

NOTICES OF EMERGENCY RULEMAKING

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

NOTICE OF EMERGENCY RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R05-05]

PREAMBLE

- 1. Sections Affected**
R2-8-113
R2-8-114
- Rulemaking Action**
New Section
New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statute the rules are implementing (specific):**
Authorizing statute: A.R.S. § 38-714(F)(5)
Implementing statutes: A.R.S. § 38-738
- 3. The effective date of the rules:**
January 4, 2005

The Arizona State Retirement System (ASRS) requests that this rule become effective upon filing with the Secretary of State. This immediate effective date is allowed under A.R.S. § 41-1032(A)(4), which allows a rule to become effective immediately when the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. It benefits the public, and in particular ASRS member employees and employers, to have this new rule in place immediately upon filing with the Secretary of State. Legislation changing the calculation of service credit purchase cost from "normal cost" to "actuarial present value" became effective August 25, 2004, and having a rule in place immediately that clarifies the new calculation is beneficial to the public. It is also a benefit to have a rule in place immediately that prevents a member from taking advantage of the system as explained in paragraph 6, thus placing a financial burden on other ASRS member employees and employers. There is no penalty associated with the violation of the rule.
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**
No
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
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3300 N. Central Ave., Suite 1400
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or
Name: Susanne Dobel, Manager, External Operations
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

Chapter 252, Laws of 2004 (SB2029) became effective on August 25, 2004. This law changes how the cost is calculated for ASRS members wishing to purchase service credits in the defined benefit retirement plan. Under prior law members paid a "normal cost" for service being purchased. Normal cost is basically an average based on the assumption that a cross-section of members would make purchases. The new law provides that the cost to the member wishing to make a purchase be the actuarial present value of the purchased benefit to the specific member making the purchase.

In determining the actuarial present value of a benefit to a member, various factors are taken into account including the member's age, how close the member is to normal retirement (including the points gained with the new service purchase), and how close the member is to attaining a higher benefit multiplier in the Arizona's graded multiplier benefit system. For example, a member whose purchase of five years of service places that member at 30 years of credited service (the maximum 2.3 multiplier) attains a benefit with a greater actuarial present value (and concurrent cost to the retirement system) than another member whose 5-year purchase still leaves the member far short of the maximum multiplier.

The proposed rules would limit the ability of members to take advantage of the system. Specifically, the proposed rules would limit a member to a single service purchase request for each of the several categories of service purchases (other public service, military service, forfeited service and leave of absence service) at a single point in time. This change would mean that a member with five years to purchase could not make five separate requests in rapid succession and thereby defeat the actuarial process. Requiring that either all available time in a category be purchased at one time or that each successive request be completed before the next one is submitted will ensure that ASRS will be considering the correct number of years of service when calculating the actuarial present value of the time that is being purchased.

This emergency rulemaking specifies how the actuarial present value is calculated, which types of service credit are calculated using the actuarial present value, and limits the number of requests to purchase service credit that are active at any given time.

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

Not applicable

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

This emergency rulemaking implements legislation, changing the cost of service credit purchases from normal cost to actuarial present value. It is the legislation, as opposed to the rules, that impact ASRS members who choose to purchase service credit. The change in calculation will cause those members who are further from retirement to pay less for service credit they purchase, while those members closer to retirement will pay more for service credit they purchase. Because calculating service credit at normal cost was creating a liability to the ASRS, the change to actuarial present value will mean a savings of approximately 17 basis points on the contribution rates for employee members and 17 basis points on the contribution rates for employer members.

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

Not applicable

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

None

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

An Emergency Rulemaking is necessary because the legislation becomes effective August 25, 2004 and does not allow enough time to make a rule through the regular rule making process that implements the statute. Without a rule that limits the number of active requests for purchases of service credit, members may make a number of separate requests in rapid succession and thereby defeat the actuarial process. This would mean the member pays less than the full amount of the member's increased benefit, and places the burden for the unfunded portion of that member's benefit on the other member employees and employers.

