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions
14 made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or
15 in part, by any one or a combination of the following methods:

16 1. In lump sum payments.

17 2. Subject to the limitations prescribed in sections 401(a)(31) and
18 402(c) of the internal revenue code AND SUBSECTION J OF THIS SECTION,
19 accepting A DIRECT ROLLOVER OF OR A CONTRIBUTION BY A MEMBER OF AN eligible
20 rollover ~~distributions directly~~ DISTRIBUTION from one or more:

21 (a) Retirement programs that are qualified under section 401(a) OR
22 403(a) of the internal revenue code ~~or accepting rollovers directly from a~~
23 member.

24 (b) ANNUITY CONTRACTS DESCRIBED IN SECTION 403(b) OF THE INTERNAL
25 REVENUE CODE.

26 (c) ELIGIBLE DEFERRED COMPENSATION PLANS DESCRIBED IN SECTION 457(b)
27 OF THE INTERNAL REVENUE CODE THAT ARE MAINTAINED BY A STATE, A POLITICAL
28 SUBDIVISION OF A STATE OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR A
29 POLITICAL SUBDIVISION OF A STATE.

30 3. Subject to the limitations prescribed in section 408(d)(3)(A)(ii)
31 of the internal revenue code, accepting from a member ~~conduit rollover~~
32 ~~contributions that are received by the member from one or more conduit~~
33 ~~rollover individual retirement accounts previously established by the member~~
34 A ROLLOVER CONTRIBUTION OF THAT PORTION OF A DISTRIBUTION FROM AN INDIVIDUAL
35 RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN SECTION
36 408(a) OR 408(b) OF THE INTERNAL REVENUE CODE THAT IS ELIGIBLE TO BE ROLLED
37 OVER AND WOULD OTHERWISE BE INCLUDABLE AS GROSS INCOME.

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

40 I. TO THE EXTENT THAT A PAYMENT UNDER THIS SUBSECTION DOES NOT ALTER,
41 AMEND OR REVOKE ANY ONE OR MORE CURRENTLY EFFECTIVE IRREVOCABLE ELECTIONS
42 MADE BY A MEMBER PURSUANT TO SUBSECTION B OR D OF THIS SECTION, THE BOARD MAY
43 ACCEPT A DIRECT TRUSTEE-TO-TRUSTEE TRANSFER FROM AN ANNUITY CONTRACT
44 DESCRIBED IN SECTION 403(b) OF THE INTERNAL REVENUE CODE OR AN ELIGIBLE
45 DEFERRED COMPENSATION PLAN DESCRIBED IN SECTION 457(b) OF THE INTERNAL

1 REVENUE CODE FOR THE PAYMENT FOR CREDITED SERVICE PURCHASES PURSUANT TO
2 SECTION 38-742, 38-743, 38-744, 38-745 OR 38-922.

3 J. ASRS SHALL SEPARATELY ACCOUNT FOR ALL AMOUNTS ROLLED OVER OR
4 DIRECTLY TRANSFERRED TO ASRS.

5 ~~I.~~ K. ASRS shall not grant credited service under section 38-738,
6 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to
7 subsection H of this section until the contributions are received by
8 ASRS. ASRS may assess interest or administrative charges attributable to any
9 installment payment made pursuant to subsection H, paragraph 4 of this
10 section to purchase credited service pursuant to section 38-738, 38-742,
11 38-743, 38-744 or 38-922. The interest or administrative charges shall be
12 added to the amount of contributions made to ASRS by the member. The
13 interest or administrative charges shall not be treated as member
14 contributions for any purposes under this article, and a member or a member's
15 beneficiary does not have a right to the return of the interest or
16 administrative charges pursuant to any other provision of this
17 article. Interest assessed pursuant to this subsection shall be at the rate
18 specified by the board pursuant to section 38-711, paragraph 2.

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

22 ~~K.~~ M. If the member retires before all payments are made pursuant to
23 this section, ASRS shall calculate the member's benefits based only on the
24 payments actually made.

25 ~~L.~~ N. On satisfaction of the requirements of this section, ASRS shall
26 adjust the member's credited service history and add any additional service
27 credits acquired.

28 ~~M.~~ O. Annual additions on behalf of a member in any limitation year
29 shall be the sum of:

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

34 2. The amount of member and employer contributions made to ASRS on
35 behalf of a member who elected or was deemed to have elected to receive
36 retirement benefits pursuant to section 38-771 or who is entitled to benefits
37 pursuant to section 38-771.01, except that, other than as provided in
38 subsection ~~M~~ P of this section, corrective contributions shall be considered
39 annual additions for the limitation years to which the contributions relate
40 and interest and gains shall not be considered as annual additions for the
41 purpose of any limitation prescribed in this article or in section 415 of the
42 internal revenue code. If the corrective contributions exceed the limit on
43 annual additions for a limitation year prior to the limitation year in which
44 the corrective contributions are contributed by the employer to ASRS, the
45 retirement benefit attributable to the excess corrective contributions shall

1 be treated as an excess benefit and shall be payable to the member as any
2 other excess benefit is payable pursuant to section 38-774, and the employer
3 shall pay the excess corrective contributions to the separate unfunded
4 governmental excess benefit arrangement administered by the board pursuant
5 to section 38-774.

