

RETIREMENT SYSTEMS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending certain retirement provisions.

Highlighted Provisions:

This bill:

- ▶ clarifies retiree reporting provisions to the Utah State Retirement Office on the status of the reemployment;
- ▶ allows Utah Retirement Systems to make payments to a deceased member's beneficiaries after 30 days instead of three months after the date of death;
- ▶ amends the definition of "final average salary" to specify its basis is contract year for educational institutions, state fiscal year for judges, and calendar year for all other participating employers;
- ▶ clarifies that a public safety employee who is transferred or promoted to an administration position within the same department primarily to manage or supervise public safety service employees will continue to earn public safety service credit;
- ▶ addresses references to death or disability;
- ▶ provides that a person's retirement date is among the circumstances in which a person qualified for a monthly disability benefit will no longer receive the benefit;
- ▶ provides that for an elected official under Tier II retirement, the total amount contributed by the participating employer and the total amount contributed by the elected official vests immediately;
- ▶ clarifies four-year vesting provisions for Tier II defined contribution benefits;
- ▶ repeals provisions that require the Utah State Retirement Office to include accrued earnings in Unused Sick Leave Retirement Program II; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256

39 **49-11-609**, as last amended by Laws of Utah 2005, Chapter 116

40 **49-12-102**, as last amended by Laws of Utah 2015, Chapter 243

41 **49-13-102**, as last amended by Laws of Utah 2014, Chapter 15

42 **49-14-102**, as last amended by Laws of Utah 2015, Chapter 463

43 **49-14-201**, as last amended by Laws of Utah 2015, Chapters 100 and 463

44 **49-15-102**, as last amended by Laws of Utah 2015, Chapter 463

45 **49-15-201**, as last amended by Laws of Utah 2015, Chapters 100 and 463

46 **49-16-102**, as last amended by Laws of Utah 2015, Chapter 254

47 **49-17-102**, as last amended by Laws of Utah 2008, Chapter 3

48 **49-18-102**, as last amended by Laws of Utah 2008, Chapter 3

49 **49-21-403**, as last amended by Laws of Utah 2013, Chapter 316

50 **49-22-102**, as last amended by Laws of Utah 2013, Chapters 109 and 127

51 **49-22-201**, as last amended by Laws of Utah 2015, Chapter 315

52 **49-22-205**, as enacted by Laws of Utah 2015, Chapter 315

53 **49-22-303**, as last amended by Laws of Utah 2015, Chapter 315

54 **49-22-401**, as last amended by Laws of Utah 2015, Chapter 315

55 **49-23-102**, as last amended by Laws of Utah 2015, Chapters 254 and 463

56 **49-23-302**, as last amended by Laws of Utah 2011, Chapter 439

57 **49-23-401**, as last amended by Laws of Utah 2015, Chapter 315

58 **67-19-14.4**, as last amended by Laws of Utah 2013, Chapter 277

59

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

61 Section 1. Section **49-11-505** is amended to read:

62 **49-11-505. Reemployment of a retiree -- Restrictions.**

63 (1) (a) For purposes of this section, "retiree":

- 64 (i) means a person who:
- 65 (A) retired from a participating employer; and
- 66 (B) begins reemployment on or after July 1, 2010, with a participating employer;
- 67 (ii) does not include a person:
- 68 (A) who was reemployed by a participating employer before July 1, 2010; and
- 69 (B) whose participating employer that reemployed the person under Subsection
- 70 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with
- 71 Section 49-11-621 after July 1, 2010; and
- 72 (iii) does not include a person who is reemployed as an active senior judge or an active
- 73 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by
- 74 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.
- 75 (b) (i) This section does not apply to employment as an elected official if the elected
- 76 official's position is not full time as certified by the participating employer.
- 77 (ii) The provisions of this section apply to an elected official whose elected position is
- 78 full time as certified by the participating employer.
- 79 (c) (i) This section does not apply to employment as a part-time appointed board
- 80 member who does not receive any remuneration, stipend, or other benefit for the part-time
- 81 appointed board member's service.
- 82 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does
- 83 not include receipt of per diem and travel expenses up to the amounts established by the
- 84 Division of Finance in:
- 85 (A) Section 63A-3-106;
- 86 (B) Section 63A-3-107; and
- 87 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
- 88 63A-3-107.
- 89 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
- 90 means a person who is employed by a participating employer and who performs emergency
- 91 services for another participating employer that is a different agency in which the person:
- 92 (A) has been trained in techniques and skills required for the service the person
- 93 provides to the participating employer;
- 94 (B) continues to receive regular training required for the service;

95 (C) is on the rolls as a trained affiliated emergency services worker of the participating
96 employer; and

97 (D) provides ongoing service for a participating employer, which service may include
98 service as a volunteer firefighter, reserve law enforcement officer, search and rescue personnel,
99 emergency medical technician, ambulance personnel, park ranger, or public utilities worker.

100 (ii) A person who performs work or service but does not meet the requirements of
101 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
102 Subsection (1)(d).

103 (iii) The office may not cancel the retirement allowance of a retiree who is employed as
104 an affiliated emergency services worker within one year of the retiree's retirement date if the
105 affiliated emergency services worker does not receive any compensation, except for:

106 (A) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money
107 or cash equivalent payment not tied to productivity and paid periodically for services;

108 (B) a length-of-service award;

109 (C) insurance policy premiums paid by the participating employer in the event of death
110 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

111 (D) reimbursement of expenses incurred in the performance of duties.

112 (iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any
113 discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

114 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
115 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year
116 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
117 determined by the board.

118 (vi) The office shall cancel the retirement allowance of a retiree for the remainder of
119 the calendar year if employment as an affiliated emergency services worker with a participating
120 employer exceeds the limitation under Subsection (1)(d)(iv).

121 (vii) If a retiree is employed as an affiliated emergency services worker under the
122 provisions of Subsection (1)(d), the termination date of the employment as an affiliated
123 emergency services worker, as confirmed in writing by the participating employer, is
124 considered the retiree's retirement date for the purpose of calculating the separation
125 requirement under Subsection (3)(a).

- 126 (2) A retiree may not for the same period of reemployment:
- 127 (a) (i) earn additional service credit; or
- 128 (ii) receive any retirement related contribution from a participating employer; and
- 129 (b) receive a retirement allowance.
- 130 (3) (a) Except as provided under Subsection (3)(b) or (10), the office shall cancel the
- 131 retirement allowance of a retiree if the reemployment with a participating employer begins
- 132 within one year of the retiree's retirement date.
- 133 (b) The office may not cancel the retirement allowance of a retiree who is reemployed
- 134 with a participating employer within one year of the retiree's retirement date if:
- 135 (i) the retiree is not reemployed by a participating employer for a period of at least 60
- 136 days from the retiree's retirement date;
- 137 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree
- 138 does not receive any employer provided benefits, including:
- 139 (A) medical benefits;
- 140 (B) dental benefits;
- 141 (C) other insurance benefits except for workers' compensation as provided under Title
- 142 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
- 143 for Social Security, Medicare, and unemployment insurance; or
- 144 (D) paid time off, including sick, annual, or other type of leave; and
- 145 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in
- 146 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the
- 147 retiree's retirement allowance is based; or
- 148 (B) the retiree is reemployed as a judge as defined under Section 78A-11-102.
- 149 (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection
- 150 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar
- 151 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average
- 152 as determined by the board.
- 153 (d) The office shall cancel the retirement allowance of a retiree for the remainder of the
- 154 calendar year if the reemployment with a participating employer exceeds the limitation under
- 155 Subsection (3)(b)(iii)(A).
- 156 (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination

157 date of the reemployment, as confirmed in writing by the participating employer, is considered
158 the retiree's retirement date for the purpose of calculating the separation requirement under
159 Subsection (3)(a).

160 (f) If a retiree received a retirement allowance in error, due to reemployment in
161 violation of this section:

162 (i) the office shall cancel the retiree's retirement allowance; and

163 (ii) if the retiree applies for a future benefit, the office shall recover any overpayment in
164 accordance with the provisions of Section 49-11-607.

165 (4) If a reemployed retiree has completed the one-year separation from employment
166 with a participating employer required under Subsection (3)(a), the retiree may elect to:

167 (a) earn additional service credit in accordance with this title and cancel the retiree's
168 retirement allowance; or

169 (b) continue to receive the retiree's retirement allowance and forfeit any retirement
170 related contribution from the participating employer who reemployed the retiree.

171 (5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate,
172 as defined in Section 49-11-102, to be applied to the system that would have covered the retiree
173 if the retiree's reemployed position were deemed to be an eligible, full-time position within that
174 system.

175 (b) A participating employer who reemploys a retiree shall contribute to the office the
176 amortization rate if the reemployed retiree:

177 (i) has completed the one-year separation from employment with a participating
178 employer required under Subsection (3)(a); and

179 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
180 allowance while reemployed.

181 (6) (a) A participating employer shall immediately notify the office:

182 (i) if the participating employer reemploys a retiree;

183 (ii) whether the reemployment is subject to Subsection (3)(b) or (4) of this section; and

184 (iii) of any election by the retiree under Subsection (4).

185 (b) A participating employer shall certify to the office whether the position of an
186 elected official is or is not full time.

187 (c) A participating employer is liable to the office for a payment or failure to make a

188 payment in violation of this section.

189 (d) If a participating employer fails to notify the office in accordance with this section,
190 the participating employer is immediately subject to a compliance audit by the office.

191 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
192 accordance with Subsection (7)(b) if the office receives notice or learns of:

193 (i) the reemployment of a retiree in violation of Subsection (3); or

194 (ii) the election of a reemployed retiree under Subsection (4)(a).

195 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
196 office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the
197 retiree to active member status on the first day of the month following the date of:

198 (i) reemployment if the retiree is subject to Subsection (3); or

199 (ii) an election by an employee under Subsection (4)(a).

200 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
201 position:

202 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

203 (ii) the participating employer shall pay the amortization rate to the office on behalf of
204 the retiree.

205 (8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date
206 of reemployment:

207 (i) is not entitled to a recalculated retirement benefit; and

208 (ii) will resume the allowance that was being paid at the time of cancellation.

209 (b) Subject to Subsection (2), a retiree who is reinstated to active membership under
210 Subsection (7) and who retires two or more years after the date of reinstatement to active
211 membership shall:

212 (i) resume receiving the allowance that was being paid at the time of cancellation; and

213 (ii) receive an additional allowance based on the formula in effect at the date of the
214 subsequent retirement for all service credit accrued between the first and subsequent retirement
215 dates.

216 (9) (a) A retiree subject to this section shall report to the office the status of the
217 reemployment under Subsection (1)(d), (3)₂ or (4).

218 (b) If the retiree fails to inform the office of an election under Subsection (4), the office

219 shall withhold one month's benefit for each month the retiree fails to inform the office under
220 Subsection (9)(a).

