

1 **UTAH RETIREMENT SYSTEMS REVISIONS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill modifies the Utah State Retirement and Insurance Benefit Act by amending
8 provisions relating to the Utah Retirement Systems.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ clarifies that the maximum number of positions that a municipality, county, or
- 12 political subdivision may exempt from participation with the Utah Retirement
- 13 System applies to the total number of exempted positions for employees covered
- 14 under both the Tier I and Tier II retirement systems;
- 15 ▶ specifies additional positions covered under the Tier II retirement system that are
- 16 eligible to file for an exemption from participation in the Utah Retirement System;
- 17 ▶ amends the applicability of contribution vesting periods and the effect of system
- 18 elections for individuals who elect to be exempt from participation in the Tier II
- 19 Utah Retirement Systems;
- 20 ▶ provides that a full-time elected official or legislator initially entering office on or
- 21 after July 1, 2011, who has service credit accrued in a Tier I retirement system or a
- 22 Tier II hybrid retirement system before July 1, 2011, shall continue in the Tier I or
- 23 Tier II system for which the full-time elected official or legislator is eligible;
- 24 ▶ provides that if an active member dies, employer nonelective contributions made on
- 25 behalf of the employee to a defined contribution plan are exempt from the vesting
- 26 requirements and vest to the member upon death; and
- 27 ▶ makes technical corrections.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **49-12-203**, as last amended by Laws of Utah 2014, Chapters 15, 201, and 365

35 **49-13-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365

36 **49-22-201**, as last amended by Laws of Utah 2014, Chapter 15

37 **49-22-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365

38 **49-22-303**, as last amended by Laws of Utah 2011, Chapter 439

39 **49-22-401**, as last amended by Laws of Utah 2013, Chapters 310 and 316

40 **49-23-201**, as last amended by Laws of Utah 2014, Chapter 15

41 **49-23-401**, as last amended by Laws of Utah 2013, Chapter 316

42 ENACTS:

43 **49-22-205**, Utah Code Annotated 1953

44 **49-22-503**, Utah Code Annotated 1953

45 **49-23-203**, Utah Code Annotated 1953

46 **49-23-504**, Utah Code Annotated 1953

47

48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **49-12-203** is amended to read:

50 **49-12-203. Exclusions from membership in system.**

51 (1) The following employees are not eligible for service credit in this system:

52 (a) subject to the requirements of Subsection (2), an employee whose employment
53 status is temporary in nature due to the nature or the type of work to be performed;

54 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
55 education who participates in a retirement system with a public or private retirement system,
56 organization, or company designated by the State Board of Regents during any period in which
57 required contributions based on compensation have been paid on behalf of the employee by the
58 employer;

59 (c) an employee serving as an exchange employee from outside the state;

60 (d) an executive department head of the state, a member of the State Tax Commission,
61 the Public Service Commission, and a member of a full-time or part-time board or commission
62 who files a formal request for exemption;

63 (e) an employee of the Department of Workforce Services who is covered under

64 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

65 (f) an employee who is employed on or after July 1, 2009, with an employer that has
66 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
67 49-12-202(2)(c);

68 (g) an employee who is employed on or after July 1, 2014, with an employer that has
69 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection
70 49-12-202(2)(d); or

71 (h) an employee who is employed with a withdrawing entity that has elected, prior to
72 January 1, 2017, to exclude new employees from participation in this system under Subsection
73 49-11-623(3).

74 (2) If an employee whose status is temporary in nature due to the nature of type of
75 work to be performed:

76 (a) is employed for a term that exceeds six months and the employee otherwise
77 qualifies for service credit in this system, the participating employer shall report and certify to
78 the office that the employee is a regular full-time employee effective the beginning of the
79 seventh month of employment; or

80 (b) was previously terminated prior to being eligible for service credit in this system
81 and is reemployed within three months of termination by the same participating employer, the
82 participating employer shall report and certify that the member is a regular full-time employee
83 when the total of the periods of employment equals six months and the employee otherwise
84 qualifies for service credits in this system.

85 (3) (a) Upon cessation of the participating employer contributions, an employee under
86 Subsection (1)(b) is eligible for service credit in this system.

87 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
88 credit earned by an employee under this chapter before July 1, 2009 is not affected under
89 Subsection (1)(f).

90 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service
91 credit earned by an employee under this chapter before July 1, 2014, is not affected under
92 Subsection (1)(g).