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

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

13 ~~N.~~ P. To the extent any portion of the subject benefits, if treated
14 as subject to the benefit limitations of section 415(b) of the internal
15 revenue code, exceed the applicable limitation on benefits pursuant to
16 section 38-769 for the form of distribution, a percentage of corrective
17 contributions and interest and gains shall be treated as annual additions for
18 the limitation year in which contributed by the employer to ASRS. This
19 percentage of corrective contributions and interest and gains shall be equal
20 to the percentage determined by dividing the subject benefits that exceed the
21 limitation on benefits pursuant to section 38-769 by the subject
22 benefits. If the corrective contributions and interest and gains that are
23 treated as annual additions for the limitation year in which the corrective
24 contributions and interest and gains are contributed by the employer to ASRS
25 exceed the limit on annual additions for the limitation year, the retirement
26 benefit attributable to the excess shall be treated as an excess benefit and
27 shall be payable to the member as any other excess benefit is payable
28 pursuant to section 38-774, and the employer shall pay the excess to the
29 separate unfunded governmental excess benefit arrangement administered by the
30 board pursuant to section 38-774.

31 ~~O.~~ Q. Subsection ~~M~~ 0 of this section shall be construed and
32 interpreted in accordance with 26 Code of Federal Regulations section 1.415-6
33 to the extent that section is applicable.

34 ~~P.~~ R. For the purposes of this section:

35 1. "Compensation" has the same meaning prescribed in section 38-769,
36 except that in determining a member's compensation for purposes of
37 calculating the limits prescribed in subsection E of this section and
38 effective for limitation years beginning on or after July 1, 1998,
39 compensation includes any elective deferrals as defined in section 402(g)(3)
40 of the internal revenue code and any amount that is contributed or deferred
41 by an employer at the election of a member and that is not includable in the
42 gross income of the member pursuant to section 125 or 457 of the internal
43 revenue code.

44 2. "Corrective contributions" means any contributions that are paid
45 by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and

1 that are attributable to employer contributions that should have been made
2 for prior limitation years.

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

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

9 5. "Limitation year" has the same meaning prescribed in section
10 38-769.

11 6. "Subject benefits" means the retirement benefit received by a
12 member pursuant to section 38-771.01 minus the sum of the portion of such
13 retirement benefit attributable to contributions that were made by or on
14 behalf of the member to the defined contribution program administered by ASRS
15 for periods before July 1, 1981 and contributions that were made by the
16 member after June 30, 1981 and that were not picked up as provided in section
17 414(h)(2) of the internal revenue code.

18 Sec. 4. Section 38-747, Arizona Revised Statutes, as amended by
19 section 3 of this act, is amended effective from and after June 30, 2002, to
20 read:

21 38-747. Purchase of credited service; payment; limitations;
22 definitions

23 A. A member who purchases credited service pursuant to section 38-738,
24 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

25 1. Make payments directly to ASRS as provided in subsection H of this
26 section.

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

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

33 1. The amounts paid pursuant to a salary reduction program are in lieu
34 of contributions by the electing member. The electing member's salary or
35 other compensation shall be reduced by the amount paid by the employer
36 pursuant to this subsection.

37 2. The member shall make an election pursuant to this subsection at
38 any time on or after the date the member elects to purchase credited service
39 pursuant to the sections prescribed in subsection A of this section and
40 before the member's termination of employment. The election shall specify
41 the number of payroll periods that deductions will be made from the member's
42 compensation and the dollar amount of deductions for each payroll period
43 during the specified number of payroll periods. After an election is made
44 pursuant to this subsection, the election is binding on and irrevocable for
45 the member and the member's employer during the member's remaining period of

1 current employment. After a member makes an irrevocable election pursuant
2 to this subsection, the member does not have the option of choosing to
3 receive the contributed amounts directly.

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

18 4. If on termination of the member's current employment all amounts
19 have not been paid to ASRS pursuant to the member's irrevocable election
20 pursuant to this subsection, the member may pay ASRS, within thirty days
21 after the 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. ASRS shall not grant
40 credited service for contributions made pursuant to this subsection until
41 those contributions are received by ASRS. ASRS may assess interest or
42 administrative charges attributable to any salary reduction election made
43 pursuant to this subsection. The interest or administrative charges shall
44 be added to the amount of contributions that is made to ASRS by the member
45 each payroll period and that is paid by the member's employer. The interest

1 or administrative charges shall not be treated as member contributions for
2 any purposes under this article and a member or a member's beneficiary does
3 not have a right to the return of the interest or administrative charges
4 pursuant to any other provision of this article. Interest assessed pursuant
5 to this subsection shall be at the rate specified by the board pursuant to
6 section 38-711, paragraph 2.

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

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

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

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

1 is binding on and irrevocable for the member and the member's employer during
2 the member's remaining period of current employment.