221 (10) A retiree shall be considered as having completed the one-year separation from
222 employment with a participating employer required under Subsection (3)(a), if the retiree:

223 (a) before retiring:

224 (i) was employed with a participating employer as a public safety service employee as
225 defined in Section 49-14-102, 49-15-102, or 49-23-102;

226 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury
227 resulting from external force or violence while performing the duties of the employment, and
228 for which injury the retiree would have been approved for total disability in accordance with
229 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
230 years of service are not considered;

231 (iii) had less than 30 years of service credit but had sufficient service credit to retire,
232 with an unreduced allowance making the public safety service employee ineligible for
233 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term
234 Disability Act, or a substantially similar long-term disability program; and

235 (iv) does not receive any long-term disability benefits from any participating employer;
236 and

237 (b) is reemployed by a different participating employer.

238 (11) The board may make rules to implement this section.

239 Section 2. Section **49-11-609** is amended to read:

240 **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**
241 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**
242 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**
243 **expenses.**

244 (1) As used in this section, "member" includes a member, retiree, participant, covered
245 individual, a spouse of a retiree participating in the insurance benefits created by Sections
246 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a
247 defined contribution account.

248 (2) The most recent beneficiary designations signed by the member and filed with the
249 office, including electronic records, at the time of the member's death are binding in the

250 payment of any benefits due under this title.

251 (3) (a) Except where an optional continuing benefit is chosen, or the law makes a
252 specific benefit designation to a dependent spouse, a member may revoke a beneficiary
253 designation at any time and may execute and file a different beneficiary designation with the
254 office.

255 (b) A change of beneficiary designation shall be completed on forms provided by the
256 office.

257 (4) (a) All benefits payable by the office may be paid or applied to the benefit of the
258 surviving next of kin of the deceased in the order of precedence established under Title 75,
259 Chapter 2, Intestate Succession and Wills, if:

260 (i) no beneficiary is designated or if all designated beneficiaries have predeceased the
261 member;

262 (ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by
263 the office within 12 months of the date a reasonable attempt is made by the office to locate the
264 beneficiaries; or

265 (iii) the beneficiary has not completed the forms necessary to pay the benefits within
266 six months of the date that beneficiary forms are sent to the beneficiary's last-known address.

267 (b) (i) A payment may not be made to a person included in any of the groups referred
268 to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups
269 preceding it.

270 (ii) Payment to a person in any group based upon receipt from the person of an
271 affidavit in a form satisfactory to the office that:

272 (A) there are no living individuals in the group preceding it;

273 (B) the probate of the estate of the deceased has not been commenced; and

274 (C) more than [~~three months~~] 30 days have elapsed since the date of death of the
275 decedent.

276 (5) Benefits paid under this section shall be:

277 (a) a full satisfaction and discharge of all claims for benefits under this title; and

278 (b) payable by reason of the death of the decedent.

279 Section 3. Section **49-12-102** is amended to read:

280 **49-12-102. Definitions.**

281 As used in this chapter:

282 (1) "Benefits normally provided":

283 (a) means a benefit offered by an employer, including:

284 (i) a leave benefit of any kind;

285 (ii) insurance coverage of any kind if the employer pays some or all of the premium for
286 the coverage;

287 (iii) employer contributions to a health savings account, health reimbursement account,
288 health reimbursement arrangement, or medical expense reimbursement plan; and

289 (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the
290 benefit; and

291 (b) does not include:

292 (i) a payment for Social Security;

293 (ii) workers' compensation insurance;

294 (iii) unemployment insurance;

295 (iv) a payment for Medicare;

296 (v) a payment or insurance required by federal or state law that is similar to a payment
297 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

298 (vi) any other benefit that state or federal law requires an employer to provide an
299 employee who would not otherwise be eligible to receive the benefit; or

300 (vii) any benefit that an employer provides an employee in order to avoid a penalty or
301 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health
302 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal
303 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

304 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
305 amount of payments made by a participating employer to a member of this system for services
306 rendered to the participating employer, including:

307 (i) bonuses;

308 (ii) cost-of-living adjustments;

309 (iii) other payments currently includable in gross income and that are subject to Social
310 Security deductions, including any payments in excess of the maximum amount subject to
311 deduction under Social Security law;

- 312 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
313 or other benefits authorized by federal law; and
- 314 (v) member contributions.
- 315 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
316 under Internal Revenue Code, Section 401(a)(17).
- 317 (c) "Compensation" does not include:
- 318 (i) the monetary value of remuneration paid in kind, including a residence or use of
319 equipment;
- 320 (ii) the cost of any employment benefits paid for by the participating employer;
- 321 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
322 otherwise ineligible for service credit;
- 323 (iv) any payments upon termination, including accumulated vacation, sick leave
324 payments, severance payments, compensatory time payments, or any other special payments; or
- 325 (v) any allowances or payments to a member for costs or expenses paid by the
326 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
327 housing costs, insurance costs, equipment costs, and dependent care costs.
- 328 (d) The executive director may determine if a payment not listed under this Subsection
329 (2) falls within the definition of compensation.
- 330 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
331 highest five years of annual compensation preceding retirement subject to Subsections (3)(a),
332 (b), (c), [~~and~~] (d), and (e).
- 333 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
334 compensation in any one of the years used may not exceed the previous year's compensation by
335 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
336 of the dollar during the previous year, as measured by a United States Bureau of Labor
337 Statistics Consumer Price Index average as determined by the board.
- 338 (b) In cases where the participating employer provides acceptable documentation to the
339 office, the limitation in Subsection (3)(a) may be exceeded if:
- 340 (i) the member has transferred from another agency; or
- 341 (ii) the member has been promoted to a new position.
- 342 (c) If the member retires more than six months from the date of termination of

343 employment, the member is considered to have been in service at the member's last rate of pay
344 from the date of the termination of employment to the effective date of retirement for purposes
345 of computing the member's final average salary only.

346 (d) If the member has less than five years of service credit in this system, final average
347 salary means the average annual compensation paid to the member during the full period of
348 service credit.

349 (e) The annual compensation used to calculate final average salary shall be based on:

350 (i) a calendar year for a member employed by a participating employer that is not an
351 educational institution; or

352 (ii) a contract year for a member employed by an educational institution.

353 (4) "Participating employer" means an employer which meets the participation
354 requirements of Sections 49-12-201 and 49-12-202.

355 (5) (a) "Regular full-time employee" means an employee whose term of employment
356 for a participating employer contemplates continued employment during a fiscal or calendar
357 year and whose employment normally requires an average of 20 hours or more per week,
358 except as modified by the board, and who receives benefits normally provided by the
359 participating employer.

360 (b) "Regular full-time employee" includes:

361 (i) a teacher whose term of employment for a participating employer contemplates
362 continued employment during a school year and who teaches half-time or more;

363 (ii) a classified school employee:

364 (A) who is hired before July 1, 2013; and

365 (B) whose employment normally requires an average of 20 hours per week or more for
366 a participating employer, regardless of benefits provided;

367 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
368 of January 1, 1990, as provided in Section 49-12-407;

369 (iv) a faculty member or employee of an institution of higher education who is
370 considered full-time by that institution of higher education; and

371 (v) an individual who otherwise meets the definition of this Subsection (5) who
372 performs services for a participating employer through a professional employer organization or
373 similar arrangement.

374 (c) "Regular full-time employee" does not include a classified school employee:

375 (i) (A) who is hired on or after July 1, 2013; and

376 (B) who does not receive benefits normally provided by the participating employer

377 even if the employment normally requires an average of 20 hours per week or more for a

378 participating employer; or

379 (ii) (A) who is hired before July 1, 2013;

380 (B) who did not qualify as a regular full-time employee before July 1, 2013;

381 (C) who does not receive benefits normally provided by the participating employer;

382 and

383 (D) whose employment hours are increased on or after July 1, 2013, to require an

384 average of 20 hours per week or more for a participating employer.

385 (6) "System" means the Public Employees' Contributory Retirement System created

386 under this chapter.

387 (7) "Years of service credit" means:

388 (a) a period consisting of 12 full months as determined by the board;

389 (b) a period determined by the board, whether consecutive or not, during which a

390 regular full-time employee performed services for a participating employer, including any time

391 the regular full-time employee was absent on a paid leave of absence granted by a participating

392 employer or was absent in the service of the United States government on military duty as

393 provided by this chapter; or

394 (c) the regular school year consisting of not less than eight months of full-time service

395 for a regular full-time employee of an educational institution.

396 Section 4. Section **49-13-102** is amended to read:

397 **49-13-102. Definitions.**

398 As used in this chapter:

399 (1) "Benefits normally provided" has the same meaning as defined in Section

400 49-12-102.

401 (2) (a) Except as provided in Subsection (2)(c), "compensation" means the total

402 amount of payments made by a participating employer to a member of this system for services

403 rendered to the participating employer, including:

404 (i) bonuses;

405 (ii) cost-of-living adjustments;
406 (iii) other payments currently includable in gross income and that are subject to Social
407 Security deductions, including any payments in excess of the maximum amount subject to
408 deduction under Social Security law; and

409 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
410 or other benefits authorized by federal law.

411 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
412 under Internal Revenue Code, Section 401(a)(17).

413 (c) "Compensation" does not include:

414 (i) the monetary value of remuneration paid in kind, including a residence or use of
415 equipment;

416 (ii) the cost of any employment benefits paid for by the participating employer;

417 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
418 otherwise ineligible for service credit;

419 (iv) any payments upon termination, including accumulated vacation, sick leave
420 payments, severance payments, compensatory time payments, or any other special payments; or

421 (v) any allowances or payments to a member for costs or expenses paid by the
422 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
423 housing costs, insurance costs, equipment costs, and dependent care costs.

424 (d) The executive director may determine if a payment not listed under this Subsection
425 (2) falls within the definition of compensation.

426 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
427 highest three years of annual compensation preceding retirement subject to [~~the following:~~]
428 Subsections (3)(a), (b), (c), and (d).

429 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
430 compensation in any one of the years used may not exceed the previous year's compensation by
431 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
432 of the dollar during the previous year, as measured by a United States Bureau of Labor
433 Statistics Consumer Price Index average as determined by the board.

434 (b) In cases where the participating employer provides acceptable documentation to the
435 office, the limitation in Subsection (3)(a) may be exceeded if:

436 (i) the member has transferred from another agency; or
437 (ii) the member has been promoted to a new position.
438 (c) If the member retires more than six months from the date of termination of
439 employment and for purposes of computing the member's final average salary only, the
440 member is considered to have been in service at the member's last rate of pay from the date of
441 the termination of employment to the effective date of retirement.

442 (d) The annual compensation used to calculate final average salary shall be based on:

443 (i) a calendar year for a member employed by a participating employer that is not an
444 educational institution; or

445 (ii) a contract year for a member employed by an educational institution.

446 (4) "Participating employer" means an employer which meets the participation
447 requirements of Sections 49-13-201 and 49-13-202.