93 (4) Upon filing a written request for exemption with the office, the following
94 employees shall be exempt from coverage under this system:

- 95 (a) a full-time student or the spouse of a full-time student and individuals employed in
96 a trainee relationship;
- 97 (b) an elected official;
- 98 (c) an executive department head of the state, a member of the State Tax Commission,
99 a member of the Public Service Commission, and a member of a full-time or part-time board or
100 commission;
- 101 (d) an employee of the Governor's Office of Management and Budget;
- 102 (e) an employee of the Governor's Office of Economic Development;
- 103 (f) an employee of the Commission on Criminal and Juvenile Justice;
- 104 (g) an employee of the Governor's Office;
- 105 (h) an employee of the State Auditor's Office;
- 106 (i) an employee of the State Treasurer's Office;
- 107 (j) any other member who is permitted to make an election under Section 49-11-406;
- 108 (k) a person appointed as a city manager or chief city administrator or another person
109 employed by a municipality, county, or other political subdivision, who is an at-will employee;
110 and
- 111 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
112 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
113 membership in a labor organization that provides retirement benefits to its members.
- 114 (5) (a) Each participating employer shall prepare a list designating those positions
115 eligible for exemption under Subsection (4).
- 116 (b) An employee may not be exempted unless the employee is employed in an
117 exempted position designated by the participating employer.
- 118 (6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a
119 municipality, county, or political subdivision may not exempt a total of more than 50 positions
120 or a number equal to 10% of the employees of the municipality, county, or political subdivision
121 whichever is ~~less~~ less.
- 122 (b) A municipality, county, or political subdivision may exempt at least one regular
123 full-time employee.
- 124 (7) Each participating employer shall:
- 125 (a) file employee exemptions annually with the office; and

126 (b) update the employee exemptions in the event of any change.

127 (8) The office may make rules to implement this section.

128 Section 2. Section **49-13-203** is amended to read:

129 **49-13-203. Exclusions from membership in system.**

130 (1) The following employees are not eligible for service credit in this system:

131 (a) subject to the requirements of Subsection (2), an employee whose employment
132 status is temporary in nature due to the nature or the type of work to be performed;

133 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
134 education who participates in a retirement system with a public or private retirement system,
135 organization, or company designated by the State Board of Regents during any period in which
136 required contributions based on compensation have been paid on behalf of the employee by the
137 employer;

138 (c) an employee serving as an exchange employee from outside the state;

139 (d) an executive department head of the state or a legislative director, senior executive
140 employed by the governor's office, a member of the State Tax Commission, a member of the
141 Public Service Commission, and a member of a full-time or part-time board or commission
142 who files a formal request for exemption;

143 (e) an employee of the Department of Workforce Services who is covered under
144 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

145 (f) an employee who is employed with an employer that has elected to be excluded
146 from participation in this system under Subsection 49-13-202(5), effective on or after the date
147 of the employer's election under Subsection 49-13-202(5); or

148 (g) an employee who is employed with a withdrawing entity that has elected, prior to
149 January 1, 2017, to exclude new employees from participation in this system under Subsection
150 49-11-623(3).

151 (2) If an employee whose status is temporary in nature due to the nature of type of
152 work to be performed:

153 (a) is employed for a term that exceeds six months and the employee otherwise
154 qualifies for service credit in this system, the participating employer shall report and certify to
155 the office that the employee is a regular full-time employee effective the beginning of the
156 seventh month of employment; or

157 (b) was previously terminated prior to being eligible for service credit in this system
158 and is reemployed within three months of termination by the same participating employer, the
159 participating employer shall report and certify that the member is a regular full-time employee
160 when the total of the periods of employment equals six months and the employee otherwise
161 qualifies for service credits in this system.

162 (3) (a) Upon cessation of the participating employer contributions, an employee under
163 Subsection (1)(b) is eligible for service credit in this system.

164 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
165 credit earned by an employee under this chapter before the date of the election under
166 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

167 (4) Upon filing a written request for exemption with the office, the following
168 employees shall be exempt from coverage under this system:

169 (a) a full-time student or the spouse of a full-time student and individuals employed in
170 a trainee relationship;

171 (b) an elected official;

172 (c) an executive department head of the state, a member of the State Tax Commission,
173 a member of the Public Service Commission, and a member of a full-time or part-time board or
174 commission;

175 (d) an employee of the Governor's Office of Management and Budget;

176 (e) an employee of the Governor's Office of Economic Development;

177 (f) an employee of the Commission on Criminal and Juvenile Justice;

178 (g) an employee of the Governor's Office;

179 (h) an employee of the State Auditor's Office;

180 (i) an employee of the State Treasurer's Office;

181 (j) any other member who is permitted to make an election under Section 49-11-406;

182 (k) a person appointed as a city manager or chief city administrator or another person
183 employed by a municipality, county, or other political subdivision, who is an at-will employee;

184 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
185 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
186 membership in a labor organization that provides retirement benefits to its members; and

187 (m) an employee of the Utah Science Technology and Research Initiative created under

188 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

189 (5) (a) Each participating employer shall prepare a list designating those positions
190 eligible for exemption under Subsection (4).