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

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

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

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

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

2 1. Except to the extent paragraphs 2 and 3 of this subsection apply
3 to 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
6 or on behalf of a member shall not exceed the lesser of either:

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

13 (b) ~~Twenty-five~~ ONE HUNDRED per cent of the member's compensation for
14 the limitation year. THE COMPENSATION LIMIT PRESCRIBED IN THIS SUBDIVISION
15 DOES NOT APPLY TO ANY CONTRIBUTION TO ASRS FOR MEDICAL BENEFITS AFTER A
16 MEMBER'S SEPARATION FROM SERVICE, WITHIN THE MEANING PRESCRIBED IN SECTION
17 401(h) OR 419A(f)(2) OF THE INTERNAL REVENUE CODE, THAT IS OTHERWISE TREATED
18 AS AN 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
9 3 of this subsection, except that any service purchase by an eligible member
10 is 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
5 in 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 rollover of or a contribution by a member of an eligible
10 rollover distribution from one or more:

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

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

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

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

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

27 I. To the extent that a payment under this subsection does not alter,
28 amend or revoke any one or more currently effective irrevocable elections
29 made by a member pursuant to subsection B or D of this section, the board may
30 accept a direct trustee-to-trustee transfer from an annuity contract
31 described in section 403(b) of the internal revenue code or an eligible
32 deferred compensation plan described in section 457(b) of the internal
33 revenue code for the payment for credited service purchases pursuant to
34 section 38-742, 38-743, 38-744, 38-745 or 38-922.

35 J. ASRS shall separately account for all amounts rolled over or
36 directly transferred to ASRS.

37 K. ASRS shall not grant credited service under section 38-738, 38-742,
38 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of
39 this section until the contributions are received by ASRS. ASRS may assess
40 interest or administrative charges attributable to any installment payment
41 made pursuant to subsection H, paragraph 4 of this section to purchase
42 credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or
43 38-922. The interest or administrative charges shall be added to the amount
44 of contributions made to ASRS by the member. The interest or administrative
45 charges shall not be treated as member contributions for any purposes under

1 this article, and a member or a member's beneficiary does not have a right
2 to the return of the interest or administrative charges pursuant to any other
3 provision of this article. Interest assessed pursuant to this subsection
4 shall be at the rate specified by the board pursuant to section 38-711,
5 paragraph 2.

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

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

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

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

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

21 2. The amount of member and employer contributions made to ASRS on
22 behalf of a member who elected or was deemed to have elected to receive
23 retirement benefits pursuant to section 38-771 or who is entitled to benefits
24 pursuant to section 38-771.01, except that, other than as provided in
25 subsection P of this section, corrective contributions shall be considered
26 annual additions for the limitation years to which the contributions relate
27 and interest and gains shall not be considered as annual additions for the
28 purpose of any limitation prescribed in this article or in section 415 of the
29 internal revenue code. If the corrective contributions exceed the limit on
30 annual additions for a limitation year prior to the limitation year in which
31 the corrective contributions are contributed by the employer to ASRS, the
32 retirement benefit attributable to the excess corrective contributions shall
33 be treated as an excess benefit and shall be payable to the member as any
34 other excess benefit is payable pursuant to section 38-774, and the employer
35 shall pay the excess corrective contributions to the separate unfunded
36 governmental excess benefit arrangement administered by the board pursuant
37 to section 38-774.

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

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

5 P. To the extent any portion of the subject benefits, if treated as
6 subject to the benefit limitations of section 415(b) of the internal revenue
7 code, exceed the applicable limitation on benefits pursuant to section 38-769
8 for the form of distribution, a percentage of corrective contributions and
9 interest and gains shall be treated as annual additions for the limitation
10 year in which contributed by the employer to ASRS. This percentage of
11 corrective contributions and interest and gains shall be equal to the
12 percentage determined by dividing the subject benefits that exceed the
13 limitation on benefits pursuant to section 38-769 by the subject
14 benefits. If the corrective contributions and interest and gains that are
15 treated as annual additions for the limitation year in which the corrective
16 contributions and interest and gains are contributed by the employer to ASRS
17 exceed the limit on annual additions for the limitation year, the retirement
18 benefit attributable to the excess shall be treated as an excess benefit and
19 shall be payable to the member as any other excess benefit is payable
20 pursuant to section 38-774, and the employer shall pay the excess to the
21 separate unfunded governmental excess benefit arrangement administered by the
22 board pursuant to section 38-774.

23 Q. Subsection O of this section shall be construed and interpreted in
24 accordance with 26 Code of Federal Regulations section 1.415-6 to the extent
25 that section is applicable.

26 R. For the purposes of this section:

27 1. "Compensation" has the same meaning prescribed in section 38-769.
28 ~~, except that in determining a member's compensation for purposes of~~
29 ~~calculating the limits prescribed in subsection E of this section and~~
30 ~~effective for limitation years beginning on or after July 1, 1998,~~
31 ~~compensation includes any elective deferrals as defined in section 402(g)(3)~~
32 ~~of the internal revenue code and any amount that is contributed or deferred~~
33 ~~by an employer at the election of a member and that is not includable in the~~
34 ~~gross income of the member pursuant to section 125 or 457 of the internal~~
35 ~~revenue code.~~

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

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

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

1 5. "Limitation year" has the same meaning prescribed in section
2 38-769.

3 6. "Subject benefits" means the retirement benefit received by a
4 member pursuant to section 38-771.01 minus the sum of the portion of such
5 retirement benefit attributable to contributions that were made by or on
6 behalf of the member to the defined contribution program administered by ASRS
7 for periods before July 1, 1981 and contributions that were made by the
8 member after June 30, 1981 and that were not picked up as provided in section
9 414(h)(2) of the internal revenue code.

10 Sec. 5. Section 38-766, Arizona Revised Statutes, is amended to read:
11 38-766. Retired members; return to work; maximum benefit

12 A. A retired member who is engaged to work by an employer for at least
13 twenty weeks in each fiscal year and at least twenty hours per week resumes
14 active membership in ASRS. ASRS shall suspend payment of the member's
15 retirement benefits until the member either:

16 1. Terminates employment.