448 (5) (a) "Regular full-time employee" means an employee whose term of employment
449 for a participating employer contemplates continued employment during a fiscal or calendar
450 year and whose employment normally requires an average of 20 hours or more per week,
451 except as modified by the board, and who receives benefits normally provided by the
452 participating employer.

453 (b) "Regular full-time employee" includes:

454 (i) a teacher whose term of employment for a participating employer contemplates
455 continued employment during a school year and who teaches half time or more;

456 (ii) a classified school employee:

457 (A) who is hired before July 1, 2013; and

458 (B) whose employment normally requires an average of 20 hours per week or more for
459 a participating employer, regardless of benefits provided;

460 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
461 of January 1, 1990, as provided in Section 49-13-407;

462 (iv) a faculty member or employee of an institution of higher education who is
463 considered full time by that institution of higher education; and

464 (v) an individual who otherwise meets the definition of this Subsection (5) who
465 performs services for a participating employer through a professional employer organization or
466 similar arrangement.

467 (c) "Regular full-time employee" does not include a classified school employee:

468 (i) (A) who is hired on or after July 1, 2013; and

469 (B) who does not receive benefits normally provided by the participating employer

470 even if the employment normally requires an average of 20 hours per week or more for a

471 participating employer; or

472 (ii) (A) who is hired before July 1, 2013;

473 (B) who did not qualify as a regular full-time employee before July 1, 2013;

474 (C) who does not receive benefits normally provided by the participating employer;

475 and

476 (D) whose employment hours are increased on or after July 1, 2013, to require an

477 average of 20 hours per week or more for a participating employer.

478 (6) "System" means the Public Employees' Noncontributory Retirement System.

479 (7) "Years of service credit" means:

480 (a) a period consisting of 12 full months as determined by the board;

481 (b) a period determined by the board, whether consecutive or not, during which a

482 regular full-time employee performed services for a participating employer, including any time

483 the regular full-time employee was absent on a paid leave of absence granted by a participating

484 employer or was absent in the service of the United States government on military duty as

485 provided by this chapter; or

486 (c) the regular school year consisting of not less than eight months of full-time service

487 for a regular full-time employee of an educational institution.

488 Section 5. Section **49-14-102** is amended to read:

489 **49-14-102. Definitions.**

490 As used in this chapter:

491 (1) (a) "Compensation" means the total amount of payments that are includable in

492 gross income which are received by a public safety service employee as base income for the

493 regularly scheduled work period. The participating employer shall establish the regularly

494 scheduled work period. Base income shall be determined prior to the deduction of member

495 contributions or any amounts the public safety service employee authorizes to be deducted for

496 salary deferral or other benefits authorized by federal law.

497 (b) "Compensation" includes performance-based bonuses and cost-of-living

498 adjustments.

499 (c) "Compensation" does not include:

500 (i) overtime;

501 (ii) sick pay incentives;

502 (iii) retirement pay incentives;

503 (iv) the monetary value of remuneration paid in kind, including a residence, use of
504 equipment or uniform, travel, or similar payments;

505 (v) a lump-sum payment or special payments covering accumulated leave; and

506 (vi) all contributions made by a participating employer under this system or under any
507 other employee benefit system or plan maintained by a participating employer for the benefit of
508 a member or participant.

509 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
510 under Internal Revenue Code Section 401(a)(17).

511 (2) "Dispatcher" means the same as that term is defined in Section 53-6-102.

512 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
513 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
514 [~~and~~], (b), and (c).

515 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
516 compensation in any one of the years used may not exceed the previous year's compensation by
517 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
518 of the dollar during the previous year, as measured by a United States Bureau of Labor
519 Statistics Consumer Price Index average as determined by the board.

520 (b) In cases where the participating employer provides acceptable documentation to the
521 office, the limitation in Subsection (3)(a) may be exceeded if:

522 (i) the public safety service employee has transferred from another agency; or

523 (ii) the public safety service employee has been promoted to a new position.

524 (c) The annual compensation used to calculate final average salary shall be based on:

525 (i) a calendar year for a member employed by a participating employer that is not an
526 educational institution; or

527 (ii) a contract year for a member employed by an educational institution.

528 (4) (a) "Line-of-duty death" means a death resulting from:

529 (i) external force, violence, or disease occasioned by an act of duty as a public safety
530 service employee; or

531 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
532 training or another strenuous activity required as an act of duty as a public safety service
533 employee.

534 (b) "Line-of-duty death" does not include a death that:

535 (i) occurs during an activity that is required as an act of duty as a public safety service
536 employee if the activity is not a strenuous activity, including an activity that is clerical,
537 administrative, or of a nonmanual nature;

538 (ii) occurs during the commission of a crime committed by the employee;

539 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
540 nonprescribed, contributes to the employee's death; or

541 (iv) occurs in a manner other than as described in Subsection (4)(a).

542 (5) "Participating employer" means an employer which meets the participation
543 requirements of Section 49-14-201.

544 (6) (a) "Public safety service" means employment normally requiring an average of
545 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

546 (i) law enforcement officer in accordance with Section 53-13-103;

547 (ii) correctional officer in accordance with Section 53-13-104;

548 (iii) special function officer approved in accordance with Sections 49-14-201 and
549 53-13-105;

550 (iv) dispatcher who is certified in accordance with Section 53-6-303; or

551 (v) full-time member of the Board of Pardons and Parole created under Section
552 77-27-2.

553 (b) Except as provided under Subsections (6)(a)(iv) and (v), "public safety service"
554 also requires that in the course of employment the employee's life or personal safety is at risk.

555 (c) Except for the minimum hour requirement, Subsections (6)(a) and (b) do not apply
556 to any person who was eligible for service credit in this system before January 1, 1984.

557 (7) "Public safety service employee" means an employee of a participating employer
558 who performs public safety service under this chapter.

559 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or

560 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
561 physical law enforcement, prison security, disaster relief, or other emergency response activity.

562 (b) "Strenuous activity" includes participating in a participating employer sanctioned
563 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

564 (9) "System" means the Public Safety Contributory Retirement System created under
565 this chapter.

566 (10) "Years of service credit" means the number of periods, each to consist of 12 full
567 months as determined by the board, whether consecutive or not, during which a public safety
568 service employee was employed by a participating employer, including time the public safety
569 service employee was absent in the service of the United States government on military duty.

570 Section 6. Section **49-14-201** is amended to read:

571 **49-14-201. System membership -- Eligibility.**

572 (1) Except as provided in Section 49-15-201, a public safety service employee of a
573 participating employer participating in this system is eligible for service credit in this system at
574 the earliest of:

575 (a) July 1, 1969, if the public safety service employee was employed by the
576 participating employer on July 1, 1969, and the participating employer was participating in this
577 system on that date;

578 (b) the date the participating employer begins participating in this system if the public
579 safety service employee was employed by the participating employer on that date; or

580 (c) the date the public safety service employee is employed by the participating
581 employer and is eligible to perform public safety service, except that a public safety service
582 employee initially entering employment with a participating employer on or after July 1, 2011,
583 who does not have service credit accrued before July 1, 2011, in a Tier I system or plan
584 administered by the board, may not participate in this system.

585 (2) (a) (i) A participating employer that has public safety service and firefighter service
586 employees that require cross-training and duty shall enroll those dual purpose employees in the
587 system in which the greatest amount of time is actually worked.

588 (ii) The employees shall either be full-time public safety service or full-time firefighter
589 service employees of the participating employer.

590 (b) (i) Prior to transferring a dual purpose employee from one system to another, the

591 participating employer shall receive written permission from the office.

592 (i) The office may request documentation to verify the appropriateness of the transfer.

593 (3) The board may combine or segregate the actuarial experience of participating
594 employers in this system for the purpose of setting contribution rates.

595 (4) (a) (i) Each participating employer participating in this system shall annually
596 submit to the office a schedule indicating the positions to be covered under this system in
597 accordance with this chapter.

598 (ii) The office may require documentation to justify the inclusion of any position under
599 this system.

600 (b) If there is a dispute between the office and a participating employer or employee
601 over any position to be covered, the disputed position shall be submitted to the Peace Officer
602 Standards and Training Council established under Section 53-6-106 for determination.

603 (c) (i) The Peace Officer Standards and Training Council's authority to decide
604 eligibility for public safety service credit is limited to claims for coverage under this system for
605 time periods after July 1, 1989.

606 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
607 to service credit earned in another system prior to July 1, 1989.

608 (iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer
609 Standards and Training Council granting a position coverage under this system may only be
610 applied prospectively from the date of that decision.

611 (iv) A decision of the Peace Officer Standards and Training Council granting a position
612 coverage under this system may be applied retroactively only if:

613 (A) the participating employer covered other similarly situated positions under this
614 system during the time period in question; and

615 (B) the position otherwise meets all eligibility requirements for receiving service credit
616 in this system during the period for which service credit is to be granted.

617 (5) The Peace Officer Standards and Training Council may use a subcommittee to
618 provide a recommendation to the council in determining disputes between the office and a
619 participating employer or employee over a position to be covered under this system.

620 (6) The Peace Officer Standards and Training Council shall comply with Title 63G,
621 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

622 (7) A public safety employee who is transferred or promoted to an administration
623 position [~~not covered by this system~~] requiring the performance of duties that consist primarily
624 of management or supervision of public safety service employees shall continue to earn public
625 safety service credit in this system as long as the employee remains employed in the same
626 department.

627 (8) An employee of the Department of Corrections shall continue to earn public safety
628 service credit in this system if:

629 (a) the employee's position is no longer covered under this system for new employees
630 hired on or after July 1, 2015; and

631 (b) the employee:

632 (i) remains employed by the Department of Corrections;

633 (ii) meets the eligibility requirements of this system;

634 (iii) was hired into a position covered by this system prior to July 1, 2015; and

635 (iv) has not had a break in service on or after July 1, 2015.

636 (9) An employee who is reassigned to the Department of Technology Services or to the
637 Department of Human Resource Management, and who was a member of this system, is
638 entitled to remain a member of this system.

639 (10) (a) To determine that a position is covered under this system, the office and, if a
640 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
641 position requires the employee to:

642 (i) except for a dispatcher, place the employee's life or personal safety at risk; and

643 (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or
644 53-13-105.

645 (b) If a position satisfies the requirements of Subsection (10)(a), the office and the
646 Peace Officer Standards and Training Council shall consider whether or not the position
647 requires the employee to:

648 (i) perform duties that consist primarily of actively preventing or detecting crime and
649 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

650 (ii) perform duties that consist primarily of providing community protection; and

651 (iii) respond to situations involving threats to public safety and make emergency
652 decisions affecting the lives and health of others.

653 (11) If a subcommittee is used to recommend the determination of disputes to the
654 Peace Officer Standards and Training Council, the subcommittee shall comply with the
655 requirements of Subsection (10) in making its recommendation.

656 (12) A final order of the Peace Officer Standards and Training Council regarding a
657 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative
658 Procedures Act.

659 (13) Except as provided under Subsection (14), if a participating employer's public
660 safety service employees are not covered by this system or under Chapter 15, Public Safety
661 Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees
662 who may otherwise qualify for membership in this system shall, at the discretion of the
663 participating employer, remain in their current retirement system.