191 (b) An employee may not be exempted unless the employee is employed in a position
192 designated by the participating employer.

193 (6) (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a
194 municipality, county, or political subdivision may not exempt a total of more than 50 positions
195 or a number equal to 10% of the employees of the municipality, county, or political
196 subdivision, whichever is ~~[lesser]~~ less.

197 (b) A municipality, county, or political subdivision may exempt at least one regular
198 full-time employee.

199 (7) Each participating employer shall:

200 (a) file employee exemptions annually with the office; and

201 (b) update the employee exemptions in the event of any change.

202 (8) The office may make rules to implement this section.

203 Section 3. Section **49-22-201** is amended to read:

204 **49-22-201. System membership -- Eligibility.**

205 (1) Beginning July 1, 2011, a participating employer shall participate in this system.

206 (2) (a) A person initially entering regular full-time employment with a participating
207 employer on or after July 1, 2011, who does not have service credit accrued before July 1,
208 2011, in a Tier I system or plan administered by the board, is eligible:

209 (i) as a member for service credit and defined contributions under the Tier II hybrid
210 retirement system established by Part 3, Tier II Hybrid Retirement System; or

211 (ii) as a participant for defined contributions under the Tier II defined contribution plan
212 established by Part 4, Tier II Defined Contribution Plan.

213 (b) A person initially entering regular full-time employment with a participating
214 employer on or after July 1, 2011, shall:

215 (i) make an election to participate in the system created under this chapter [~~within 30~~
216 ~~days from the date of eligibility for accrual of benefits~~]:

217 (A) as a member for service credit and defined contributions under the Tier II hybrid
218 retirement system established by Part 3, Tier II Hybrid Retirement System; or

219 (B) as a participant for defined contributions under the Tier II defined contribution plan
220 established by Part 4, Tier II Defined Contribution Plan; and

221 (ii) electronically submit to the office notification of the member's election under
222 Subsection (2)(b)(i) in a manner approved by the office.

223 (c) An election made by a person initially entering regular full-time employment with a
224 participating employer under this Subsection (2) is irrevocable beginning one year from the
225 date of eligibility for accrual of benefits.

226 (d) If no election is made under Subsection (2)(b)(i), the person shall become a
227 member eligible for service credit and defined contributions under the Tier II hybrid retirement
228 system established by Part 3, Tier II Hybrid Retirement System.

229 (3) Notwithstanding the provisions of this section and except as provided in Subsection
230 (4), an elected official initially entering office on or after July 1, 2011:

231 (a) is only eligible to participate in the Tier II defined contribution plan established
232 under Chapter 22, Part 4, Tier II Defined Contribution Plan; and

233 (b) is not eligible to participate in the Tier II hybrid retirement system established
234 under Chapter 22, Part 3, Tier II Hybrid Retirement System.

235 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected
236 official initially entering office on or after July 1, 2011, who has service credit accrued before
237 July 1, 2011:

238 (a) in a Tier I retirement system or plan administered by the board shall continue in the
239 Tier I system or plan for which the legislator or full-time elected official is eligible; or

240 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which
241 the legislator or full-time elected official is eligible.

242 Section 4. Section **49-22-203** is amended to read:

243 **49-22-203. Exclusions from membership in system.**

244 (1) The following employees are not eligible for service credit in this system:

245 (a) subject to the requirements of Subsection (2), an employee whose employment
246 status is temporary in nature due to the nature or the type of work to be performed;

247 (b) except as provided under Subsection (3), an employee of an institution of higher
248 education who participates in a retirement system with a public or private retirement system,
249 organization, or company designated by the State Board of Regents during any period in which

250 required contributions based on compensation have been paid on behalf of the employee by the
251 employer;

252 (c) an employee serving as an exchange employee from outside the state;

253 (d) an employee of the Department of Workforce Services who is covered under
254 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; ~~or~~

255 (e) an employee who is employed with a withdrawing entity that has elected, prior to
256 January 1, 2017, to exclude new employees from participation in this system under Subsection
257 49-11-623(3)~~[-]~~; or

258 (f) a person who files a written request for exemption with the office under Section
259 49-22-205.

260 (2) If an employee whose status is temporary in nature due to the nature of type of
261 work to be performed:

262 (a) is employed for a term that exceeds six months and the employee otherwise
263 qualifies for service credit in this system, the participating employer shall report and certify to
264 the office that the employee is a regular full-time employee effective the beginning of the
265 seventh month of employment; or

266 (b) was previously terminated prior to being eligible for service credit in this system
267 and is reemployed within three months of termination by the same participating employer, the
268 participating employer shall report and certify that the member is a regular full-time employee
269 when the total of the periods of employment equals six months and the employee otherwise
270 qualifies for service credits in this system.