17 2. Attains a normal retirement date and no longer meets the
18 requirements for active membership pursuant to this subsection.

19 B. A member who satisfies subsection A, paragraph 1 or 2 of this
20 section is entitled to receive an annuity recomputed to include the
21 additional compensation and credited service. However, the recomputed
22 annuity shall be in the original optional form chosen pursuant to section
23 38-760, with the same beneficiary, if applicable, as when the member first
24 retired. A member who retired under a provision of law allowing increased
25 benefits if the retirement occurred during a specific period of time and who
26 subsequently becomes an employee under ASRS shall not retain the increased
27 benefits under the prior law when benefits are computed for the member's most
28 recent retirement.

29 C. Section 38-769, subsection ~~M~~ L applies when determining the
30 maximum benefit that may be paid to a retired member who resumes active
31 membership and subsequently retires.

32 Sec. 6. Section 38-769, Arizona Revised Statutes, is amended to read:
33 38-769. Maximum retirement benefits; termination; definitions

34 A. Notwithstanding any other provision of this article, except as
35 provided in subsection C of this section, the employer provided portion of
36 a member's annual benefit PAYABLE IN THE FORM OF A STRAIGHT LIFE ANNUITY, at
37 any time within a limitation year, shall not exceed ninety ONE HUNDRED SIXTY
38 thousand dollars or a larger amount that is EFFECTIVE AS OF JANUARY 1 OF EACH
39 CALENDAR YEAR, IS prescribed by the board and that is due to any cost of
40 living adjustment announced by the United States secretary of the treasury
41 pursuant to section 415(d) of the internal revenue code. The board shall
42 increase the amount pursuant to this paragraph SUBSECTION as of the effective
43 date of the increase as prescribed by the United States secretary of the
44 treasury. BENEFIT INCREASES PROVIDED IN THIS SECTION RESULTING FROM THE
45 INCREASE IN THE LIMITATIONS OF SECTION 415(b) OF THE INTERNAL REVENUE CODE

1 AS AMENDED BY THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001
2 SHALL BE PROVIDED TO ALL CURRENT AND FORMER MEMBERS WHO HAVE BENEFITS THAT
3 ARE LIMITED BY SECTION 415(b) OF THE INTERNAL REVENUE CODE AND WHO HAVE AN
4 ACCRUED BENEFIT UNDER ASRS IMMEDIATELY BEFORE JULY 1, 2001, OTHER THAN AN
5 ACCRUED BENEFIT RESULTING FROM A BENEFIT INCREASE SOLELY AS A RESULT OF THE
6 INCREASES PROVIDED BY THIS SECTION RESULTING FROM THE INCREASE IN THE
7 LIMITATIONS OF SECTION 415(b) OF THE INTERNAL REVENUE CODE AS AMENDED BY THE
8 ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001.

9 B. Notwithstanding the limitations of subsection A of this section,
10 the benefits payable to a member are deemed not to exceed the limitations
11 determined under subsection A of this section if the retirement benefits
12 payable to the member under this article do not exceed ten thousand dollars
13 for the limitation year and if an employer has not at any time maintained a
14 defined contribution plan in which the member has participated.

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

17 1. If a member has less than ten years of membership in ASRS, the
18 maximum dollar limitation determined under subsection A of this section shall
19 be multiplied by a fraction, the numerator of which is the number of years,
20 or partial years, of membership in ASRS and the denominator of which is ten.
21 The reduction provided in this paragraph also applies to the ten thousand
22 dollar floor limitation provided in subsection B of this section, except that
23 the reduction applies to years of service with an employer rather than to
24 years of membership in ASRS. The reduction in this paragraph does not reduce
25 the limitations determined under subsection A of this section to an amount
26 less than one-tenth of the limitations as determined without regard to this
27 paragraph.

28 2. If a member's annual benefit commences before the member attains
29 sixty-two years of age, the ~~limitation determined under subsection A of this~~
30 ~~section shall be adjusted to the actuarial equivalent of an annual benefit~~
31 ~~equal to the dollar limitation commencing at sixty-two years of age. The~~
32 ~~actuarial equivalent under this paragraph shall not be less than seventy-five~~
33 ~~thousand dollars if a member's annual benefit commences at or after~~
34 ~~fifty-five years of age. If a member's annual benefit commences before~~
35 ~~fifty-five years of age, the actuarial equivalent shall equal the greater of:~~

36 (a) ~~The actuarial equivalent of a seventy-five thousand dollar annual~~
37 ~~benefit for fifty-five years of age.~~

38 (b) ~~The actuarial equivalent of the dollar limitation determined under~~
39 ~~subsection A of this section for sixty-two years of age.~~

40 ~~Actuarial equivalency under this paragraph shall be determined by the use of~~
41 ~~an interest rate assumption equal to the greater of five per cent a year or~~
42 ~~the rate specified by the board as provided in section 38-711, paragraph 2~~
43 ~~DEFINED BENEFIT DOLLAR LIMITATION APPLICABLE TO THE MEMBER AT THE EARLIER AGE~~
44 ~~IS AN ANNUAL BENEFIT PAYABLE IN THE FORM OF A STRAIGHT LIFE ANNUITY BEGINNING~~
45 ~~AT THE EARLIER AGE THAT IS THE ACTUARIAL EQUIVALENT OF THE DEFINED BENEFIT~~

1 DOLLAR LIMITATION APPLICABLE TO THE MEMBER AT AGE SIXTY-TWO AND THAT IS
2 ADJUSTED UNDER PARAGRAPH 1 OF THIS SUBSECTION, IF REQUIRED. THE DEFINED
3 BENEFIT DOLLAR LIMITATION APPLICABLE AT AN AGE BEFORE AGE SIXTY-TWO IS
4 DETERMINED AS THE LESSER OF:

5 (a) THE ACTUARIAL EQUIVALENT AT THAT AGE OF THE DEFINED BENEFIT DOLLAR
6 LIMITATION COMPUTED USING THE INTEREST RATE SPECIFIED BY THE BOARD IN SECTION
7 38-711, PARAGRAPH 2 AND THE MORTALITY TABLE OR OTHER TABULAR FACTORS
8 PRESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION.

