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KEN BENNETT
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CHAPTER 110

SENATE BILL 1170

AN ACT

AMENDING SECTIONS 38-737 AND 38-747, ARIZONA REVISED STATUTES; AMENDING SECTION 38-755, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 87, SECTION 4 AND CHAPTER 88, SECTION 1; AMENDING SECTION 38-757, ARIZONA REVISED STATUTES; AMENDING SECTION 38-760, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 88, SECTION 2 AND CHAPTER 362, SECTION 11; AMENDING SECTIONS 38-762, 38-767, 38-769, 38-776 AND 38-782, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-737, Arizona Revised Statutes, is amended to read:

38-737. Employer contributions

A. Employer contributions shall be a percentage of compensation of all employees of the employers, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two per cent of compensation of all employees of the employers. Beginning July 1, 2011, the total employer contribution shall be determined on the projected unit credit method. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a ~~rolling thirty-year~~ period THAT IS DETERMINED BY THE BOARD AND CONSISTENT WITH GENERALLY ACCEPTED ACTUARIAL STANDARDS. IN DETERMINING THE PAST SERVICE FUNDING PERIOD, THE BOARD SHALL SEEK TO IMPROVE THE FUNDED STATUS WHENEVER THE ASRS TRUST FUND IS LESS THAN ONE HUNDRED PER CENT FUNDED.

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

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide a preliminary report by November 1 and a final report by December 15 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

Sec. 2. Section 38-747, Arizona Revised Statutes, is amended to read:

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

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

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

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

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

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

pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

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

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

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

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

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

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

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

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

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

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

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

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

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

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

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

(b) One hundred per cent of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

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

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

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

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

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

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

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

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions

exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

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

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

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

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

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution or a contribution by a member of an eligible rollover distribution from one or more:

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

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

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

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

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

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection

shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

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

L. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, IF THE ANNUAL ADDITIONS CREDITED ON BEHALF OF AN ASRS MEMBER DURING ANY LIMITATION YEAR EXCEED THE LIMITS OF SECTION 415(c) OF THE INTERNAL REVENUE CODE AND SUBSECTION E OF THIS SECTION, ASRS MAY ONLY CORRECT THE EXCESS PURSUANT TO THE EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM PRESCRIBED IN INTERNAL REVENUE SERVICE REVENUE PROCEDURE 2008-50 OR ANY FUTURE GUIDANCE ISSUED BY THE INTERNAL REVENUE SERVICE, INCLUDING THE PREAMBLE OF THE FINAL TREASURY REGULATIONS ISSUED UNDER SECTION 415 OF THE INTERNAL REVENUE CODE.

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

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

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

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

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

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

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

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

Q. Subsection O of this section shall be construed and interpreted in accordance with ~~26 Code of Federal Regulations section 1.415-6 to the extent that section is applicable~~ SECTION 415 OF THE INTERNAL REVENUE CODE AND THE FINAL TREASURY REGULATIONS ISSUED UNDER THAT SECTION.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

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

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

4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.

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

6. "Limitation year" has the same meaning prescribed in section 38-769.

7. "Participating employer" means an employer that participates in ASRS.

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

Sec. 3. Section 38-755, Arizona Revised Statutes, as amended by Laws 2012, chapter 87, section 4 and chapter 88, section 1, is amended to read:

38-755. Information as to member's status; beneficiary designation; spousal consent; confidentiality

A. Subject to rules prescribed by the board, on application of a member, the board shall furnish information concerning the member's status. In addition, the board shall furnish to each member an account, that may be electronic or online, showing the status of the member's account, including the name of the member's beneficiary as last listed with the board.

B. The member may change the member's beneficiary at any time in a manner established by ASRS.

C. A member who is married shall name and maintain the member's current spouse as a beneficiary to receive at least fifty per cent of the member's account, UNLESS NAMING OR MAINTAINING THE CURRENT SPOUSE AS A BENEFICIARY VIOLATES ANOTHER LAW, AN EXISTING CONTRACT OR A COURT ORDER. The member's current spouse may consent to a waiver of this requirement pursuant to section 38-776.