271 (3) Upon cessation of the participating employer contributions, an employee under
272 Subsection (1)(b) is eligible for service credit in this system.

273 Section 5. Section **49-22-205** is enacted to read:

274 **49-22-205. Exemptions from participation in system.**

275 (1) Upon filing a written request for exemption with the office, the following
276 employees are exempt from participation in the system as provided in this section:

277 (a) an elected official;

278 (b) an executive department head of the state;

279 (c) a member of the State Tax Commission;

280 (d) a member of the Public Service Commission;

- 281 (e) a member of a full-time or part-time board or commission;
282 (f) an employee of the Governor's Office of Management and Budget;
283 (g) an employee of the Governor's Office of Economic Development;
284 (h) an employee of the Commission on Criminal and Juvenile Justice;
285 (i) an employee of the Governor's Office;
286 (j) an employee of the State Auditor's Office;
287 (k) an employee of the State Treasurer's Office;
288 (l) any other member who is permitted to make an election under Section 49-11-406;
289 (m) a person appointed as a city manager or appointed as a city administrator or
290 another at-will employee of a municipality, county, or other political subdivision;
291 (n) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
292 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
293 membership in a labor organization that provides retirement benefits to its members; and
294 (o) an employee of the Utah Science Technology and Research Initiative created under
295 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- 296 (2) (a) A participating employer shall prepare a list designating those positions eligible
297 for exemption under Subsection (1).
- 298 (b) An employee may not be exempted unless the employee is employed in a position
299 designated by the participating employer under Subsection (1).
- 300 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a
301 municipality, county, or political subdivision may not exempt a total of more than 50 positions
302 or a number equal to 10% of the employees of the municipality, county, or political
303 subdivision, whichever is less.
- 304 (b) A municipality, county, or political subdivision may exempt at least one regular
305 full-time employee.
- 306 (4) Each participating employer shall:
307 (a) file each employee exemption annually with the office; and
308 (b) update an employee exemption in the event of any change.
- 309 (5) Beginning on the effective date of the exemption for an employee who elects to be
310 exempt in accordance with Subsection (1):
311 (a) for a member of the Tier II defined contribution plan;

312 (i) the participating employer shall contribute the nonelective contribution and the
313 amortization rate described in Section 49-22-401, except that the nonelective contribution is
314 exempt from the vesting requirements of Subsection 49-22-401(3)(a); and

315 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

316 (b) for a member of the Tier II hybrid retirement system:

317 (i) the participating employer shall contribute the nonelective contribution and the
318 amortization rate described in Section 49-22-401, except that the contribution is exempt from
319 the vesting requirements of Subsection 49-22-401(3)(a);

320 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

321 (iii) the member is not eligible for additional service credit in the system.

322 (6) If an employee who is a member of the Tier II hybrid retirement system
323 subsequently revokes the election of exemption made under Subsection (1), the provisions
324 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee
325 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

326 (7) (a) All employer contributions made on behalf of an employee shall be invested in
327 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election
328 period under Subsection 49-22-201(2)(c) is expired if the employee:

329 (i) elects to be exempt in accordance with Subsection (1); and

330 (ii) continues employment with the participating employer through the one-year
331 election period under Subsection 49-22-201(2)(c).

332 (b) An employee is entitled to receive a distribution of the employer contributions
333 made on behalf of the employee and all associated investment gains and losses if the employee:

334 (i) elects to be exempt in accordance with Subsection (1); and

335 (ii) terminates employment prior to the one-year election period under Subsection
336 49-22-201(2)(c).

337 (8) (a) The office shall make rules to implement this section.

338 (b) The rules made under this Subsection (8) shall include provisions to allow the
339 exemption provided under Subsection (1) to apply to all contributions made beginning on or
340 after July 1, 2011, on behalf of an exempted employee who began the employment before May
341 8, 2012.

342 Section 6. Section **49-22-303** is amended to read:

343 **49-22-303. Defined contribution benefit established -- Contribution by employer**
344 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
345 **plans.**

346 (1) (a) A participating employer shall make a nonelective contribution on behalf of
347 each regular full-time employee who is a member of this system in an amount equal to 10%
348 minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a) of the
349 member's compensation to a defined contribution plan qualified under Section 401(k) of the
350 Internal Revenue Code which:

351 (i) is sponsored by the board; and

352 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

353 (b) The member may make voluntary deferrals to:

354 (i) the qualified 401(k) plan which receives the employer contribution described in this
355 Subsection (1); or

356 (ii) at the member's option, another defined contribution plan established by the
357 participating employer.