9 (b) THE ACTUARIAL EQUIVALENT AT THAT AGE OF THE DEFINED BENEFIT DOLLAR
10 LIMITATION COMPUTED USING A FIVE PER CENT INTEREST RATE AND THE APPLICABLE
11 MORTALITY TABLE PRESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION. ANY DECREASE
12 IN THE DEFINED BENEFIT DOLLAR LIMITATION DETERMINED IN ACCORDANCE WITH THIS
13 PARAGRAPH SHALL NOT REFLECT A MORTALITY DECREMENT IF BENEFITS ARE NOT
14 FORFEITED ON THE DEATH OF THE MEMBER. IF ANY BENEFITS ARE FORFEITED ON
15 DEATH, THE FULL MORTALITY DECREMENT IS TAKEN INTO ACCOUNT.

16 3. If a member's annual benefit commences after sixty-five years of
17 age, the limitation determined under subsection A of this section shall be
18 ~~adjusted to the actuarial equivalent of an annual benefit equal to the dollar~~
19 ~~limitation commencing at sixty-five years of age. Actuarial equivalency~~
20 ~~under this paragraph shall be determined by the use of an interest rate~~
21 ~~assumption equal to the lesser of five per cent a year or the rate specified~~
22 ~~by the board as provided in section 38-711, paragraph 2~~ APPLICABLE TO THE
23 MEMBER AT THE LATER AGE IS THE ANNUAL BENEFIT PAYABLE IN THE FORM OF A
24 STRAIGHT LIFE ANNUITY BEGINNING AT THE LATER AGE THAT IS ACTUARIALLY
25 EQUIVALENT TO THE DEFINED BENEFIT DOLLAR LIMITATION APPLICABLE TO THE
26 PARTICIPANT AT AGE SIXTY-FIVE AND THAT IS ADJUSTED UNDER PARAGRAPH 1 OF THIS
27 SUBSECTION, IF REQUIRED. THE ACTUARIAL EQUIVALENT OF THE DEFINED BENEFIT
28 DOLLAR LIMITATION APPLICABLE AT AN AGE AFTER AGE SIXTY-FIVE IS DETERMINED AS
29 THE LESSER OF:

30 (a) THE ACTUARIAL EQUIVALENT AT THAT AGE OF THE DEFINED BENEFIT DOLLAR
31 LIMITATION COMPUTED USING THE INTEREST RATE SPECIFIED BY THE BOARD AS
32 PROVIDED IN SECTION 38-711, PARAGRAPH 2 AND THE MORTALITY TABLE OR OTHER
33 TABULAR FACTORS PRESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION.

34 (b) THE ACTUARIAL EQUIVALENT AT THAT AGE OF THE DEFINED BENEFIT DOLLAR
35 LIMITATION COMPUTED USING A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE
36 APPLICABLE MORTALITY TABLE PRESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION. FOR
37 THE PURPOSES OF THIS SUBDIVISION, MORTALITY BETWEEN AGE SIXTY-FIVE AND THE
38 AGE AT WHICH BENEFITS COMMENCE SHALL BE IGNORED.

39 4. If the member's benefit is paid in a form other than ~~an annual~~
40 ~~benefit~~ A STRAIGHT LIFE ANNUITY, the benefit paid may not exceed the
41 actuarial equivalent of the maximum annual benefit payable as a straight life
42 annuity disregarding the portion of any joint and survivor annuity that
43 constitutes a qualified joint and survivor annuity as defined in section 417
44 of the internal revenue code. Actuarial equivalency under this paragraph
45 shall be determined by the use of an interest rate assumption equal to the

1 greater of five per cent a year or the rate specified by the board as
2 provided in section 38-711, paragraph 2.

3 5. For the purposes of adjusting any benefit or limitation under
4 paragraph 2, 3 or 4 of this subsection, the board shall use the mortality
5 table prescribed by the United States secretary of the treasury as required
6 by section 415(b)(2)(E)(v) of the internal revenue code.