D. IN ORDER TO PROTECT A MEMBER'S IDENTITY FROM FRAUD, ABUSE, THEFT OR CIVIL OR CRIMINAL ACTIVITY, INFORMATION ABOUT A MEMBER IS NOT SUBJECT TO INSPECTION PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2, EXCEPT THAT THE FOLLOWING INFORMATION ABOUT A MEMBER IS SUBJECT TO INSPECTION:

1. THE MEMBER'S NAME.

2. WHETHER THE MEMBER IS AN ACTIVE MEMBER AS DEFINED IN SECTION 38-711, AN INACTIVE MEMBER AS DEFINED IN SECTION 38-711 OR A RETIRED MEMBER AS DEFINED IN SECTION 38-711.

3. THE MEMBER'S CURRENT OR MOST RECENT EMPLOYER.

4. FOR A RETIRED MEMBER, THE AVERAGE MONTHLY COMPENSATION, AS DEFINED IN SECTION 38-711, USED TO CALCULATE THE MEMBER'S RETIREMENT BENEFIT.

5. THE CREDITED SERVICE AS DEFINED IN SECTION 38-711 ON ACCOUNT FOR AN ACTIVE OR INACTIVE MEMBER OR THE CREDITED SERVICE USED TO CALCULATE THE RETIREMENT BENEFIT FOR A RETIRED MEMBER.

6. THE GROSS PENSION AMOUNT ACTUALLY PAID TO A RETIRED MEMBER.

7. THE MOST RECENT RETIREMENT DATE.

8. THE CURRENT ACCOUNT BALANCE FOR AN ACTIVE OR INACTIVE MEMBER.

9. THE GROSS LONG-TERM DISABILITY PROGRAM BENEFIT ACTUALLY PAID TO A DISABLED MEMBER PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER.

10. THE AMOUNT PAID TO PURCHASE CREDITED SERVICE PURSUANT TO SECTION 38-743, 38-744 OR 38-745.

11. THE AMOUNT OF CREDITED SERVICE PURCHASED PURSUANT TO SECTION 38-743, 38-744 OR 38-745.

E. ASRS SHALL NOT PERMIT ANY UNREDACTED RECORD TO BE INSPECTED THAT CONTAINS A MEMBER'S SOCIAL SECURITY NUMBER, BANK ACCOUNT INFORMATION, ADDRESS, TELEPHONE NUMBER, E-MAIL ADDRESS, MEDICAL RECORDS, HEALTH INSURANCE INFORMATION, BENEFICIARY OR SURVIVOR INFORMATION OR DISABILITY INFORMATION OR ANY INFORMATION THAT IS PROTECTED BY ANY FEDERAL OR STATE LAW.

Sec. 4. Section 38-757, Arizona Revised Statutes, is amended to read:

38-757. Normal retirement

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date. EXCEPT AS PROVIDED IN SECTION 13-713, A MEMBER'S RIGHT TO THE MEMBER'S NORMAL RETIREMENT BENEFIT AS DESCRIBED IN SUBSECTION B OF THIS SECTION IS NONFORFEITABLE BY AN EMPLOYER OR ASRS ON ATTAINMENT OF THE MEMBER'S NORMAL RETIREMENT DATE.

B. Except as provided in section 38-768, a member who meets the requirements for retirement benefits at normal retirement shall receive a monthly life annuity that equals the result of paragraph 1 OF THIS SUBSECTION multiplied by paragraph 2 OF THIS SUBSECTION when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) 2.10 per cent if the member does not have more than 19.99 years of credited service.

(b) 2.15 per cent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 per cent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 per cent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

Sec. 5. Section 38-760, Arizona Revised Statutes, as amended by Laws 2012, chapter 88, section 2 and chapter 362, section 11, is amended to read:

38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant

designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the annuity of the member under the same joint and survivor annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

(d) A member whose original date of retirement is on or after July 1, 2008 may exercise a one-time election to rescind the joint and survivor annuity option elected by the member if the contingent annuitant dies or ceases to be a contingent annuitant pursuant to the terms of a qualified domestic relations order.

(e) If the member's contingent annuitant is the member's current spouse, the member shall obtain the consent of the contingent annuitant pursuant to section 38-776 before the member names a new contingent annuitant or before the member rescinds the election, except that consent is not required if the rescission is pursuant to subdivision (d) of this paragraph.