664 (14) (a) A public safety service employee employed by an airport police department,
665 which elects to cover its public safety service employees under the Public Safety
666 Noncontributory Retirement System under Subsection (13), may elect to remain in the public
667 safety service employee's current retirement system.

668 (b) The public safety service employee's election to remain in the current retirement
669 system under Subsection (14)(a):

670 (i) shall be made at the time the employer elects to move its public safety service
671 employees to a public safety retirement system;

672 (ii) documented by written notice to the participating employer; and

673 (iii) is irrevocable.

674 (15) (a) Subject to Subsection (16), beginning July 1, 2015, a public safety service
675 employee who is a dispatcher employed by:

676 (i) the state shall be eligible for service credit in this system; and

677 (ii) a participating employer other than the state shall be eligible for service credit in
678 this system if the dispatcher's participating employer elects to cover its dispatchers under this
679 system.

680 (b) A participating employer's election to cover its dispatchers under this system under
681 Subsection (15)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the
682 governing body of the participating employer in accordance with rules made by the office.

683 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution

684 of a participating employer under Subsection (15)(b), is not eligible for service credit in this
685 system.

686 (16) Notwithstanding any other provision of this section, a person initially entering
687 employment with a participating employer on or after July 1, 2011, who does not have service
688 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
689 not participate in this system.

690 Section 7. Section **49-15-102** is amended to read:

691 **49-15-102. Definitions.**

692 As used in this chapter:

693 (1) (a) "Compensation" means the total amount of payments that are includable in
694 gross income received by a public safety service employee as base income for the regularly
695 scheduled work period. The participating employer shall establish the regularly scheduled
696 work period. Base income shall be determined prior to the deduction of any amounts the
697 public safety service employee authorizes to be deducted for salary deferral or other benefits
698 authorized by federal law.

699 (b) "Compensation" includes performance-based bonuses and cost-of-living
700 adjustments.

701 (c) "Compensation" does not include:

702 (i) overtime;

703 (ii) sick pay incentives;

704 (iii) retirement pay incentives;

705 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
706 equipment or uniform, travel, or similar payments;

707 (v) a lump-sum payment or special payment covering accumulated leave; and

708 (vi) all contributions made by a participating employer under this system or under any
709 other employee benefit system or plan maintained by a participating employer for the benefit of
710 a member or participant.

711 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
712 under Internal Revenue Code Section 401(a)(17).

713 (2) "Dispatcher" means the same as that term is defined in Section 53-6-102.

714 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the

715 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
716 [~~and~~], (b), and (c).

717 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
718 compensation in any one of the years used may not exceed the previous year's compensation by
719 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
720 of the dollar during the previous year, as measured by a United States Bureau of Labor
721 Statistics Consumer Price Index average as determined by the board.

722 (b) In cases where the participating employer provides acceptable documentation to the
723 office, the limitation in Subsection (3)(a) may be exceeded if:

724 (i) the public safety service employee has transferred from another agency; or

725 (ii) the public safety service employee has been promoted to a new position.

726 (c) The annual compensation used to calculate final average salary shall be based on:

727 (i) a calendar year for a member employed by a participating employer that is not an
728 educational institution; or

729 (ii) a contract year for a member employed by an educational institution.

730 (4) (a) "Line-of-duty death" means a death resulting from:

731 (i) external force, violence, or disease occasioned by an act of duty as a public safety
732 service employee; or

733 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
734 training or another strenuous activity required as an act of duty as a public safety service
735 employee.

736 (b) "Line-of-duty death" does not include a death that:

737 (i) occurs during an activity that is required as an act of duty as a public safety service
738 employee if the activity is not a strenuous activity, including an activity that is clerical,
739 administrative, or of a nonmanual nature;

740 (ii) occurs during the commission of a crime committed by the employee;

741 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
742 nonprescribed, contributes to the employee's death; or

743 (iv) occurs in a manner other than as described in Subsection (4)(a).

744 (5) "Participating employer" means an employer which meets the participation
745 requirements of Section 49-15-201.

746 (6) (a) "Public safety service" means employment normally requiring an average of
747 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

- 748 (i) law enforcement officer in accordance with Section 53-13-103;
- 749 (ii) correctional officer in accordance with Section 53-13-104;
- 750 (iii) special function officer approved in accordance with Sections 49-15-201 and
751 53-13-105;
- 752 (iv) dispatcher who is certified in accordance with Section 53-6-303; or
- 753 (v) full-time member of the Board of Pardons and Parole created under Section
754 77-27-2.

755 (b) Except as provided under Subsections (6)(a)(iv) and (v), "public safety service"
756 also requires that in the course of employment the employee's life or personal safety is at risk.

757 (7) "Public safety service employee" means an employee of a participating employer
758 who performs public safety service under this chapter.

759 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
760 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
761 physical law enforcement, prison security, disaster relief, or other emergency response activity.

762 (b) "Strenuous activity" includes participating in a participating employer sanctioned
763 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

764 (9) "System" means the Public Safety Noncontributory Retirement System created
765 under this chapter.

766 (10) "Years of service credit" means the number of periods, each to consist of 12 full
767 months as determined by the board, whether consecutive or not, during which a public safety
768 service employee was employed by a participating employer, including time the public safety
769 service employee was absent in the service of the United States government on military duty.

770 Section 8. Section **49-15-201** is amended to read:

771 **49-15-201. System membership -- Eligibility.**

772 (1) (a) A public safety service employee employed by the state after July 1, 1989, but
773 before July 1, 2011, is eligible for service credit in this system.

774 (b) A public safety service employee employed by the state prior to July 1, 1989, may
775 either elect to receive service credit in this system or continue to receive service credit under
776 the system established under Chapter 14, Public Safety Contributory Retirement Act, by

777 following the procedures established by the board under this chapter.

778 (2) (a) Public safety service employees of a participating employer other than the state
779 that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement
780 System shall be eligible only for service credit in that system.

781 (b) (i) A participating employer other than the state that elected on or before July 1,
782 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety
783 service employee to elect to participate in either this system or the Public Safety Contributory
784 Retirement System.

785 (ii) Except as expressly allowed by this title, the election of the public safety service
786 employee is final and may not be changed.

787 (c) A public safety service employee hired by a participating employer other than the
788 state after July 1, 1989, but before July 1, 2011, shall become a member in this system.

789 (d) A public safety service employee of a participating employer other than the state
790 who began participation in this system after July 1, 1989, but before July 1, 2011, is only
791 eligible for service credit in this system.

792 (e) A person initially entering employment with a participating employer on or after
793 July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system
794 or plan administered by the board, may not participate in this system.

795 (3) (a) (i) A participating employer that has public safety service and firefighter service
796 employees that require cross-training and duty shall enroll those dual purpose employees in the
797 system in which the greatest amount of time is actually worked.

798 (ii) The employees shall either be full-time public safety service or full-time firefighter
799 service employees of the participating employer.

800 (b) (i) Prior to transferring a dual purpose employee from one system to another, the
801 participating employer shall receive written permission from the office.

802 (ii) The office may request documentation to verify the appropriateness of the transfer.

803 (4) The board may combine or segregate the actuarial experience of participating
804 employers in this system for the purpose of setting contribution rates.

805 (5) (a) (i) Each participating employer participating in this system shall annually
806 submit to the office a schedule indicating the positions to be covered under this system in
807 accordance with this chapter.

808 (ii) The office may require documentation to justify the inclusion of any position under
809 this system.

810 (b) If there is a dispute between the office and a participating employer or employee
811 over any position to be covered, the disputed position shall be submitted to the Peace Officer
812 Standards and Training Council established under Section 53-6-106 for determination.

813 (c) (i) The Peace Officer Standards and Training Council's authority to decide
814 eligibility for public safety service credit is limited to claims for coverage under this system for
815 time periods after July 1, 1989.

816 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
817 to service credit earned in another system prior to July 1, 1989.

818 (iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer
819 Standards and Training Council granting a position coverage under this system may only be
820 applied prospectively from the date of that decision.

821 (iv) A decision of the Peace Officer Standards and Training Council granting a position
822 coverage under this system may be applied retroactively only if:

823 (A) the participating employer covered other similarly situated positions under this
824 system during the time period in question; and

825 (B) the position otherwise meets all eligibility requirements for receiving service credit
826 in this system during the period for which service credit is to be granted.

827 (6) The Peace Officer Standards and Training Council may use a subcommittee to
828 provide a recommendation to the council in determining disputes between the office and a
829 participating employer or employee over a position to be covered under this system.

830 (7) The Peace Officer Standards and Training Council shall comply with Title 63G,
831 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

832 (8) A public safety service employee who is transferred or promoted to an
833 administration position [~~not covered by this system~~] requiring the performance of duties that
834 consist primarily of management or supervision of public safety service employees shall
835 continue to earn public safety service credit in this system as long as the employee remains
836 employed in the same department.

837 (9) An employee of the Department of Corrections shall continue to earn public safety
838 service credit in this system if:

839 (a) the employee's position is no longer covered under this system for new employees
840 hired on or after July 1, 2015; and

841 (b) the employee:

842 (i) remains employed by the Department of Corrections;

843 (ii) meets the eligibility requirements of this system;

844 (iii) was hired into a position covered by this system prior to July 1, 2015; and

845 (iv) has not had a break in service on or after July 1, 2015.

846 (10) Any employee who is reassigned to the Department of Technology Services or to
847 the Department of Human Resource Management, and who was a member in this system, shall
848 be entitled to remain a member in this system.

849 (11) (a) To determine that a position is covered under this system, the office and, if a
850 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
851 position requires the employee to:

852 (i) except for a dispatcher, place the employee's life or personal safety at risk; and

853 (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or
854 53-13-105.

855 (b) If a position satisfies the requirements of Subsection (11)(a), the office and Peace
856 Officer Standards and Training Council shall consider whether the position requires the
857 employee to:

858 (i) perform duties that consist primarily of actively preventing or detecting crime and
859 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

860 (ii) perform duties that consist primarily of providing community protection; and

861 (iii) respond to situations involving threats to public safety and make emergency
862 decisions affecting the lives and health of others.

863 (12) If a subcommittee is used to recommend the determination of disputes to the
864 Peace Officer Standards and Training Council, the subcommittee shall comply with the
865 requirements of Subsection (11) in making its recommendation.

866 (13) A final order of the Peace Officer Standards and Training Council regarding a
867 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative
868 Procedures Act.

869 (14) Except as provided under Subsection (15), if a participating employer's public

870 safety service employees are not covered by this system or under Chapter 14, Public Safety
871 Contributory Retirement Act, as of January 1, 1998, those public safety service employees who
872 may otherwise qualify for membership in this system shall, at the discretion of the participating
873 employer, remain in their current retirement system.

874 (15) (a) A public safety service employee employed by an airport police department,
875 which elects to cover its public safety service employees under the Public Safety
876 Noncontributory Retirement System under Subsection (14), may elect to remain in the public
877 safety service employee's current retirement system.