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

12 ~~E. For limitation years beginning before July 1, 2000, the board shall~~
13 ~~limit benefits payable to a member who is a member of ASRS and any other~~
14 ~~defined benefit plan maintained by the member's employer and a defined~~
15 ~~contribution plan maintained by the member's employer in a manner it~~
16 ~~determines to be necessary to prevent the sum of the following fractions from~~
17 ~~exceeding 1.0:~~

18 1. ~~The projected annual benefit of the member under ASRS and any other~~
19 ~~defined benefit plan maintained by the member's employer in which the member~~
20 ~~participated as of the date of determination divided by the lesser of:~~

21 ~~(a) The product of 1.25 multiplied by the dollar limitation in effect~~
22 ~~under subsection A of this section for the limitation year.~~

23 ~~(b) One hundred forty per cent of the member's average compensation~~
24 ~~for the member's high three consecutive years of service. For the purposes~~
25 ~~of this subdivision, a member's high three consecutive years of service is~~
26 ~~the period of three consecutive years or the actual number of consecutive~~
27 ~~years of employment for a member who is employed less than three consecutive~~
28 ~~years with the employer during which the member had the greatest aggregate~~
29 ~~compensation from the employer.~~

30 2. ~~The sum of the annual additions on behalf of the member as of the~~
31 ~~limitation year in which the determination is made under ASRS and any defined~~
32 ~~contribution plan maintained by the member's employer divided by the lesser~~
33 ~~of the following amounts determined for the limitation year and for each~~
34 ~~prior year of service with the employer:~~

35 ~~(a) The product of 1.25 multiplied by the dollar limitation in effect~~
36 ~~under section 38-747, subsection E, paragraph 1, subdivision (a) for the~~
37 ~~limitation year.~~

38 ~~(b) Thirty-five per cent of the member's compensation in the~~
39 ~~limitation year.~~

40 F. ~~ASRS shall compute the fractions prescribed in subsection E of this~~
41 ~~section as of the close of any limitation year beginning before July 1,~~
42 ~~2000. For the purposes of determining a member's projected annual benefit~~
43 ~~adjusted to an actuarially equivalent straight life annuity if the benefit~~
44 ~~is expressed in a form other than a straight life annuity or a qualified~~
45 ~~joint and survivor annuity as defined in section 417 of the internal revenue~~

1 ~~code under any defined benefit plan maintained by an employer and subject to~~
2 ~~the limitation prescribed by subsection E of this section, the benefit shall~~
3 ~~be based on the following assumptions:~~

4 ~~1. The member will continue covered employment until reaching the~~
5 ~~member's normal retirement date determined under the defined benefit plan or~~
6 ~~the current date, whichever is later.~~

7 ~~2. The member's compensation for the limitation year under~~
8 ~~consideration will remain constant until the member's normal retirement date~~
9 ~~or actual retirement.~~

10 ~~3. All other relevant factors used to determine benefits under the~~
11 ~~defined benefit plan will remain constant for all future limitation years.~~

12 ~~G. E. Notwithstanding any other provision of this section, the annual~~
13 ~~benefit payable under this article may be reduced to the extent necessary,~~
14 ~~as determined by the board, to prevent disqualification of ASRS under section~~
15 ~~415 of the internal revenue code that imposes additional limitations on the~~
16 ~~annual benefits payable to members who also may be participating in another~~
17 ~~tax qualified pension or savings plan of this state. An employer shall not~~
18 ~~provide employee retirement or deferred benefits if the benefits authorized~~
19 ~~by this section and as required by federal law result in the failure of ASRS~~
20 ~~to meet federal qualification standards as applied to public pension~~
21 ~~plans. The board shall advise affected members of any additional information~~
22 ~~concerning their annual benefits required by this subsection.~~

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

34 ~~i. G. In determining the adjustments TO THE DEFINED BENEFIT DOLLAR~~
35 ~~LIMITATION authorized by subsections SUBSECTION A and B of this section, the~~
36 ~~board shall prescribe a larger amount DEFINED BENEFIT DOLLAR LIMITATION if~~
37 ~~prescribed by the United States secretary of the treasury pursuant to section~~
38 ~~415(d) of the internal revenue code. An adjustment to the DEFINED BENEFIT~~
39 ~~dollar limitation prescribed in subsection A of this section is not effective~~
40 ~~before the first calendar year for which the United States secretary of the~~
41 ~~treasury publishes the adjustment. After it is prescribed by the board, the~~
42 ~~new DEFINED BENEFIT dollar limitation applies to the limitation year ending~~
43 ~~with or within the calendar year for which the secretary of the treasury~~
44 ~~makes the adjustment. To the extent provided in regulations promulgated by~~
45 ~~the United States secretary of the treasury, the adjustments to the~~

1 ~~limitation made by the board pursuant to subsection C, paragraph 1 of this~~
2 ~~section shall be applied separately to each change in the benefit structure~~
3 ~~of ASRS.~~

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

10 ~~K.~~ I. On termination of ASRS the accrued benefit of each member is,
11 as of the date of termination, fully vested and nonforfeitable.

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

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

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

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

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

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

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

43 ~~N.~~ L. On retirement of a member who was a retired member, who resumed
44 active membership and who subsequently retires, the limitations of this
45 section in effect on the member's subsequent retirement apply to the member's

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

11 ~~O.~~ M. For THE purposes of this section:

12 1. Annual additions shall be determined as provided in section
13 38-747, subsection ~~M- O.~~