2. A period certain and life annuity actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the member but whose payments continue for the member's lifetime beyond the five, ten or fifteen year period. At the time of electing this option the member shall name a period certain beneficiary or beneficiaries who are entitled to receive the payments for any portion of the period certain beyond the lifetime of the member. The member may name a different

beneficiary at any time. If no beneficiary survives the member, any remaining payments are the property of the member's estate. A member who retires after August 9, 2001 and before July 1, 2008 may rescind the election of a period certain and life annuity. If the member rescinds the election of a period certain and life annuity, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the period certain and life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime. If the member reverts to a straight life annuity pursuant to this paragraph, the member may again elect a period certain and life annuity subject to the same provisions of the period certain and life annuity previously elected by the member. If the member's contingent annuitant is the member's current spouse, the member shall obtain the consent of the contingent annuitant pursuant to section 38-776 before the member rescinds the election of a period certain and life annuity or again elects a period certain and life annuity. A member whose original date of retirement is on or after July 1, 2008 may exercise a one-time election to rescind the period certain and life annuity option elected by the member if the beneficiary dies or ceases to be a beneficiary pursuant to the terms of a qualified domestic relations order or at the expiration of the member's period certain term.

3. Beginning on July 1, 2002, a lump sum payment equal to not more than thirty-six months of the member's retirement benefits based on the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The member's benefit shall be actuarially reduced to provide for the lump sum payment. The lump sum payment shall be made at the time of retirement. Any benefit increase granted to a member who elects a lump sum payment pursuant to this paragraph is subject to the following conditions:

(a) If the benefit increase is a percentage increase of the member's retirement benefit, the increase shall be based on the actuarially reduced retirement benefit of the member.

(b) If the benefit increase is pursuant to section 38-767, the amount of the member's benefit increase shall be calculated without regard to the lump sum payment pursuant to this paragraph.

4. Other forms of actuarially reduced optional benefits prescribed by the board.

C. A member who is married at the time of retirement shall elect a monthly benefit in the form of a joint and survivor annuity pursuant to subsection B, paragraph 1 of this section, and the member's current spouse shall be the contingent annuitant unless the member's current spouse consents to a waiver of this requirement pursuant to section 38-776 OR THE ELECTION WOULD VIOLATE ANOTHER LAW, AN EXISTING CONTRACT OR A COURT ORDER. If the married member does not elect a type of joint and survivor annuity for the

member's current spouse and the member's current spouse has not waived the requirements of this subsection, ASRS shall cancel the member's retirement. The member may reapply for retirement at any time in a manner established by ASRS.

Sec. 6. Section 38-762, Arizona Revised Statutes, is amended to read:

38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section ~~of more than five thousand dollars~~ may elect to receive the actuarial equivalent of the survivor benefit ~~pursuant to one of the following options:~~

~~1. A~~ AS monthly income for ~~five, ten or fifteen years certain and for~~ life, ~~thereafter.~~

~~2. Another form of optional benefits approved by the board.~~

~~D. On the death of an active or inactive member who has reached an early retirement date applicable to the member or who has a minimum of fifteen years of credited service and whose designated beneficiary is a spouse, a member's natural or adopted child under the age of twenty-one or a member's natural or adopted child of any age who is disabled, ASRS shall pay the designated beneficiary a survivor benefit equal to the present value, on the date following the date of the member's death, of the life annuity that would have been payable to the designated beneficiary if the member had retired on the date of the member's death and elected to receive an annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount that would have been payable during the lifetime of the member. If there is more than one designated beneficiary under this subsection, ASRS shall determine the amount of the annuity and its present value as if the oldest of the beneficiaries~~

~~was the sole beneficiary. Payment under this subsection shall be in lieu of, but not less than, any payment under subsection A of this section. Payment under this subsection, at the election of the designated beneficiary, may be made in a single sum or may be made in accordance with subsection C of this section. A beneficiary may not elect this option unless a benefit of twenty-five dollars or more per month is payable to the designated beneficiary or the designated beneficiary's estate.~~ IF THE RESULTING MONTHLY AMOUNT IS GREATER THAN OR EQUAL TO THE AMOUNT DETERMINED BY THE BOARD UNDER SECTION 38-764, SUBSECTION F.

~~E.~~ D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

~~F.~~ E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

~~G.~~ F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

~~H.~~ G. For the purposes of this section, ~~:~~

~~1.~~ "designated beneficiary" means any individual designated by the member as the member's beneficiary.

~~2. "Disabled" means a person is incapable of self-sustaining employment by reason of mental or physical handicap and is chiefly dependent on the member for support.~~

Sec. 7. Section 38-767, Arizona Revised Statutes, is amended to read:

38-767. Benefit increases; applicability

A. FOR A MEMBER WHOSE MEMBERSHIP COMMENCED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons

eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.