878 (b) The public safety service employee's election to remain in the current retirement
879 system under Subsection (15)(a):

880 (i) shall be made at the time the employer elects to move its public safety service
881 employees to a public safety retirement system;

882 (ii) shall be documented by written notice to the participating employer; and

883 (iii) is irrevocable.

884 (16) (a) Subject to Subsection (17), beginning July 1, 2015, a public safety service
885 employee who is a dispatcher employed by:

886 (i) the state shall be eligible for service credit in this system; and

887 (ii) a participating employer other than the state shall be eligible for service credit in
888 this system if the dispatcher's participating employer elects to cover its dispatchers under this
889 system.

890 (b) A participating employer's election to cover its dispatchers under this system under
891 Subsection (16)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the
892 governing body of the participating employer in accordance with rules made by the office.

893 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
894 of a participating employer under Subsection (16)(b), is not eligible for service credit in this
895 system.

896 (17) Notwithstanding any other provision of this section, a person initially entering
897 employment with a participating employer on or after July 1, 2011, who does not have service
898 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
899 not participate in this system.

900 Section 9. Section **49-16-102** is amended to read:

901 **49-16-102. Definitions.**

902 As used in this chapter:

903 (1) (a) "Compensation" means the total amount of payments that are includable as
904 gross income which are received by a firefighter service employee as base income for the
905 regularly scheduled work period. The participating employer shall establish the regularly
906 scheduled work period. Base income shall be determined prior to the deduction of member
907 contributions or any amounts the firefighter service employee authorizes to be deducted for
908 salary deferral or other benefits authorized by federal law.

909 (b) "Compensation" includes performance-based bonuses and cost-of-living
910 adjustments.

911 (c) "Compensation" does not include:

912 (i) overtime;

913 (ii) sick pay incentives;

914 (iii) retirement pay incentives;

915 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,
916 or similar payments;

917 (v) a lump-sum payment or special payments covering accumulated leave; and

918 (vi) all contributions made by a participating employer under this system or under any
919 other employee benefit system or plan maintained by a participating employer for the benefit of
920 a member or participant.

921 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
922 under Section 401(a)(17), Internal Revenue Code.

923 (2) (a) "Disability" means a physical or mental condition that, in the judgment of the
924 office, is total and presumably permanent, and prevents a member from performing firefighter
925 service.

926 (b) The determination of disability is based upon medical and other evidence
927 satisfactory to the office.

928 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
929 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
930 [~~and~~], (b), and (c).

931 (a) Except as provided in Subsection (3)(b), the percentage increase in annual

932 compensation in any one of the years used may not exceed the previous year's compensation by
933 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
934 of the dollar during the previous year, as measured by a United States Bureau of Labor
935 Statistics Consumer Price Index average as determined by the board.

936 (b) In cases where the participating employer provides acceptable documentation to the
937 office the limitation in Subsection (3)(a) may be exceeded if:

938 (i) the member has transferred from another agency; or

939 (ii) the member has been promoted to a new position.

940 (c) The annual compensation used to calculate final average salary shall be based on:

941 (i) a calendar year for a member employed by a participating employer that is not an
942 educational institution; or

943 (ii) a contract year for a member employed by an educational institution.

944 (4) (a) "Firefighter service" means employment normally requiring an average of 2,080
945 hours of regularly scheduled employment per year rendered by a member who is:

946 (i) a firefighter service employee trained in firefighter techniques and assigned to a
947 position of hazardous duty with a regularly constituted fire department; or

948 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire
949 marshal.

950 (b) "Firefighter service" does not include secretarial staff or other similar employees.

951 (5) "Firefighter service employee" means an employee of a participating employer who
952 provides firefighter service under this chapter. An employee of a regularly constituted fire
953 department who does not perform firefighter service is not a firefighter service employee.

954 (6) (a) "Line-of-duty death or disability" means a death or any physical or mental
955 disability resulting from:

956 (i) external force, violence, or disease directly resulting from firefighter service; or

957 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
958 training or another strenuous activity required as an act of duty as a firefighter service
959 employee.

960 (b) "Line-of-duty death or disability" does not include a death or any physical or mental
961 disability that:

962 (i) occurs during an activity that is required as an act of duty as a firefighter service

963 employee if the activity is not a strenuous activity, including an activity that is clerical,
964 administrative, or of a nonmanual nature;

965 (ii) occurs during the commission of a crime committed by the employee;

966 (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether
967 prescribed or nonprescribed, contributes to the employee's death or disability; or

968 (iv) occurs in a manner other than as described in Subsection (6)(a).

969 (c) "Line-of-duty death or disability" includes the death or disability of a paid
970 firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid
971 firefighter has five years of firefighter service credit.

972 (7) "Participating employer" means an employer which meets the participation
973 requirements of Section 49-16-201.

974 (8) "Regularly constituted fire department" means a fire department that employs a fire
975 chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid
976 employment per year.

977 (9) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
978 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
979 physical law enforcement, prison security, disaster relief, or other emergency response activity.

980 (b) "Strenuous activity" includes participating in a participating employer sanctioned
981 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

982 (10) "System" means the Firefighters' Retirement System created under this chapter.

983 (11) (a) "Volunteer firefighter" means any individual that is not regularly employed as
984 a firefighter service employee, but who:

985 (i) has been trained in firefighter techniques and skills;

986 (ii) continues to receive regular firefighter training; and

987 (iii) is on the rolls of a legally organized volunteer fire department which provides
988 ongoing training and serves a political subdivision of the state.

989 (b) An individual that volunteers assistance but does not meet the requirements of
990 Subsection (11)(a) is not a volunteer firefighter for purposes of this chapter.

991 (12) "Years of service credit" means the number of periods, each to consist of 12 full
992 months as determined by the board, whether consecutive or not, during which a firefighter
993 service employee was employed by a participating employer or received full-time pay while on

994 sick leave, including any time the firefighter service employee was absent in the service of the
995 United States on military duty.

996 Section 10. Section **49-17-102** is amended to read:

997 **49-17-102. Definitions.**

998 As used in this chapter:

999 (1) (a) "Compensation" means the total amount of payments which are currently
1000 includable in gross income made by a participating employer to a member of this system for
1001 services rendered to the participating employer.

1002 (b) "Compensation" includes:

1003 (i) performance-based bonuses;

1004 (ii) cost-of-living adjustments;

1005 (iii) payments subject to Social Security deductions;

1006 (iv) any payments in excess of the maximum amount subject to deduction under Social
1007 Security law;

1008 (v) amounts which the member authorizes to be deducted or reduced for salary deferral
1009 or other benefits authorized by federal law; and

1010 (vi) member contributions.

1011 (c) "Compensation" for purposes of this chapter may not exceed the amount allowed
1012 under Internal Revenue Code Section 401(a)(17).

1013 (d) "Compensation," does not include:

1014 (i) the monetary value of remuneration paid in kind, such as a residence or use of
1015 equipment;

1016 (ii) all contributions made by a participating employer under any system or plan for the
1017 benefit of a member or participant;

1018 (iii) salary paid to a temporary or exempt employee;

1019 (iv) payments upon termination or any other special payments including early
1020 retirement inducements; or

1021 (v) uniform, travel, or similar payments.

1022 (2) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1023 highest two years of annual compensation preceding retirement, subject to Subsections (2)(a)
1024 [~~and~~], (b), and (c).

1025 (a) Except as provided in Subsection (2)(b), the percentage increase in annual
1026 compensation in any one of the years used may not exceed the previous year's compensation by
1027 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1028 of the dollar during the previous year, as measured by a United States Bureau of Labor
1029 Statistics Consumer Price Index average as determined by the board.

1030 (b) In cases where the participating employer provides acceptable documentation to the
1031 board, the limitation in Subsection (2)(a) may be exceeded if:

1032 (i) the member has transferred from another participating employer; or

1033 (ii) the member has been promoted to a new position.

1034 (c) The annual compensation used to calculate final average salary shall be based on
1035 the state's fiscal year.

1036 (3) "Judge" means a judge or justice of the courts of record as enumerated in Section
1037 78A-1-101.

1038 (4) "Participating employer" means the state.

1039 (5) "System" means the Judges' Contributory Retirement System created under this
1040 chapter.

1041 (6) "Years of service credit" means the number of periods, each to consist of 12 full
1042 months as determined by the board, whether consecutive or not, during which a judge was
1043 employed by a participating employer.

1044 Section 11. Section **49-18-102** is amended to read:

1045 **49-18-102. Definitions.**

1046 As used in this chapter:

1047 (1) (a) "Compensation" means the total amount of payments which are currently
1048 includable in gross income made by a participating employer to a member of this system for
1049 services rendered to the participating employer.

1050 (b) "Compensation" includes:

1051 (i) performance-based bonuses;

1052 (ii) cost-of-living adjustments;

1053 (iii) payments subject to Social Security deductions;

1054 (iv) any payments in excess of the maximum amount subject to deduction under Social
1055 Security law; and

1056 (v) amounts which the member authorizes to be deducted or reduced for salary deferral
1057 or other benefits authorized by federal law.

1058 (c) "Compensation" for purposes of this chapter may not exceed the amount allowed
1059 under Internal Revenue Code Section 401(a)(17).

1060 (d) "Compensation" does not include:

1061 (i) the monetary value of remuneration paid in kind, such as a residence or use of
1062 equipment;

1063 (ii) all contributions made by a participating employer under a system or plan for the
1064 benefit of a member or participant;

1065 (iii) salary paid to a temporary or exempt employee;

1066 (iv) payments upon termination or any other special payments including early
1067 retirement inducements; or

1068 (v) uniform, travel, or similar payments.

1069 (2) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1070 highest two years of annual compensation preceding retirement, subject to Subsections (2)(a)
1071 [~~and~~], (b), and (c).

1072 (a) Except as provided in Subsection (2)(b), the percentage increase in annual
1073 compensation in any one of the years used may not exceed the previous year's compensation by
1074 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1075 of the dollar during the previous year, as measured by a United States Bureau of Labor
1076 Statistics Consumer Price Index average as determined by the board.

1077 (b) In cases where the participating employer provides acceptable documentation to the
1078 board, the limitation in Subsection (2)(a) may be exceeded if:

1079 (i) the member has transferred from another agency; or

1080 (ii) the member has been promoted to a new position.

1081 (c) The annual compensation used to calculate final average salary shall be based on
1082 the state's fiscal year.

1083 (3) "Judge" means a judge or justice of the courts of record as enumerated in Section
1084 78A-1-101.

1085 (4) "Participating employer" means the state.

1086 (5) "System" means the Judges' Noncontributory Retirement System created under this

1087 chapter.

1088 (6) "Years of service credit" means the number of periods, each to consist of 12 full
1089 months or as determined by the board, whether consecutive or not, during which a judge was
1090 employed by a participating employer.