358 (2) (a) The total amount contributed by the participating employer under Subsection
359 (1)(a), including associated investment gains and losses, vests to the member upon accruing
360 four years of service credit under this title.

361 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
362 member's benefit immediately and is nonforfeitable.

363 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be
364 invested in a default option selected by the board until the member is vested in accordance with
365 Subsection (2)(a).

366 (b) A member may direct the investment of contributions made by a participating
367 employer under Subsection (1)(a) only after the contributions have vested in accordance with
368 Subsection (2)(a).

369 (c) A member may direct the investment of contributions made by the member under
370 Subsection (1)(b).

371 (4) No loans shall be available from contributions made by a participating employer
372 under Subsection (1)(a).

373 (5) No hardship distributions shall be available from contributions made by a

374 participating employer under Subsection (1)(a).

375 (6) (a) Except as provided in Subsection (6)(b) and Section 49-22-205, if a member
376 terminates employment with a participating employer prior to the vesting period described in
377 Subsection (2)(a), all contributions, including associated investment gains and losses, made by
378 a participating employer on behalf of the member under Subsection (1)(a) are subject to
379 forfeiture.

380 (b) If a member who terminates employment with a participating employer prior to the
381 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
382 another participating employer within 10 years of the termination date of the previous
383 employment:

384 (i) all contributions made by the previous participating employer on behalf of the
385 member, including associated investment gains and losses, shall be reinstated upon
386 employment as a regular full-time employee; and

387 (ii) the length of time that the member worked with the previous employer shall be
388 included in determining whether the member has completed the vesting period under
389 Subsection (2)(a).

390 (c) The office shall establish a forfeiture account and shall specify the uses of the
391 forfeiture account, which may include an offset against administrative costs or employer
392 contributions made under this section.

393 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
394 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
395 Internal Revenue Code.

396 (8) The office may take any action which in its judgment is necessary to maintain the
397 tax-qualified status of its 401(k) defined contribution plan under federal law.

398 Section 7. Section **49-22-401** is amended to read:

399 **49-22-401. Contributions -- Rates.**

400 (1) Up to the amount allowed by federal law, the participating employer shall make a
401 nonelective contribution of 10% of the participant's compensation to a defined contribution
402 plan.

403 (2) (a) The participating employer shall contribute the 10% nonelective contribution
404 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the

405 Internal Revenue Code which:

406 (i) is sponsored by the board; and

407 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

408 (b) The member may make voluntary deferrals to:

409 (i) the qualified 401(k) plan which receives the employer contribution described in this

410 Subsection (2); or

411 (ii) at the member's option, another defined contribution plan established by the
412 participating employer.

413 (c) In addition to the percent specified under Subsection (2)(a), the participating
414 employer shall pay the corresponding Tier I system amortization rate of the employee's
415 compensation to the office to be applied to the employer's corresponding Tier I system liability.

416 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
417 participating employer under Subsection (2)(a) vests to the member upon accruing four years
418 employment as a regular full-time employee under this title.

419 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
420 member's benefit immediately and is nonforfeitable.

421 (c) Upon filing a written request for exemption with the office, [~~the following~~
422 ~~employees are~~] an eligible employee is exempt from the vesting requirements of Subsection
423 (3)(a)[:] in accordance with Section 49-22-205.

424 [~~(i) an executive department head of the state;~~]

425 [~~(ii) a member of the State Tax Commission;~~]

426 [~~(iii) a member of the Public Service Commission;~~]

427 [~~(iv) an employee of the Governor's Office of Management and Budget;~~]

428 [~~(v) an employee of the Governor's Office of Economic Development;~~]

429 [~~(vi) an employee of the Commission on Criminal and Juvenile Justice;~~]

430 [~~(vii) an employee of the Governor's Office;~~]

431 [~~(viii) an employee of the State Auditor's Office;~~]

432 [~~(ix) an employee of the State Treasurer's Office;~~]

433 [~~(x) a person appointed as a city manager or appointed as a city administrator or
434 another at-will employee of a municipality, county, or other political subdivision;~~]

435 [~~(xi) an employee of an interlocal cooperative agency created under Title 11, Chapter~~]

436 ~~13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided~~
437 ~~through membership in a labor organization that provides retirement benefits to its members;~~
438 ~~and]~~

439 ~~[(xii) an employee of the Utah Science Technology and Research Initiative created~~
440 ~~under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.]~~

441 ~~[(d) (i) A participating employer shall prepare a list designating those positions eligible~~
442 ~~for exemption under Subsection (3)(c).]~~

443 ~~[(ii) An employee may not be exempted unless the employee is employed in a position~~
444 ~~designated by the participating employer under Subsection (3)(c).]~~