2. Determine the total excess investment earnings as provided in subsection C of this section.

3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.

4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.

5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.

2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.

3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.

4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member WHO WAS ELIGIBLE FOR AN ANNUAL BENEFIT INCREASE PURSUANT TO SUBSECTION A OF THIS SECTION had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:

1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.

2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.

3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who

are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

Sec. 8. Section 38-769, Arizona Revised Statutes, is amended to read:

38-769. Maximum retirement benefits; termination; definitions

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

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

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

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

~~2. If a member's annual benefit commences before the member attains sixty-two years of age, the defined benefit dollar limitation applicable to the member at the earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial~~

~~equivalent of the defined benefit dollar limitation applicable to the member at age sixty-two and that is adjusted under paragraph 1 of this subsection, if required. The defined benefit dollar limitation applicable at an age before age sixty-two is determined as the lesser of:~~

~~(a) The actuarial equivalent at that age of the defined benefit dollar limitation computed using the interest rate specified by the board in section 38-711, paragraph 2 and the mortality table or other tabular factors prescribed in paragraph 5 of this subsection.~~

~~(b) The actuarial equivalent at that age of the defined benefit dollar limitation computed using a five per cent interest rate and the applicable mortality table prescribed in paragraph 5 of this subsection. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement if benefits are not forfeited on the death of the member. If any benefits are forfeited on death, the full mortality decrement is taken into account.~~

~~3. If a member's annual benefit commences after sixty-five years of age, the limitation determined under subsection A of this section applicable to the member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five and that is adjusted under paragraph 1 of this subsection, if required. The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five is determined as the lesser of:~~

~~(a) The actuarial equivalent at that age of the defined benefit dollar limitation computed using the interest rate specified by the board as provided in section 38-711, paragraph 2 and the mortality table or other tabular factors prescribed in paragraph 5 of this subsection.~~

~~(b) The actuarial equivalent at that age of the defined benefit dollar limitation computed using a five per cent interest rate assumption and the applicable mortality table prescribed in paragraph 5 of this subsection. For the purposes of this subdivision, mortality between age sixty-five and the age at which benefits commence shall be ignored.~~

~~4. If the member's benefit is paid in a form other than a straight life annuity, the benefit paid may not exceed the actuarial equivalent of the maximum annual benefit payable as a straight life annuity disregarding the portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code. Effective for plan years beginning from and after June 30, 2004, actuarial equivalency under this paragraph shall be determined by the use of an interest rate assumption equal to one of the following rates:~~

~~(a) For benefits paid under ASRS in a form to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS, the greater of:~~

~~(i) Five and one-half per cent a year.~~

~~(ii) The rate that provides a benefit of not more than one hundred five per cent of the benefit that would be provided if the applicable interest rate, as defined in section 417(e)(3) of the internal revenue code, were the interest rate assumption.~~

~~(iii) The rate specified by the board as provided in section 38-711, paragraph 2.~~

~~(b) For benefits paid under ASRS in a form to which section 417(e)(3) of the internal revenue code does not apply if that section of the internal revenue code were applicable to ASRS, five per cent per year.~~

~~In the case of any member or beneficiary receiving a distribution from and after December 31, 2003 but before January 1, 2005, the amount payable under any form of benefit subject to adjustment under this paragraph shall not, solely by reason of the interest rate assumptions contained in this paragraph, be less than the amount that would have been payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the plan year beginning July 1, 2003.~~

~~5. For the purposes of adjusting any benefit or limitation under paragraph 2, 3 or 4 of this subsection, the board shall use the mortality table prescribed by the United States secretary of the treasury as required by section 415(b)(2)(E)(v) of the internal revenue code, which, effective for distributions with annuity starting dates from and after December 30, 2002, shall be the mortality table published by the internal revenue service in revenue ruling 2001-62, as modified by the internal revenue service in revenue ruling 2007-67, until later changed or modified by the internal revenue service.~~

2. IF THE MEMBER'S BENEFIT UNDER ASRS COMMENCES BEFORE THE MEMBER REACHES SIXTY-TWO YEARS OF AGE, THE BENEFIT WILL BE LIMITED TO:

(a) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING BEFORE JULY 1, 2007, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION, WITH ACTUARIAL EQUIVALENCE COMPUTED USING WHICHEVER OF THE FOLLOWING PRODUCES THE SMALLER ANNUAL AMOUNT:

(i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR SPECIFIED BY THE BOARD FOR DETERMINING ACTUARIAL EQUIVALENCE FOR EARLY RETIREMENT PURPOSES.