1091 Section 12. Section **49-21-403** is amended to read:

1092 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

1093 (1) An eligible employee covered by this chapter and eligible for service credit under a
1094 system or plan, including an eligible employee who relinquishes rights to retirement benefits
1095 under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall
1096 receive a monthly disability benefit until the earlier of:

1097 (a) the date of the eligible employee's death;

1098 (b) the date the eligible employee no longer has a disability;

1099 (c) the date the eligible employee has accumulated or would have accumulated, if the
1100 employee had not chosen the Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan,
1101 Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan, been a volunteer firefighter, or
1102 exempted from a retirement system or plan:

1103 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public
1104 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement
1105 Act;

1106 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'
1107 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;

1108 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public
1109 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory
1110 Retirement Act;

1111 (iv) 35 years of service credit if the eligible employee is covered by the defined benefit
1112 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the
1113 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

1114 (v) 25 years of service credit if the eligible employee is covered by the defined benefit
1115 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the
1116 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; [or]

1117 (d) the date the eligible employee has received a monthly disability benefit for the

1118 following applicable time periods:

1119 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
1120 until age 65;

1121 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
1122 monthly disability benefit is payable for five years;

1123 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1124 monthly disability benefit is payable for four years;

1125 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1126 monthly disability benefit is payable for three years;

1127 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1128 monthly disability benefit is payable for two years; and

1129 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
1130 monthly disability benefit is payable for one year[-]; or

1131 (e) the eligible employee's retirement date, set when the eligible employee retires from
1132 a system or from the Utah Governors' and Legislators' Retirement Plan.

1133 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible
1134 for service credit under a system may retire under the requirements of the system which
1135 covered the eligible employee on the date of disability.

1136 (b) The final average salary used in the calculation of the allowance shall be based on
1137 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase
1138 factor applied to retirees of the system which covered the eligible employee on the date of
1139 disability.

1140 (3) An eligible employee who is eligible for service credit in a system, but has
1141 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
1142 eligible employee would have received by being eligible for service credit in the system
1143 covering the eligible employee on the date of disability, except for the accrual of service credit,
1144 in accordance with this title.

1145 (4) An eligible employee receiving a monthly disability benefit who has service credit
1146 from two or more systems may not combine service credits under Section 49-11-405 in
1147 qualifying for retirement, unless the eligible employee would receive a greater allowance by
1148 combining the service credits.

1149 (5) An eligible employee covered by this chapter who is a participant in the Tier II
1150 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or
1151 Chapter 23, Part 4, Tier II Defined Contribution Plan, who applies and is qualified for a
1152 monthly disability benefit, shall receive a monthly disability benefit until the earlier of:

1153 (a) the date of the eligible employee's death;

1154 (b) the date the eligible employee no longer has a disability;

1155 (c) (i) 35 years from the date the eligible employee began participation in the Tier II
1156 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan; or

1157 (ii) 25 years from the date the eligible employee began participation in the Tier II
1158 Defined Contribution Plan created in Chapter 23, Part 4, Tier II Defined Contribution Plan; or

1159 (d) the date the eligible employee has received a monthly disability benefit for the
1160 following applicable time periods:

1161 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
1162 until age 65;

1163 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
1164 monthly disability benefit is payable for five years;

1165 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1166 monthly disability benefit is payable for four years;

1167 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1168 monthly disability benefit is payable for three years;

1169 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1170 monthly disability benefit is payable for two years; and

1171 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
1172 monthly disability benefit is payable for one year.

1173 Section 13. Section **49-22-102** is amended to read:

1174 **49-22-102. Definitions.**

1175 As used in this chapter:

1176 (1) "Benefits normally provided" has the same meaning as defined in Section
1177 49-12-102.

1178 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
1179 amount of payments made by a participating employer to a member of this system for services

1180 rendered to the participating employer, including:

1181 (i) bonuses;

1182 (ii) cost-of-living adjustments;

1183 (iii) other payments currently includable in gross income and that are subject to Social
1184 Security deductions, including any payments in excess of the maximum amount subject to
1185 deduction under Social Security law;

1186 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
1187 or other benefits authorized by federal law; and

1188 (v) member contributions.

1189 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
1190 under Internal Revenue Code, Section 401(a)(17).

1191 (c) "Compensation" does not include:

1192 (i) the monetary value of remuneration paid in kind, including a residence or use of
1193 equipment;

1194 (ii) the cost of any employment benefits paid for by the participating employer;

1195 (iii) compensation paid to a temporary employee or an employee otherwise ineligible
1196 for service credit;

1197 (iv) any payments upon termination, including accumulated vacation, sick leave
1198 payments, severance payments, compensatory time payments, or any other special payments; or

1199 (v) any allowances or payments to a member for costs or expenses paid by the
1200 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
1201 housing costs, insurance costs, equipment costs, and dependent care costs.

1202 (d) The executive director may determine if a payment not listed under this Subsection
1203 (2) falls within the definition of compensation.

1204 (3) "Corresponding Tier I system" means the system or plan that would have covered
1205 the member if the member had initially entered employment before July 1, 2011.

1206 (4) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1207 highest five years of annual compensation preceding retirement subject to Subsections (4)(a),
1208 (b), (c), [~~and~~] (d), and (e).

1209 (a) Except as provided in Subsection (4)(b), the percentage increase in annual
1210 compensation in any one of the years used may not exceed the previous year's compensation by

1211 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1212 of the dollar during the previous year, as measured by a United States Bureau of Labor
1213 Statistics Consumer Price Index average as determined by the board.

1214 (b) In cases where the participating employer provides acceptable documentation to the
1215 office, the limitation in Subsection (4)(a) may be exceeded if:

1216 (i) the member has transferred from another agency; or

1217 (ii) the member has been promoted to a new position.

1218 (c) If the member retires more than six months from the date of termination of
1219 employment, the member is considered to have been in service at the member's last rate of pay
1220 from the date of the termination of employment to the effective date of retirement for purposes
1221 of computing the member's final average salary only.

1222 (d) If the member has less than five years of service credit in this system, final average
1223 salary means the average annual compensation paid to the member during the full period of
1224 service credit.

1225 (e) The annual compensation used to calculate final average salary shall be based on:

1226 (i) a calendar year for a member employed by a participating employer that is not an
1227 educational institution; or

1228 (ii) a contract year for a member employed by an educational institution.

1229 (5) "Participating employer" means an employer which meets the participation
1230 requirements of:

1231 (a) Sections 49-12-201 and 49-12-202;

1232 (b) Sections 49-13-201 and 49-13-202;

1233 (c) Section 49-19-201; or

1234 (d) Section 49-22-201 or 49-22-202.

1235 (6) (a) "Regular full-time employee" means an employee whose term of employment
1236 for a participating employer contemplates continued employment during a fiscal or calendar
1237 year and whose employment normally requires an average of 20 hours or more per week,
1238 except as modified by the board, and who receives benefits normally provided by the
1239 participating employer.

1240 (b) "Regular full-time employee" includes:

1241 (i) a teacher whose term of employment for a participating employer contemplates

1242 continued employment during a school year and who teaches half time or more;

1243 (ii) a classified school employee:

1244 (A) who is hired before July 1, 2013; and

1245 (B) whose employment normally requires an average of 20 hours per week or more for

1246 a participating employer, regardless of benefits provided;

1247 (iii) an appointive officer whose appointed position is full time as certified by the

1248 participating employer;

1249 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the

1250 attorney general, and a state legislator;

1251 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position

1252 is full time as certified by the participating employer;

1253 (vi) a faculty member or employee of an institution of higher education who is

1254 considered full time by that institution of higher education; and

1255 (vii) an individual who otherwise meets the definition of this Subsection (6) who

1256 performs services for a participating employer through a professional employer organization or

1257 similar arrangement.

1258 (c) "Regular full-time employee" does not include:

1259 (i) a firefighter service employee as defined in Section 49-23-102;

1260 (ii) a public safety service employee as defined in Section 49-23-102;

1261 (iii) a classified school employee:

1262 (A) who is hired on or after July 1, 2013; and

1263 (B) who does not receive benefits normally provided by the participating employer

1264 even if the employment normally requires an average of 20 hours per week or more for a

1265 participating employer; or

1266 (iv) a classified school employee:

1267 (A) who is hired before July 1, 2013;

1268 (B) who did not qualify as a regular full-time employee before July 1, 2013;

1269 (C) who does not receive benefits normally provided by the participating employer;

1270 and

1271 (D) whose employment hours are increased on or after July 1, 2013, to require an

1272 average of 20 hours per week or more for a participating employer.

1273 (7) "System" means the New Public Employees' Tier II Contributory Retirement
1274 System created under this chapter.

1275 (8) "Years of service credit" means:

1276 (a) a period consisting of 12 full months as determined by the board;

1277 (b) a period determined by the board, whether consecutive or not, during which a
1278 regular full-time employee performed services for a participating employer, including any time
1279 the regular full-time employee was absent on a paid leave of absence granted by a participating
1280 employer or was absent in the service of the United States government on military duty as
1281 provided by this chapter; or

1282 (c) the regular school year consisting of not less than eight months of full-time service
1283 for a regular full-time employee of an educational institution.

1284 Section 14. Section **49-22-201** is amended to read:

1285 **49-22-201. System membership -- Eligibility.**

1286 (1) Beginning July 1, 2011, a participating employer shall participate in this system.

1287 (2) (a) A person initially entering regular full-time employment with a participating
1288 employer on or after July 1, 2011, who does not have service credit accrued before July 1,
1289 2011, in a Tier I system or plan administered by the board, is eligible:

1290 (i) as a member for service credit and defined contributions under the Tier II hybrid
1291 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1292 (ii) as a participant for defined contributions under the Tier II defined contribution plan
1293 established by Part 4, Tier II Defined Contribution Plan.

1294 (b) A person initially entering regular full-time employment with a participating
1295 employer on or after July 1, 2011, shall:

1296 (i) make an election to participate in the system created under this chapter:

1297 (A) as a member for service credit and defined contributions under the Tier II hybrid
1298 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1299 (B) as a participant for defined contributions under the Tier II defined contribution plan
1300 established by Part 4, Tier II Defined Contribution Plan; and

1301 (ii) electronically submit to the office notification of the member's election under
1302 Subsection (2)(b)(i) in a manner approved by the office.

1303 (c) An election made by a person initially entering regular full-time employment with a

1304 participating employer under this Subsection (2) is irrevocable beginning one year from the
1305 date of eligibility for accrual of benefits.

1306 (d) If no election is made under Subsection (2)(b)(i), the person shall become a
1307 member eligible for service credit and defined contributions under the Tier II hybrid retirement
1308 system established by Part 3, Tier II Hybrid Retirement System.