14 2. "Annual benefit" means a benefit, including any portion of a
15 member's retirement benefit payable to an alternate payee under a qualified
16 domestic relations order that satisfies the requirements prescribed in
17 section 414(p)(1)(A)(i) of the internal revenue code and section 38-773,
18 payable annually in the form of a straight life annuity, disregarding the
19 portion of a joint and survivor annuity that constitutes a qualified joint
20 and survivor annuity as defined in section 417 of the internal revenue code,
21 with no ancillary or incidental benefits or rollover contributions and
22 excluding any portion of the benefit derived from member contributions or
23 other contributions that are treated as a separate defined contribution plan
24 under section 415 of the internal revenue code but including any of those
25 contributions that are picked up by the employer under section 414(h) of the
26 internal revenue code, or that otherwise are not treated as a separate
27 defined contribution plan. If the benefit is payable in another form, the
28 determination as to whether the limitation described in subsection A of this
29 section has been satisfied shall be made by the board by adjusting the
30 benefit so that it is actuarially equivalent to the annual benefit described
31 in this paragraph in accordance with the regulations promulgated by the
32 United States secretary of the treasury. In addition, for determining the
33 annual benefit attributable to member contributions, the factors described
34 in section 411(c)(2)(B) of the internal revenue code and the regulations
35 promulgated under the internal revenue code shall be used by the board
36 regardless of whether section 411 of the internal revenue code applies to
37 ASRS. The factors described in section 411(c)(2)(B) of the internal revenue
38 code shall be those factors described under section 417(e)(3) of the internal
39 revenue code and determined on the basis of the 417(e) mortality table and
40 an interest rate equal to the annual yield for thirty-year treasury constant
41 maturities, as reported in federal reserve statistical release G-13 and H-15,
42 for the third full calendar month preceding the plan year for which the
43 determination is made. For the purposes of this paragraph, "the 417(e)
44 mortality table" means the mortality table that is published by the United
45 States treasury department as the table to be used for the purposes of

1 section 417(e) of the internal revenue code to determine the single sum value
2 of an accrued benefit.

3 3. "Compensation" means the member's earned income, wages, salaries,
4 fees for professional service and other amounts received for personal
5 services actually rendered in the course of employment with the employer and
6 includes amounts described in sections 104(a)(3) and 105(a) of the internal
7 revenue code, but only to the extent that these amounts are includable in the
8 gross income of the member. COMPENSATION ALSO INCLUDES ANY ELECTIVE DEFERRAL
9 AS DEFINED IN SECTION 402(g)(3) OF THE INTERNAL REVENUE CODE AND ANY AMOUNT
10 THAT IS CONTRIBUTED OR DEFERRED BY AN EMPLOYER AT THE ELECTION OF A MEMBER
11 AND THAT IS NOT INCLUDABLE IN THE GROSS INCOME OF THE MEMBER BY REASON OF
12 SECTION 125, 132(f)(4) OR 457 OF THE INTERNAL REVENUE CODE. Compensation
13 does not mean:

14 (a) Employer contributions to a plan of deferred compensation to the
15 extent the contributions are not included in the gross income of the employee
16 for the taxable year in which contributed, ~~on behalf of an employee to a~~
17 ~~simplified employee pension plan described in section 408(k) of the internal~~
18 ~~revenue code and any distributions from a plan of deferred compensation,~~
19 regardless of whether the amounts are includable in gross income of the
20 employee when distributed, except that any amount received by a member
21 pursuant to an unfunded nonqualified plan may be considered as compensation
22 for the purposes of this section in the year the amounts are includible
23 INCLUDABLE in the gross income of the member under the internal revenue code.

24 (b) Other amounts that receive special tax benefits, such as premiums
25 for group term life insurance, but only to the extent that the premiums are
26 not includable in the gross income of the employee, ~~or contributions made by~~
27 ~~the employer, whether or not under a salary reduction agreement, towards the~~
28 ~~purchase of an annuity contract described in section 403(b) of the internal~~
29 ~~revenue code, whether or not the contributions are excludable from the gross~~
30 ~~income of the employee.~~

31 4. "DEFINED BENEFIT DOLLAR LIMITATION" MEANS THE DOLLAR LIMITATION
32 DETERMINED UNDER SUBSECTION A OF THIS SECTION.

33 ~~4.~~ 5. "Defined benefit plan" has the same meaning prescribed in
34 section 414(j) of the internal revenue code.

35 ~~5.~~ 6. "Defined contribution plan" has the same meaning prescribed in
36 section 414(i) of the internal revenue code.

37 ~~6.~~ 7. "Limitation year" and "years of service" means the fiscal year.

38 Sec. 7. Section 38-770, Arizona Revised Statutes, is amended to read:
39 38-770. Eligible rollover distribution; definitions

40 A. Notwithstanding any other provision of this article that would
41 limit a distributee's election under this section, a distributee may elect,
42 at any time and in the manner prescribed by the board, to have any portion
43 of an eligible rollover distribution paid directly to an eligible retirement
44 plan specified by the distributee in a direct rollover.

1 B. An eligible rollover distribution may commence less than thirty
2 days after the notice required under section 402(f) of the internal revenue
3 code is given to the distributee, provided that both:

4 1. ASRS clearly informs the distributee that the distributee has a
5 right to a period of at least thirty days after receiving the notice to
6 consider the decision of whether or not to elect a direct rollover.

7 2. The distributee, after receiving the notice, affirmatively elects
8 a distribution.

9 C. For the purposes of this section:

10 1. "Direct rollover" means a payment by ASRS to the eligible
11 retirement plan specified by the distributee.

12 2. "Distributee" means a member, a member's surviving spouse or a
13 member's SPOUSE OR former spouse WHO IS THE ALTERNATE PAYEE UNDER AN
14 ACCEPTABLE DOMESTIC RELATIONS ORDER AS DEFINED IN SECTION 38-773.