(ii) A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE.

(b) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON OR AFTER JULY 1, 2007 AND ASRS DOES NOT HAVE AN IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY PAYABLE AT BOTH AGE SIXTY-TWO AND THE AGE OF BENEFIT COMMENCEMENT, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION

415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION, WITH ACTUARIAL EQUIVALENCE COMPUTED USING A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE AND EXPRESSING THE MEMBER'S AGE BASED ON COMPLETED CALENDAR MONTHS AS OF THE ANNUITY START DATE.

(c) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON OR AFTER JULY 1, 2007 AND ASRS HAS AN IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY PAYABLE AT BOTH AGE SIXTY-TWO AND THE AGE OF BENEFIT COMMENCEMENT, THE LESSER OF:

(i) THE ADJUSTED DOLLAR LIMITATION DETERMINED IN ACCORDANCE WITH SUBDIVISION (b) OF THIS PARAGRAPH, DETERMINED WITHOUT APPLYING THE LIMITATIONS OF SECTION 415 OF THE INTERNAL REVENUE CODE.

(ii) THE PRODUCT OF THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION, MULTIPLIED BY THE RATIO OF THE ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY UNDER ASRS AT THE MEMBER'S ANNUITY STARTING DATE TO THE ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY UNDER ASRS AT AGE SIXTY-TWO, DETERMINED WITHOUT APPLYING THE LIMITATIONS OF SECTION 415 OF THE INTERNAL REVENUE CODE.

3. IF THE RETIREMENT BENEFIT UNDER ASRS COMMENCES AFTER THE MEMBER REACHES SIXTY-FIVE YEARS OF AGE, THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION ON THAT BENEFIT IS INCREASED TO:

(a) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING BEFORE JULY 1, 2007, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A) AS ADJUSTED UNDER SECTION 415(d) OF THE INTERNAL REVENUE CODE, WITH ACTUARIAL EQUIVALENCE COMPUTED USING WHICHEVER OF THE FOLLOWING PRODUCES THE SMALLER ANNUAL AMOUNT:

(i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR SPECIFIED BY THE BOARD FOR DETERMINING ACTUARIAL EQUIVALENCE FOR DELAYED RETIREMENT PURPOSES.

(ii) A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE.

(b) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON OR AFTER JULY 1, 2007 AND ASRS DOES NOT HAVE AN IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY PAYABLE AT BOTH AGE SIXTY-FIVE AND THE AGE OF BENEFIT COMMENCEMENT, THE ANNUAL AMOUNT OF A BENEFIT PAYABLE IN THE FORM OF A STRAIGHT LIFE ANNUITY COMMENCING AT THE MEMBER'S ANNUITY STARTING DATE THAT IS THE ACTUARIAL EQUIVALENT OF THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION, WITH ACTUARIAL EQUIVALENCE COMPUTED USING A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE AND EXPRESSING THE MEMBER'S AGE BASED ON COMPLETED CALENDAR MONTHS AS OF THE ANNUITY STARTING DATE.

(c) IF THE ANNUITY STARTING DATE IS IN A LIMITATION YEAR BEGINNING ON OR AFTER JULY 1, 2007 AND ASRS HAS AN IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY PAYABLE AT BOTH AGE SIXTY-FIVE AND THE AGE OF BENEFIT COMMENCEMENT, THE LESSER OF:

(i) THE ADJUSTED DOLLAR LIMITATION DETERMINED IN ACCORDANCE WITH SUBDIVISION (b) OF THIS PARAGRAPH, DETERMINED WITHOUT APPLYING THE LIMITATIONS OF SECTION 415 OF THE INTERNAL REVENUE CODE.

(ii) THE PRODUCT OF THE DOLLAR LIMITATION UNDER SECTION 415(b)(1)(A) OF THE INTERNAL REVENUE CODE AS ADJUSTED IN SUBSECTION A OF THIS SECTION, MULTIPLIED BY THE RATIO OF THE ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY UNDER ASRS AT THE MEMBER'S ANNUITY STARTING DATE TO THE ANNUAL AMOUNT OF THE IMMEDIATELY COMMENCING STRAIGHT LIFE ANNUITY UNDER ASRS AT AGE SIXTY-FIVE, DETERMINED WITHOUT APPLYING THE LIMITATIONS OF SECTION 415 OF THE INTERNAL REVENUE CODE.