1309 (3) Notwithstanding the provisions of this section and except as provided in Subsection
1310 (4), an elected official initially entering office on or after July 1, 2011:

1311 (a) is only eligible to participate in the Tier II defined contribution plan established
1312 under Part 4, Tier II Defined Contribution Plan; ~~and~~

1313 (b) is not eligible to participate in the Tier II hybrid retirement system established
1314 under Part 3, Tier II Hybrid Retirement System~~[-]; and~~

1315 (c) is vested immediately in the elected official's benefit and the benefit is
1316 nonforfeitable, including the the total amount contributed by the participating employer and the
1317 total amount contributed by the member in the Tier II defined contribution plan.

1318 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected
1319 official initially entering office on or after July 1, 2011, who has service credit accrued before
1320 July 1, 2011:

1321 (a) in a Tier I retirement system or plan administered by the board shall continue in the
1322 Tier I system or plan for which the legislator or full-time elected official is eligible; or

1323 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which
1324 the legislator or full-time elected official is eligible.

1325 Section 15. Section **49-22-205** is amended to read:

1326 **49-22-205. Exemptions from participation in system.**

1327 (1) Upon filing a written request for exemption with the office, the following
1328 employees are exempt from participation in the system as provided in this section:

1329 (a) ~~an elected official;~~ (b) an executive department head of the state;

1330 ~~(c)~~ (b) a member of the State Tax Commission;

1331 ~~(d)~~ (c) a member of the Public Service Commission;

1332 ~~(e)~~ (d) a member of a full-time or part-time board or commission;

1333 ~~(f)~~ (e) an employee of the Governor's Office of Management and Budget;

1334 ~~(g)~~ (f) an employee of the Governor's Office of Economic Development;

- 1335 ~~(h)~~ (g) an employee of the Commission on Criminal and Juvenile Justice;
- 1336 ~~(i)~~ (h) an employee of the Governor's Office;
- 1337 ~~(j)~~ (i) an employee of the State Auditor's Office;
- 1338 ~~(k)~~ (j) an employee of the State Treasurer's Office;
- 1339 ~~(l)~~ (k) any other member who is permitted to make an election under Section
- 1340 49-11-406;
- 1341 ~~(m)~~ (l) a person appointed as a city manager or appointed as a city administrator or
- 1342 another at-will employee of a municipality, county, or other political subdivision;
- 1343 ~~(n)~~ (m) an employee of an interlocal cooperative agency created under Title 11,
- 1344 Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily
- 1345 provided through membership in a labor organization that provides retirement benefits to its
- 1346 members; and
- 1347 ~~(o)~~ (n) an employee of the Utah Science Technology and Research Initiative created
- 1348 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- 1349 (2) (a) A participating employer shall prepare a list designating those positions eligible
- 1350 for exemption under Subsection (1).
- 1351 (b) An employee may not be exempted unless the employee is employed in a position
- 1352 designated by the participating employer under Subsection (1).
- 1353 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a
- 1354 municipality, county, or political subdivision may not exempt a total of more than 50 positions
- 1355 or a number equal to 10% of the employees of the municipality, county, or political
- 1356 subdivision, whichever is less.
- 1357 (b) A municipality, county, or political subdivision may exempt at least one regular
- 1358 full-time employee.
- 1359 (4) Each participating employer shall:
- 1360 (a) file each employee exemption annually with the office; and
- 1361 (b) update an employee exemption in the event of any change.
- 1362 (5) Beginning on the effective date of the exemption for an employee who elects to be
- 1363 exempt in accordance with Subsection (1):
- 1364 (a) for a member of the Tier II defined contribution plan:
- 1365 (i) the participating employer shall contribute the nonelective contribution and the

1366 amortization rate described in Section 49-22-401, except that the nonelective contribution is
1367 exempt from the vesting requirements of Subsection 49-22-401(3)(a); and

1368 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

1369 (b) for a member of the Tier II hybrid retirement system:

1370 (i) the participating employer shall contribute the nonelective contribution and the
1371 amortization rate described in Section 49-22-401, except that the contribution is exempt from
1372 the vesting requirements of Subsection 49-22-401(3)(a);

1373 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

1374 (iii) the member is not eligible for additional service credit in the system.

1375 (6) If an employee who is a member of the Tier II hybrid retirement system
1376 subsequently revokes the election of exemption made under Subsection (1), the provisions
1377 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee
1378 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1379 (7) (a) All employer contributions made on behalf of an employee shall be invested in
1380 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election
1381 period under Subsection 49-22-201(2)(c) is expired if the employee:

1382 (i) elects to be exempt in accordance with Subsection (1); and

1383 (ii) continues employment with the participating employer through the one-year
1384 election period under Subsection 49-22-201(2)(c).

1385 (b) An employee is entitled to receive a distribution of the employer contributions
1386 made on behalf of the employee and all associated investment gains and losses if the employee:

1387 (i) elects to be exempt in accordance with Subsection (1); and

1388 (ii) terminates employment prior to the one-year election period under Subsection
1389 49-22-201(2)(c).

1390 (8) (a) The office shall make rules to implement this section.

1391 (b) The rules made under this Subsection (8) shall include provisions to allow the
1392 exemption provided under Subsection (1) to apply to all contributions made beginning on or
1393 after July 1, 2011, on behalf of an exempted employee who began the employment before May
1394 8, 2012.

1395 Section 16. Section **49-22-303** is amended to read:

1396 **49-22-303. Defined contribution benefit established -- Contribution by employer**

1397 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
1398 **plans.**

1399 (1) (a) A participating employer shall make a nonelective contribution on behalf of
1400 each regular full-time employee who is a member of this system in an amount equal to 10%
1401 minus the contribution rate paid by the employer [~~pursuant to~~] under Subsection
1402 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under
1403 Section 401(k) of the Internal Revenue Code which:

1404 (i) is sponsored by the board; and

1405 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1406 (b) The member may make voluntary deferrals to:

1407 (i) the qualified 401(k) plan which receives the employer contribution described in this
1408 Subsection (1); or

1409 (ii) at the member's option, another defined contribution plan established by the
1410 participating employer.

1411 (2) (a) The total amount contributed by the participating employer under Subsection
1412 (1)(a), including associated investment gains and losses, vests to the member upon accruing
1413 four years of service credit under this title.

1414 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
1415 member's benefit immediately and is nonforfeitable.

1416 (c) (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to
1417 which the member may be entitled.

1418 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1419 one year of the total years required for vesting, the member shall be considered to have the total
1420 years of service credit required for vesting.

1421 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be
1422 invested in a default option selected by the board until the member is vested in accordance with
1423 Subsection (2)(a).

1424 (b) A member may direct the investment of contributions made by a participating
1425 employer under Subsection (1)(a) only after the contributions have vested in accordance with
1426 Subsection (2)(a).

1427 (c) A member may direct the investment of contributions made by the member under

1428 Subsection (1)(b).

1429 (4) No loans shall be available from contributions made by a participating employer
1430 under Subsection (1)(a).

1431 (5) No hardship distributions shall be available from contributions made by a
1432 participating employer under Subsection (1)(a).

1433 (6) (a) Except as provided in Subsection (6)(b) and Section 49-22-205, if a member
1434 terminates employment with a participating employer prior to the vesting period described in
1435 Subsection (2)(a), all contributions, including associated investment gains and losses, made by
1436 a participating employer on behalf of the member under Subsection (1)(a) are subject to
1437 forfeiture.

1438 (b) If a member who terminates employment with a participating employer prior to the
1439 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
1440 another participating employer within 10 years of the termination date of the previous
1441 employment:

1442 (i) all contributions made by the previous participating employer on behalf of the
1443 member, including associated investment gains and losses, shall be reinstated upon
1444 employment as a regular full-time employee; and

1445 (ii) the length of time that the member worked with the previous employer shall be
1446 included in determining whether the member has completed the vesting period under
1447 Subsection (2)(a).

1448 (c) The office shall establish a forfeiture account and shall specify the uses of the
1449 forfeiture account, which may include an offset against administrative costs or employer
1450 contributions made under this section.

1451 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
1452 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
1453 Internal Revenue Code.

1454 (8) The office may take any action which in its judgment is necessary to maintain the
1455 tax-qualified status of its 401(k) defined contribution plan under federal law.

1456 Section 17. Section **49-22-401** is amended to read:

1457 **49-22-401. Contributions -- Rates.**

1458 (1) Up to the amount allowed by federal law, the participating employer shall make a

1459 nonelective contribution of 10% of the participant's compensation to a defined contribution
1460 plan.

1461 (2) (a) The participating employer shall contribute the 10% nonelective contribution
1462 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1463 Internal Revenue Code which:

1464 (i) is sponsored by the board; and

1465 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1466 (b) The member may make voluntary deferrals to:

1467 (i) the qualified 401(k) plan which receives the employer contribution described in this
1468 Subsection (2); or

1469 (ii) at the member's option, another defined contribution plan established by the
1470 participating employer.

1471 (c) In addition to the percent specified under Subsection (2)(a), the participating
1472 employer shall pay the corresponding Tier I system amortization rate of the employee's
1473 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1474 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1475 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1476 employment as a regular full-time employee under this title.

1477 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1478 member's benefit immediately and is nonforfeitable.

1479 (c) Upon filing a written request for exemption with the office, an eligible employee is
1480 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
1481 49-22-205.

1482 (d) (i) Years of employment under Subsection (3)(a) includes any fraction of a year to
1483 which the member may be entitled.

1484 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1485 one year of the total years required for vesting, the member shall be considered to have the total
1486 years of employment required for vesting.

1487 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1488 invested in a default option selected by the board until the member is vested in accordance with
1489 Subsection (3)(a).

1490 (b) A member may direct the investment of contributions including associated
1491 investment gains and losses made by a participating employer under Subsection (2)(a) only
1492 after the contributions have vested in accordance with Subsection (3)(a).

1493 (c) A member may direct the investment of contributions made by the member under
1494 Subsection (3)(b).

1495 (5) No loans shall be available from contributions made by a participating employer
1496 under Subsection (2)(a).

1497 (6) No hardship distributions shall be available from contributions made by a
1498 participating employer under Subsection (2)(a).

1499 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1500 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1501 contributions made by a participating employer on behalf of the member including associated
1502 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1503 (b) If a member who terminates employment with a participating employer prior to the
1504 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1505 another participating employer within 10 years of the termination date of the previous
1506 employment:

1507 (i) all contributions made by the previous participating employer on behalf of the
1508 member including associated investment gains and losses shall be reinstated upon the member's
1509 employment as a regular full-time employee; and

1510 (ii) the length of time that the member worked with the previous employer shall be
1511 included in determining whether the member has completed the vesting period under
1512 Subsection (3)(a).

1513 (c) The office shall establish a forfeiture account and shall specify the uses of the
1514 forfeiture account, which may include an offset against administrative costs or employer
1515 contributions made under this section.

1516 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1517 any relevant information pertaining to the maintenance of its tax qualification under the
1518 Internal Revenue Code.

1519 (9) The office may take any action which in its judgment is necessary to maintain the
1520 tax-qualified status of its 401(k) defined contribution plan under federal law.