15 3. "Eligible retirement plan" means ANY OF THE FOLLOWING THAT ACCEPTS
16 A DISTRIBUTEES ELIGIBLE ROLLOVER DISTRIBUTION:

17 ~~(a) For a member any of the following that accepts the distributee's~~
18 ~~eligible rollover distribution:~~

19 ~~(i) (a) An individual retirement account described in section 408(a)~~
20 ~~of the internal revenue code.~~

21 ~~(ii) (b) An individual retirement annuity described in section 408(b)~~
22 ~~of the internal revenue code.~~

23 ~~(iii) (c) An annuity plan described in section 403(a) of the internal~~
24 ~~revenue code.~~

25 ~~(iv) (d) A qualified trust described in section 401(a) of the~~
26 ~~internal revenue code.~~

27 ~~(b) For a surviving or former spouse any of the following that accepts~~
28 ~~the distributee's eligible rollover distribution:~~

29 ~~(i) An individual retirement account described in section 408(a) of~~
30 ~~the internal revenue code.~~

31 ~~(ii) An individual retirement annuity described in section 408(b) of~~
32 ~~the internal revenue code.~~

33 (e) AN ANNUITY CONTRACT DESCRIBED IN SECTION 403(b) OF THE INTERNAL
34 REVENUE CODE.

35 (f) AN ELIGIBLE DEFERRED COMPENSATION PLAN DESCRIBED IN SECTION 457(b)
36 OF THE INTERNAL REVENUE CODE THAT IS MAINTAINED BY A STATE, A POLITICAL
37 SUBDIVISION OF A STATE OR ANY AGENCY OR INSTRUMENTALITY OF A STATE OR A
38 POLITICAL SUBDIVISION OF A STATE AND THAT AGREES TO SEPARATELY ACCOUNT FOR
39 AMOUNTS TRANSFERRED INTO THE ELIGIBLE DEFERRED COMPENSATION PLAN FROM ASRS.

40 4. "Eligible rollover distribution" means distribution of all or any
41 portion of the balance to the credit of the distributee but does not include
42 any of the following:

43 (a) Any distribution that is one of a series of substantially equal
44 periodic payments made not less frequently than annually for the life or life
45 expectancy of the member or the joint lives or joint life expectancies of the

1 member and the member's designated beneficiary or for a specified period of
2 ten years or more.

3 (b) Any distribution to the extent the distribution is required under
4 section 401(a)(9) of the internal revenue code.

5 (c) EXCEPT AS PROVIDED IN THIS PARAGRAPH, the portion of any
6 distribution that is not includable in gross income. A DISTRIBUTION DOES NOT
7 FAIL TO BE AN ELIGIBLE ROLLOVER DISTRIBUTION MERELY BECAUSE THE PORTION
8 CONSISTS OF AFTER-TAX EMPLOYEE CONTRIBUTIONS THAT ARE NOT INCLUDABLE IN GROSS
9 INCOME IF THE PORTION IS PAID ONLY TO AN INDIVIDUAL RETIREMENT ACCOUNT OR
10 ANNUITY DESCRIBED IN SECTION 408(a) OR 408(b) OF THE INTERNAL REVENUE CODE
11 OR TO A QUALIFIED DEFINED CONTRIBUTION PLAN DESCRIBED IN SECTION 401(a) OR
12 403(a) OF THE INTERNAL REVENUE CODE THAT AGREES TO SEPARATELY ACCOUNT FOR
13 AMOUNTS SO TRANSFERRED, INCLUDING SEPARATELY ACCOUNTING FOR THE PORTION OF
14 THE DISTRIBUTION THAT IS INCLUDABLE IN GROSS INCOME AND THE PORTION OF THE
15 DISTRIBUTION THAT IS NOT INCLUDABLE IN GROSS INCOME.

16 (d) ANY DISTRIBUTION THAT IS MADE DUE TO HARDSHIP OF THE MEMBER.

17 Sec. 8. Repeal

18 Laws 2000, chapter 132, section 4 is repealed.

19 Sec. 9. Retroactivity

20 A. Sections 38-766 and 38-769, Arizona Revised Statutes, as amended
21 by this act, apply retroactively to July 1, 2001.

22 B. Section 38-747, Arizona Revised Statutes, as amended by section 3
23 of this act, and section 38-770, Arizona Revised Statutes, as amended by this
24 act, apply retroactively to January 1, 2002.

25 Sec. 10. Appropriation; purpose

26 The sum of \$270,342 is appropriated from the Arizona state retirement
27 system administration account in fiscal year 2002-2003 to the Arizona state
28 retirement system for the administrative implementation of this act including
29 the hiring of 5.0 FTEs and employee related expenditures.

30 Sec. 11. Emergency

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

APPROVED BY THE GOVERNOR MAY 15, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2002.

Passed the House May 2, 2002,

Passed the Senate March 28, 2002

by the following vote: 57 Ayes,

by the following vote: 28 Ayes,

0 Nays, 3 Not Voting
with emergency

0 Nays, 2 Not Voting
with emergency

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Asst. Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

Approved this _____ day of

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

~~this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

S.B. 1095

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 9, 2002

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Wanda Smart
President of the Senate

Chaimin Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9 day of May, 2002

at 2:48 o'clock P M.

Jandra Ramirez
Secretary to the Governor

Approved this 15 day of

May, 2002

at 9:52 o'clock A M.

Janice Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 15 day of May, 2002

at 4:39 o'clock P M.

Robert Taylor
Secretary of State

S.B. 1095