4. FOR PURPOSES OF APPLYING THE LIMITS OF SECTION 415 OF THE INTERNAL REVENUE CODE, A RETIREMENT BENEFIT THAT IS PAYABLE IN ANY FORM OTHER THAN A STRAIGHT LIFE ANNUITY AND THAT IS NOT SUBJECT TO SECTION 417(e)(3) OF THE INTERNAL REVENUE CODE MUST BE ADJUSTED TO AN ACTUARIALLY EQUIVALENT STRAIGHT LIFE ANNUITY THAT EQUALS EITHER:

(a) FOR LIMITATION YEARS BEGINNING ON OR AFTER JULY 1, 2007, THE GREATER OF THE ANNUAL AMOUNT OF THE STRAIGHT LIFE ANNUITY, IF ANY, PAYABLE UNDER ASRS AT THE SAME ANNUITY STARTING DATE, AND THE ANNUAL AMOUNT OF A STRAIGHT LIFE ANNUITY COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME ACTUARIAL PRESENT VALUE AS THE MEMBER'S FORM OF BENEFIT COMPUTED USING AN INTEREST RATE OF FIVE PER CENT AND THE APPLICABLE MORTALITY TABLE UNDER SECTION 417(e)(3) OF THE INTERNAL REVENUE CODE.

(b) FOR LIMITATION YEARS BEGINNING BEFORE JULY 1, 2007, THE ANNUAL AMOUNT OF A STRAIGHT LIFE ANNUITY COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME ACTUARIAL PRESENT VALUE AS THE MEMBER'S FORM OF BENEFIT COMPUTED USING WHICHEVER OF THE FOLLOWING PRODUCES THE GREATER ANNUAL AMOUNT:

(i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR SPECIFIED BY THE BOARD FOR ADJUSTING BENEFITS IN THE SAME FORM.

(ii) A FIVE PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE.

5. FOR THE PURPOSE OF APPLYING THE LIMITS OF SECTION 415 OF THE INTERNAL REVENUE CODE, A RETIREMENT BENEFIT THAT IS PAYABLE IN ANY FORM OTHER THAN A STRAIGHT LIFE ANNUITY TO WHICH SECTION 417(e)(3) OF THE INTERNAL REVENUE CODE WOULD APPLY IF THAT SECTION OF THE INTERNAL REVENUE CODE WERE APPLICABLE TO ASRS MUST BE ADJUSTED TO AN ACTUARIALLY EQUIVALENT STRAIGHT LIFE ANNUITY THAT EQUALS:

(a) IF THE ANNUITY STARTING DATE IS IN A PLAN YEAR BEGINNING ON OR AFTER JULY 1, 2006, THE ANNUAL AMOUNT OF THE STRAIGHT LIFE ANNUITY COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME ACTUARIAL PRESENT VALUE

AS THE MEMBER'S FORM OF BENEFIT, USING WHICHEVER OF THE FOLLOWING PRODUCES THE GREATER ANNUAL AMOUNT:

(i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR SPECIFIED BY THE BOARD FOR ADJUSTING BENEFITS IN THE SAME FORM.

(ii) A FIVE AND ONE-HALF PER CENT INTEREST RATE ASSUMPTION AND THE APPLICABLE MORTALITY TABLE.

(iii) THE APPLICABLE INTEREST RATE UNDER SECTION 417(e)(3) OF THE INTERNAL REVENUE CODE AND THE APPLICABLE MORTALITY TABLE, DIVIDED BY 1.05.

(b) IF THE ANNUITY STARTING DATE IS IN A PLAN YEAR BEGINNING IN JULY 1, 2004 OR JULY 1, 2005, THE ANNUAL AMOUNT OF THE STRAIGHT LIFE ANNUITY COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME ACTUARIAL PRESENT VALUE AS THE MEMBER'S FORM OF BENEFIT PAYABLE, USING WHICHEVER OF THE FOLLOWING PRODUCES THE GREATER ANNUAL AMOUNT:

(i) THE INTEREST RATE AND MORTALITY TABLE OR OTHER TABULAR FACTOR SPECIFIED BY THE BOARD FOR ADJUSTING BENEFITS IN THE SAME FORM.