445 ~~[(e) (i) All employer contributions made on behalf of an employee shall be invested in~~
446 ~~accordance with Subsection 49-22-303(3)(a) until the one-year election period under~~
447 ~~Subsection 49-22-201(2)(c) is expired if the employee:]~~

448 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~

449 ~~[(B) continues employment with the participating employer through the one-year~~
450 ~~election period under Subsection 49-22-201(2)(c).]~~

451 ~~[(ii) An employee is entitled to receive a distribution of the employer contributions~~
452 ~~made on behalf of the employee and all associated investment gains and losses if the~~
453 ~~employee:]~~

454 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~

455 ~~[(B) terminates employment prior to the one-year election period under Subsection~~
456 ~~49-22-201(2)(c).]~~

457 ~~[(f) (i) In accordance with this section, a municipality, county, or political subdivision~~
458 ~~may not exempt more than 50 positions or a number equal to 10% of the employees of the~~
459 ~~municipality, county, or political subdivision, whichever is less.]~~

460 ~~[(ii) A municipality, county, or political subdivision may exempt at least one regular~~
461 ~~full-time employee.]~~

462 ~~[(g) Each participating employer shall:]~~

463 ~~[(i) file each employee exemption annually with the office; and]~~

464 ~~[(ii) update an employee exemption in the event of any change.]~~

465 ~~[(h) (i) The office shall make rules to implement this Subsection (3).]~~

466 ~~[(ii) The rules made under Subsection (3)(h)(i) shall include provisions to allow the~~

467 ~~exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or~~
468 ~~after July 1, 2011, on behalf of an exempted employee who began the employment before May~~
469 ~~8, 2012.]~~

470 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
471 invested in a default option selected by the board until the member is vested in accordance with
472 Subsection (3)(a).

473 (b) A member may direct the investment of contributions including associated
474 investment gains and losses made by a participating employer under Subsection (2)(a) only
475 after the contributions have vested in accordance with Subsection (3)(a).

476 (c) A member may direct the investment of contributions made by the member under
477 Subsection (3)(b).

478 (5) No loans shall be available from contributions made by a participating employer
479 under Subsection (2)(a).

480 (6) No hardship distributions shall be available from contributions made by a
481 participating employer under Subsection (2)(a).

482 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
483 with a participating employer prior to the vesting period described in Subsection (3)(a), all
484 contributions made by a participating employer on behalf of the member including associated
485 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

486 (b) If a member who terminates employment with a participating employer prior to the
487 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
488 another participating employer within 10 years of the termination date of the previous
489 employment:

490 (i) all contributions made by the previous participating employer on behalf of the
491 member including associated investment gains and losses shall be reinstated upon the member's
492 employment as a regular full-time employee; and

493 (ii) the length of time that the member worked with the previous employer shall be
494 included in determining whether the member has completed the vesting period under
495 Subsection (3)(a).

496 (c) The office shall establish a forfeiture account and shall specify the uses of the
497 forfeiture account, which may include an offset against administrative costs or employer

498 contributions made under this section.

499 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
500 any relevant information pertaining to the maintenance of its tax qualification under the
501 Internal Revenue Code.

502 (9) The office may take any action which in its judgment is necessary to maintain the
503 tax-qualified status of its 401(k) defined contribution plan under federal law.

504 Section 8. Section **49-22-503** is enacted to read:

505 **49-22-503. Death of members -- Exemption from vesting requirements for**
506 **employer nonelective contributions to defined contribution plan.**

507 (1) (a) If an active member dies, employer nonelective contributions made on behalf of
508 the employee to a defined contribution plan under Section 49-22-303 or 49-22-401 are exempt
509 from the vesting requirements of Subsections 49-22-303(2)(a) and 49-22-401(3)(a).

510 (b) The total amount of nonelective contributions made by the participating employer
511 vests to the member upon death and the member's beneficiary is entitled to receive a
512 distribution of the employer contributions made on behalf of the employee and all associated
513 investment gains and losses.

514 (2) Employer contributions vested and distributed under this section are in addition to
515 and separate from the benefits payable under Sections 49-22-501 and 49-22-502.

516 Section 9. Section **49-23-201** is amended to read:

517 **49-23-201. System membership -- Eligibility.**

518 (1) Beginning July 1, 2011, a participating employer that employs public safety service
519 employees or firefighter service employees shall participate in this system.

520 (2) (a) A public safety service employee or a firefighter service employee initially
521 entering employment with a participating employer on or after July 1, 2011, who does not have
522 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,
523 is eligible:

524 (i) as a member for service credit and defined contributions under the Tier II hybrid
525 retirement system established by Part 3, Tier II Hybrid Retirement System; or

526 (ii) as a participant for defined contributions under the Tier II defined contributions
527 plan established by Part 4, Tier II Defined Contribution Plan.