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

December 22, 2004

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

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-113. ~~Reserved~~ Definitions: Calculating a Service Credit Purchase Request

R2-8-114. ~~Reserved~~ Number of Active Requests Allowed to Purchase Service Credit

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-113. ~~Reserved~~ Definitions: Calculating a Service Credit Purchase Request

A. The following definitions apply to this Section and R2-8-114 unless otherwise specified:

1. “Active request” means a written or verbal application by an eligible member to purchase service credit that has been received by the ASRS but has not been completed by payment or payroll deduction agreement or terminated by:
 - a. Inaction of the eligible member.
 - b. Request to withdraw by the eligible member, or
 - c. Rejection by ASRS.
2. “Active reserve duty” means participating in required meetings and annual training in a Reserve or National Guard branch of a United States uniformed service, for which the member received pay.
3. “ASRS” means the same as in A.R.S. § 38-711.
4. “Actuarial present value” means an amount that is the value in today’s dollars of a member’s future retirement benefit when calculated using the actuarial assumptions in R2-8-123 and the:
 - a. Member’s current years of credited service to the nearest month,
 - b. Member’s age to the nearest day,
 - c. Amount of service credit the member wishes to purchase to the nearest month, and
 - d. Member’s current annual compensation.
5. “ASRS employer” means the same as “employer” in A.R.S. § 38-711.
6. “Credited service” means the same as in A.R.S. § 38-711.
7. “Current annual compensation” means the same as in A.R.S. § 38-711.
8. “Eligible member” means an active member of the Plan who is currently contributing to the ASRS, or who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.
9. “Forfeited service” means eligible service for which the ASRS has returned contributions to the member under A.R.S. § 38-742.
10. “Leave of absence” means the same as in A.R.S. § 38-711.
11. “Military service” means active duty or active reserve duty with any branch of the United States uniformed services.
12. “Military call-up” means a directive from the President of the United States, activating National Guard, Reserve, or Inactive Ready Reserve branches of the United States uniformed services.
13. “Other public service” means previous employment listed in A.R.S. § 38-743 (A).
14. “Service credit” means forfeited service, leave of absence, military service, military call-up service, or other public service that is eligible for an eligible member to purchase.
15. “SP invoice” means a written correspondence from the ASRS providing an eligible member with the amount of money required to purchase a specified amount of eligible service credit.
16. “Uniformed services” means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, the National Oceanic and Atmospheric Administration, and the Public Health Service.
17. “United States” means the same as in A.R.S. § 1-215.

B. For leave of absence, military service, and other public service, the ASRS shall calculate, as of the date of the request to purchase service credit:

1. The actuarial present value of the future retirement benefit for the eligible member including the service credit that the eligible member has requested to purchase, and
2. The actuarial present value of the future retirement benefit for the eligible member without the service credit that the eligible member has requested to purchase.

C. The cost to purchase the service credit that the eligible member has requested to purchase is the amount that equals the difference between the actuarial present value in subsection (B)(1) and the actuarial present value in subsection (B)(2).

D. The amount an eligible member shall pay to purchase service credit for previously forfeited credited service is the amount

of contributions the ASRS returned to the eligible member, plus interest on that amount from the date of the return of contributions to the date of redeposit. The interest rate is determined by the Board as specified in A.R.S. § 38-742.

E. The cost to purchase military call-up service is calculated by multiplying the eligible member's salary at the time active duty commences, times the contribution rate in effect for the period of active service, times the years or partial years of service elapsing from the active duty commencement date through the active duty termination date. The active duty termination date is one of the following, whichever is applicable:

1. The date the eligible member separates from active military service;
2. The date the eligible member is released from service-related hospitalization or one year after initiation of service-related hospitalization, whichever date is earlier; or
3. The date the eligible member dies as a result of active military service.

R2-8-114. ~~Reserved~~ Number of Active Requests Allowed to Purchase Service Credit

A. An eligible member may have only one active request to purchase service credit at a time in each of the following categories:

1. Leave of absence,
2. Military service,
3. Military call-up service,
4. Forfeited service, and
5. Other public service.

B. An eligible member may cancel an active request to purchase a specific category of service credit and immediately submit a new request in the same category of service credit for a different amount of service credit.