(ii) A FIVE AND ONE-HALF PER CENT INTEREST ASSUMPTION AND THE APPLICABLE MORTALITY TABLE.

(c) IF THE ANNUITY STARTING DATE IS ON OR AFTER JULY 1, 2004 AND BEFORE DECEMBER 31, 2004, AND ASRS APPLIES THE TRANSITION RULE IN SECTION 101(d)(3) OF THE PENSION FUNDING EQUITY ACT OF 2005 IN LIEU OF THE RULE IN SUBDIVISION (b) OF THIS PARAGRAPH, THE ANNUAL AMOUNT OF THE STRAIGHT LIFE ANNUITY COMMENCING AT THE SAME ANNUITY STARTING DATE THAT HAS THE SAME ACTUARIAL PRESENT VALUE AS THE MEMBER'S FORM OF BENEFIT, DETERMINED IN ACCORDANCE WITH INTERNAL REVENUE SERVICE NOTICE 2004-78.

6. WHEN CALCULATING THE LIMITATIONS OF PARAGRAPH 4 OR 5 OF THIS SUBSECTION, THE PORTION OF ANY JOINT OR SURVIVOR ANNUITY THAT CONSTITUTES A QUALIFIED JOINT AND SURVIVOR ANNUITY AS DEFINED IN SECTION 417 OF THE INTERNAL REVENUE CODE SHALL BE DISREGARDED.

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

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

benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code ~~are exceeded~~ for any member EXCEED THE LIMITS OF SECTION 415(b) OF THE INTERNAL REVENUE CODE AND THIS SECTION, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

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

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

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

I. On termination OR PARTIAL TERMINATION of ASRS, the accrued benefit of each member is, as of the date of termination OR PARTIAL TERMINATION, fully vested and nonforfeitable TO THE EXTENT THEN FUNDED.

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

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

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

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

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

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

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

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c)

and (d) OF THIS PARAGRAPH may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is permanently and totally disabled as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages

are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

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

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, ~~paragraphs 4 and~~ PARAGRAPH 5 of this section.

3. "APPLICABLE MORTALITY TABLE" MEANS THE MORTALITY TABLE DESCRIBED IN INTERNAL REVENUE SERVICE REVENUE RULING 2001-62.

~~3.~~ 4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of

the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a ~~participant~~ MEMBER in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

~~4.~~ 5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

~~5.~~ 6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

~~6.~~ 7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

~~7.~~ 8. "Limitation year" and "years of service" ~~means~~ MEAN the fiscal year.

Sec. 9. Section 38-776, Arizona Revised Statutes, is amended to read:

38-776. Spousal waiver and consent

A. A member's current spouse may consent to one of the following requirements established in section 38-755 or 38-760 by signing and submitting an acknowledgement in a manner established by ASRS:

1. A change of beneficiary that provides the member's current spouse with less than fifty per cent of the member's account balance.

2. The member's retirement application that does not name the member's current spouse as a contingent annuitant of a joint and survivor annuity.

3. A change or rescission of the member's current spouse's contingent annuitant status.

B. If the member's current spouse is not capable of executing the acknowledgement because of an incapacitating mental or physical condition, a power of attorney or guardian may execute the acknowledgment on the current spouse's behalf.

C. The member may affirm in writing under penalty of perjury in a manner determined by ASRS that spousal consent is not required because of one of the following reasons:

1. The member is not married.

2. The member's current spouse has no identifiable community property interest in the member's benefits.

3. The member does not know, and has taken all reasonable steps to determine, the location of the member's current spouse.

4. The member has received notification from the board that a domestic relations order is acceptable pursuant to section 38-773 and that domestic relations order requires ASRS to pay benefits to an alternate payee that is contrary to the requirements of section 38-760.

5. Obtaining consent violates another law, ~~or~~ AN existing CONTRACT OR A court order.

D. This section does not abrogate any community property laws of this state.

E. Payments or distributions made by ASRS in good faith reliance on the consent or waiver of a member's current spouse, the affirmations of a member contained in documents submitted to ASRS pursuant to this section or the member's indication to ASRS that the member is not married constitute a full and complete discharge and release of all liability of the board or ASRS, or both, respecting these payments or distributions.

F. If questions arise as to the distribution of a particular member's account, ASRS shall use reasonable judgment to distribute the account in a manner that is consistent with Arizona community property laws and interpretations of those laws.