528 (b) A public safety service employee or a firefighter service employee initially entering

529 employment with a participating employer on or after July 1, 2011, shall:

530 (i) make an election to participate in the system created under this chapter [~~within 30~~
531 ~~days from the date of eligibility for accrual of benefits~~]:

532 (A) as a member for service credit and defined contributions under the Tier II hybrid
533 retirement system established by Part 3, Tier II Hybrid Retirement System; or

534 (B) as a participant for defined contributions under the Tier II defined contribution plan
535 established by Part 4, Tier II Defined Contribution Plan; and

536 (ii) electronically submit to the office notification of the member's election under
537 Subsection (2)(b)(i) in a manner approved by the office.

538 (c) An election made by a public safety service employee or firefighter service
539 employee initially entering employment with a participating employer under this Subsection (2)
540 is irrevocable beginning one year from the date of eligibility for accrual of benefits.

541 (d) If no election is made under Subsection (2)(b)(i), the public safety service employee
542 or firefighter service employee shall become a member eligible for service credit and defined
543 contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid
544 Retirement System.

545 Section 10. Section **49-23-203** is enacted to read:

546 **49-23-203. Exemptions from participation in system.**

547 (1) Upon filing a written request for exemption with the office, the following
548 employees are exempt from participation in the system as provided in this section if the
549 employee is a public safety service employee and is:

550 (a) an executive department head of the state;

551 (b) an elected or appointed sheriff of a county; or

552 (c) an elected or appointed chief of police of a municipality.

553 (2) (a) A participating employer shall prepare a list designating those positions eligible
554 for exemption under Subsection (1).

555 (b) An employee may not be exempted unless the employee is employed in a position
556 designated by the participating employer under Subsection (1).

557 (3) Each participating employer shall:

558 (a) file each employee exemption annually with the office; and

559 (b) update an employee exemption in the event of any change.

560 (4) Beginning on the effective date of the exemption for an employee who elects to be
561 exempt in accordance with Subsection (1):

562 (a) for a member of the Tier II defined contribution plan:

563 (i) the participating employer shall contribute the nonelective contribution and the
564 amortization rate described in Section 49-23-401, except that the contribution is exempt from
565 the vesting requirements of Subsection 49-23-401(3)(a); and

566 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

567 (b) for a member of the Tier II hybrid retirement system:

568 (i) the participating employer shall contribute the nonelective contribution and the
569 amortization rate described in Section 49-23-401, except that the contribution is exempt from
570 the vesting requirements of Subsection 49-23-401(3)(a);

571 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

572 (iii) the member is not eligible for additional service credit in the system.

573 (5) If an employee who is a member of the Tier II hybrid retirement system
574 subsequently revokes the election of exemption made under Subsection (1), the provisions
575 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee
576 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

577 (6) (a) All employer contributions made on behalf of an employee shall be invested in
578 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election
579 period under Subsection 49-23-201(2)(c) is expired if the employee:

580 (i) elects to be exempt in accordance with Subsection (1); and

581 (ii) continues employment with the participating employer through the one-year
582 election period under Subsection 49-23-201(2)(c).

583 (b) An employee is entitled to receive a distribution of the employer contributions
584 made on behalf of the employee and all associated investment gains and losses if the employee:

585 (i) elects to be exempt in accordance with Subsection (1); and

586 (ii) terminates employment prior to the one-year election period under Subsection
587 49-23-201(2)(c).

588 (7) (a) The office shall make rules to implement this section.

589 (b) The rules made under this Subsection (7) shall include provisions to allow the
590 exemption provided under Subsection (1) to apply to all contributions made beginning on or

591 after July 1, 2011, on behalf of an exempted employee who began the employment before May
592 8, 2012.

593 Section 11. Section **49-23-401** is amended to read:

594 **49-23-401. Contributions -- Rates.**

595 (1) Up to the amount allowed by federal law, the participating employer shall make a
596 nonelective contribution of 12% of the participant's compensation to a defined contribution
597 plan.

598 (2) (a) The participating employer shall contribute the 12% nonelective contribution
599 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
600 Internal Revenue Code which:

601 (i) is sponsored by the board; and

602 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

603 (b) The member may make voluntary deferrals to:

604 (i) the qualified 401(k) plan which receives the employer contribution described in this
605 Subsection (2); or

606 (ii) at the member's option, another defined contribution plan established by the
607 participating employer.

608 (c) In addition to the percent specified under Subsection (2)(a), the participating
609 employer shall pay the corresponding Tier I system amortization rate of the employee's
610 compensation to the office to be applied to the employer's corresponding Tier I system liability.