Sec. 10. Section 38-782, Arizona Revised Statutes, is amended to read:

38-782. Group health and accident coverage for retired public employees and elected officials and their dependents; definition

A. The board shall establish group health and accident coverage for eligible retired, SURVIVING and disabled members and their dependents. ~~Eligible retired and disabled members are those members who are receiving retirement benefits from ASRS or long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter and who elect not to obtain health and accident insurance through their former employer.~~ THE BOARD MAY ESTABLISH A SELF-INSURANCE PROGRAM FOR THE PURPOSES OF THIS SUBSECTION IF THE BOARD DETERMINES THAT SELF-INSURING WOULD BE LESS EXPENSIVE THAN AND AT LEAST AS EFFECTIVE AS A FULLY INSURED PLAN, WHILE CONSIDERING THE RISKS AND COSTS. IF THE BOARD ESTABLISHES A SELF-INSURANCE PROGRAM, THE BOARD SHALL PROVIDE THAT THE SELF-INSURANCE PROGRAM INCLUDE ALL HEALTH COVERAGE BENEFITS THAT ARE

REQUIRED PURSUANT TO TITLE 20. ASRS SHALL ESTABLISH A SEPARATE ACCOUNT FOR ANY SELF-INSURANCE PROGRAM ESTABLISHED PURSUANT TO THIS SECTION IN AN AMOUNT DETERMINED APPROPRIATE BY ASRS. ASRS SHALL NOT USE OR DIVERT ANY PART OF THE CORPUS OR INCOME OF THE ACCOUNT FOR ANY PURPOSE OTHER THAN TO ADMINISTER THE SELF-INSURANCE PROGRAM UNLESS THE BOARD DETERMINES THAT A SELF-INSURANCE PROGRAM SHOULD NO LONGER BE OFFERED. IF A SELF-INSURANCE PROGRAM IS NO LONGER OFFERED, MONIES IN THE ACCOUNT SHALL BE TRANSFERRED TO ANOTHER ACCOUNT OF ASRS AS DETERMINED BY ASRS. If an insured retired or disabled member dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired, SURVIVING and disabled members of ASRS who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who

elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired, SURVIVING or disabled members who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the

health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. FOR THE PURPOSES OF THIS SECTION, "ELIGIBLE RETIRED, SURVIVING AND DISABLED MEMBER" MEANS A RETIRED MEMBER WHO IS RECEIVING RETIREMENT BENEFITS FROM ASRS, A DESIGNATED BENEFICIARY OF A DECEASED MEMBER WHO IS RECEIVING A SURVIVOR BENEFIT PURSUANT TO SECTION 38-762, SUBSECTION C AS MONTHLY INCOME OR A DISABLED MEMBER WHO IS RECEIVING LONG-TERM DISABILITY BENEFITS PURSUANT TO SECTION 38-651.03 OR ARTICLE 2.1 OF THIS CHAPTER, AND WHO DOES NOT OTHERWISE ELECT TO OBTAIN COVERAGE UNDER A GROUP HEALTH AND ACCIDENT INSURANCE PLAN OR PROGRAM.

Sec. 11. Appropriation; ASRS; exemption

A. The sum of $200,000 is appropriated from the Arizona state retirement system administration account fund in fiscal year 2013-2014 to the Arizona state retirement system for the implementation of this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 12. Retroactivity

The amendments to the following sections apply retroactively to from and after June 30, 2013:

1. Section 38-755, Arizona Revised Statutes, as amended by Laws 2012, chapter 87, section 4 and chapter 88, section 1, and this act.

2. Section 38-760, Arizona Revised Statutes, as amended by Laws 2012, chapter 88, section 2 and chapter 362, section 11, and this act.

3. Section 38-776, Arizona Revised Statutes, as amended by this act.

Sec. 13. Effective date

Section 38-762, Arizona Revised Statutes, as amended by this act, is effective from and after December 31, 2013.

APPROVED BY THE GOVERNOR APRIL 16, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2013.

Passed the House April 1, 2013, by the following vote: 35 Ayes, 23 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 11, 2013, by the following vote: 28 Ayes, 1 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of April, 2013,

at 2:30 o'clock P M.

Mikhaila Howard
Secretary to the Governor

Approved this 16th day of April, 2013,

at 3:32 o'clock P. M.

Governor of Arizona

S.B. 1170

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 17th day of April, 2013,

at 8:41 o'clock A M.

Secretary of State