611 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
612 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
613 service credit under this title.

614 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
615 member's benefit immediately and is nonforfeitable.

616 (c) Upon filing a written request for exemption with the office, [~~the following~~
617 ~~employees are~~] an eligible employee is exempt from the vesting requirements of Subsection
618 (3)(a) [~~if the employee is a public safety service employee and is:~~] in accordance with Section
619 49-23-203.

620 [~~(i) an executive department head of the state;~~]

621 [~~(ii) an elected or appointed sheriff of a county; or~~]

622 ~~[(iii) an elected or appointed chief of police of a municipality.]~~

623 ~~[(d) (i) A participating employer shall prepare a list designating those positions eligible~~

624 ~~for exemption under Subsection (3)(c).]~~

625 ~~[(ii) An employee may not be exempted unless the employee is employed in a position~~

626 ~~designated by the participating employer under Subsection (3)(c).]~~

627 ~~[(e) (i) All employer contributions made on behalf of an employee shall be invested in~~

628 ~~accordance with Subsection 49-23-302(3)(a) until the one-year election period under~~

629 ~~Subsection 49-23-201(2)(c) is expired if the employee:]~~

630 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~

631 ~~[(B) continues employment with the participating employer through the one-year~~

632 ~~election period under Subsection 49-23-201(2)(c).]~~

633 ~~[(ii) An employee is entitled to receive a distribution of the employer contributions~~

634 ~~made on behalf of the employee and all associated investment gains and losses if the~~

635 ~~employee:]~~

636 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~

637 ~~[(B) terminates employment prior to the one-year election period under Subsection~~

638 ~~49-23-201(2)(c).]~~

639 ~~[(f) Each participating employer shall:]~~

640 ~~[(i) file each employee exemption annually with the office; and]~~

641 ~~[(ii) update an employee exemption in the event of any change.]~~

642 ~~[(g) (i) The office shall make rules to implement this Subsection (3).]~~

643 ~~[(ii) The rules made under Subsection (3)(g)(i) shall include provisions to allow the~~

644 ~~exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or~~

645 ~~after July 1, 2011, on behalf of an exempted employee who began the employment before May~~

646 ~~8, 2012.]~~

647 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be

648 invested in a default option selected by the board until the member is vested in accordance with

649 Subsection (3)(a).

650 (b) A member may direct the investment of contributions, including associated

651 investment gains and losses, made by a participating employer under Subsection (2)(a) only

652 after the contributions have vested in accordance with Subsection (3)(a).

653 (c) A member may direct the investment of contributions made by the member under
654 Subsection (3)(b).

655 (5) No loans shall be available from contributions made by a participating employer
656 under Subsection (2)(a).

657 (6) No hardship distributions shall be available from contributions made by a
658 participating employer under Subsection (2)(a).

659 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
660 with a participating employer prior to the vesting period described in Subsection (3)(a), all
661 contributions made by a participating employer on behalf of the member under Subsection
662 (2)(a), including associated investment gains and losses are subject to forfeiture.

663 (b) If a member who terminates employment with a participating employer prior to the
664 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
665 another participating employer within 10 years of the termination date of the previous
666 employment:

667 (i) all contributions made by the previous participating employer on behalf of the
668 member, including associated investment gains and losses, shall be reinstated upon the
669 member's employment as a regular full-time employee; and

670 (ii) the length of time that the member worked with the previous employer shall be
671 included in determining whether the member has completed the vesting period under
672 Subsection (3)(a).

673 (c) The office shall establish a forfeiture account and shall specify the uses of the
674 forfeiture account, which may include an offset against administrative costs of employer
675 contributions made under this section.

676 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
677 any relevant information pertaining to the maintenance of its tax qualification under the
678 Internal Revenue Code.

679 (9) The office may take any action which in its judgment is necessary to maintain the
680 tax-qualified status of its 401(k) defined contribution plan under federal law.

681 Section 12. Section **49-23-504** is enacted to read:

682 **49-23-504. Death of members -- Exemption from vesting requirements for**
683 **employer nonelective contributions to defined contribution plan.**

684 (1) (a) If an active member dies, employer nonelective contributions made on behalf of
685 the employee to a defined contribution plan under Section 49-23-302 or 49-23-401 are exempt
686 from the vesting requirements of Subsections 49-23-302(2)(a) and 49-23-401(3)(a).

687 (b) The total amount of nonelective contributions made by the participating employer
688 vests to the member upon death and the member's beneficiary is entitled to receive a
689 distribution of the employer contributions made on behalf of the employee and all associated
690 investment gains and losses.

691 (2) Employer contributions vested and distributed under this section are in addition to
692 and separate from the benefits payable under Sections 49-23-501, 49-23-502 and 49-23-503.