1521 Section 18. Section **49-23-102** is amended to read:

1522 **49-23-102. Definitions.**

1523 As used in this chapter:

1524 (1) (a) "Compensation" means the total amount of payments that are includable in
1525 gross income received by a public safety service employee or a firefighter service employee as
1526 base income for the regularly scheduled work period. The participating employer shall
1527 establish the regularly scheduled work period. Base income shall be determined prior to the
1528 deduction of any amounts the public safety service employee or firefighter service employee
1529 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

1530 (b) "Compensation" includes performance-based bonuses and cost-of-living
1531 adjustments.

1532 (c) "Compensation" does not include:

1533 (i) overtime;

1534 (ii) sick pay incentives;

1535 (iii) retirement pay incentives;

1536 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
1537 equipment or uniform, travel, or similar payments;

1538 (v) a lump-sum payment or special payment covering accumulated leave; and

1539 (vi) all contributions made by a participating employer under this system or under any
1540 other employee benefit system or plan maintained by a participating employer for the benefit of
1541 a member or participant.

1542 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
1543 under Section 401(a)(17), Internal Revenue Code.

1544 (2) "Corresponding Tier I system" means the system or plan that would have covered
1545 the member if the member had initially entered employment before July 1, 2011.

1546 (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.

1547 (4) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1548 highest five years of annual compensation preceding retirement subject to Subsections (4)(a),
1549 (b), (c), [~~and~~] (d), and (e).

1550 (a) Except as provided in Subsection (4)(b), the percentage increase in annual
1551 compensation in any one of the years used may not exceed the previous year's compensation by

1552 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1553 of the dollar during the previous year, as measured by a United States Bureau of Labor
1554 Statistics Consumer Price Index average as determined by the board.

1555 (b) In cases where the participating employer provides acceptable documentation to the
1556 office, the limitation in Subsection (4)(a) may be exceeded if:

1557 (i) the member has transferred from another agency; or

1558 (ii) the member has been promoted to a new position.

1559 (c) If the member retires more than six months from the date of termination of
1560 employment, the member is considered to have been in service at the member's last rate of pay
1561 from the date of the termination of employment to the effective date of retirement for purposes
1562 of computing the member's final average salary only.

1563 (d) If the member has less than five years of service credit in this system, final average
1564 salary means the average annual compensation paid to the member during the full period of
1565 service credit.

1566 (e) The annual compensation used to calculate final average salary shall be based on:

1567 (i) a calendar year for a member employed by a participating employer that is not an
1568 educational institution; or

1569 (ii) a contract year for a member employed by an educational institution.

1570 (5) (a) "Firefighter service" means employment normally requiring an average of 2,080
1571 hours of regularly scheduled employment per year rendered by a member who is:

1572 (i) a firefighter service employee trained in firefighter techniques and assigned to a
1573 position of hazardous duty with a regularly constituted fire department; or

1574 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire
1575 marshal.

1576 (b) "Firefighter service" does not include secretarial staff or other similar employees.

1577 (6) "Firefighter service employee" means an employee of a participating employer who
1578 provides firefighter service under this chapter. An employee of a regularly constituted fire
1579 department who does not perform firefighter service is not a firefighter service employee.

1580 (7) (a) "Line-of-duty death" means a death resulting from:

1581 (i) external force, violence, or disease occasioned by an act of duty as a public safety
1582 service or firefighter service employee; or

1583 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
1584 training or another strenuous activity required as an act of duty as a public safety service or
1585 firefighter service employee.

1586 (b) "Line-of-duty death" does not include a death that:

1587 (i) occurs during an activity that is required as an act of duty as a public safety service
1588 or firefighter service employee if the activity is not a strenuous activity, including an activity
1589 that is clerical, administrative, or of a nonmanual nature;

1590 (ii) occurs during the commission of a crime committed by the employee;

1591 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
1592 nonprescribed, contributes to the employee's death; or

1593 (iv) occurs in a manner other than as described in Subsection (7)(a).

1594 (8) "Participating employer" means an employer which meets the participation
1595 requirements of:

1596 (a) Sections 49-14-201 and 49-14-202;

1597 (b) Sections 49-15-201 and 49-15-202;

1598 (c) Sections 49-16-201 and 49-16-202; or

1599 (d) Sections 49-23-201 and 49-23-202.

1600 (9) (a) "Public safety service" means employment normally requiring an average of
1601 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

1602 (i) law enforcement officer in accordance with Section 53-13-103;

1603 (ii) correctional officer in accordance with Section 53-13-104;

1604 (iii) special function officer approved in accordance with Sections 49-15-201 and
1605 53-13-105;

1606 (iv) dispatcher who is certified in accordance with Section 53-6-303; and

1607 (v) full-time member of the Board of Pardons and Parole created under Section
1608 77-27-2.

1609 (b) Except as provided under Subsections (9)(a)(iv) and (v), "public safety service"
1610 also requires that in the course of employment the employee's life or personal safety is at risk.

1611 (10) "Public safety service employee" means an employee of a participating employer
1612 who performs public safety service under this chapter.

1613 (11) (a) "Strenuous activity" means engagement involving a difficult, stressful, or

1614 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
1615 physical law enforcement, prison security, disaster relief, or other emergency response activity.

1616 (b) "Strenuous activity" includes participating in a participating employer sanctioned
1617 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

1618 (12) "System" means the New Public Safety and Firefighter Tier II Contributory
1619 Retirement System created under this chapter.

1620 (13) (a) "Volunteer firefighter" means any individual that is not regularly employed as
1621 a firefighter service employee, but who:

1622 (i) has been trained in firefighter techniques and skills;

1623 (ii) continues to receive regular firefighter training; and

1624 (iii) is on the rolls of a legally organized volunteer fire department which provides
1625 ongoing training and serves a political subdivision of the state.

1626 (b) An individual that volunteers assistance but does not meet the requirements of
1627 Subsection (13)(a) is not a volunteer firefighter for purposes of this chapter.

1628 (14) "Years of service credit" means:

1629 (a) a period, consisting of 12 full months as determined by the board; or

1630 (b) a period determined by the board, whether consecutive or not, during which a
1631 regular full-time employee performed services for a participating employer, including any time
1632 the regular full-time employee was absent on a paid leave of absence granted by a participating
1633 employer or was absent in the service of the United States government on military duty as
1634 provided by this chapter.

1635 Section 19. Section **49-23-302** is amended to read:

1636 **49-23-302. Defined contribution benefit established -- Contribution by employer**
1637 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
1638 **plans.**

1639 (1) (a) A participating employer shall make a nonelective contribution on behalf of
1640 each public safety service employee or firefighter service employee who is a member of this
1641 system in an amount equal to 12% minus the contribution rate paid by the employer [~~pursuant~~
1642 ~~to~~] under Subsection 49-23-301(2)(a) of the member's compensation to a defined contribution
1643 plan qualified under Section 401(k) of the Internal Revenue Code which:

1644 (i) is sponsored by the board; and

- 1645 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
1646 (b) The member may make voluntary deferrals to:
1647 (i) the qualified 401(k) plan which receives the employer contribution described in this
1648 Subsection (1); or
1649 (ii) at the member's option, another defined contribution plan established by the
1650 participating employer.
- 1651 (2) (a) The total amount contributed by the participating employer under Subsection
1652 (1)(a), including associated investment gains and losses, vests to the member upon accruing
1653 four years of service credit under this title.
- 1654 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
1655 member's benefit immediately and is nonforfeitable.
- 1656 (c) (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to
1657 which the member may be entitled.
- 1658 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1659 one year of the total years required for vesting, the member shall be considered to have the total
1660 years of service credit required for vesting.
- 1661 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be
1662 invested in a default option selected by the board until the member is vested in accordance with
1663 Subsection (2)(a).
- 1664 (b) A member may direct the investment of contributions made by a participating
1665 employer under Subsection (1)(a) only after the contributions have vested in accordance with
1666 Subsection (2)(a).
- 1667 (c) A member may direct the investment of contributions made by the member under
1668 Subsection (1)(b).
- 1669 (4) No loans shall be available from contributions made by a participating employer
1670 under Subsection (1)(a).
- 1671 (5) No hardship distributions shall be available from contributions made by a
1672 participating employer under Subsection (1)(a).
- 1673 (6) (a) Except as provided in Subsection (6)(b), if a member terminates employment
1674 with a participating employer prior to the vesting period described in Subsection (2)(a), all
1675 contributions, including associated investment gains and losses, made by a participating

1676 employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

1677 (b) If a member who terminates employment with a participating employer prior to the
1678 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
1679 another participating employer within 10 years of the termination date of the previous
1680 employment:

1681 (i) all contributions made by the previous participating employer on behalf of the
1682 member, including associated investment gains and losses, shall be reinstated upon the
1683 member's employment as a regular full-time employee; and

1684 (ii) the length of time that the member worked with the previous employer shall be
1685 included in determining whether the member has completed the vesting period under
1686 Subsection (2)(a).

1687 (c) The office shall establish a forfeiture account and shall specify the uses of the
1688 forfeiture account, which may include an offset against administrative costs or employer
1689 contributions made under this section.

1690 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
1691 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
1692 Internal Revenue Code.

1693 (8) The office may take any action which in its judgment is necessary to maintain the
1694 tax-qualified status of its 401(k) defined contribution plan under federal law.

1695 Section 20. Section **49-23-401** is amended to read:

1696 **49-23-401. Contributions -- Rates.**

1697 (1) Up to the amount allowed by federal law, the participating employer shall make a
1698 nonelective contribution of 12% of the participant's compensation to a defined contribution
1699 plan.

1700 (2) (a) The participating employer shall contribute the 12% nonelective contribution
1701 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1702 Internal Revenue Code which:

1703 (i) is sponsored by the board; and

1704 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1705 (b) The member may make voluntary deferrals to:

1706 (i) the qualified 401(k) plan which receives the employer contribution described in this

1707 Subsection (2); or

1708 (ii) at the member's option, another defined contribution plan established by the
1709 participating employer.

1710 (c) In addition to the percent specified under Subsection (2)(a), the participating
1711 employer shall pay the corresponding Tier I system amortization rate of the employee's
1712 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1713 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1714 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1715 service credit under this title.

1716 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1717 member's benefit immediately and is nonforfeitable.

1718 (c) Upon filing a written request for exemption with the office, an eligible employee is
1719 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
1720 49-23-203.

1721 (d) (i) Years of service credit under Subsection (3)(a) includes any fraction of a year to
1722 which the member may be entitled.

1723 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1724 one year of the total years required for vesting, the member shall be considered to have the total
1725 years of service credit required for vesting.

1726 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1727 invested in a default option selected by the board until the member is vested in accordance with
1728 Subsection (3)(a).

1729 (b) A member may direct the investment of contributions, including associated
1730 investment gains and losses, made by a participating employer under Subsection (2)(a) only
1731 after the contributions have vested in accordance with Subsection (3)(a).

1732 (c) A member may direct the investment of contributions made by the member under
1733 Subsection (3)(b).

1734 (5) No loans shall be available from contributions made by a participating employer
1735 under Subsection (2)(a).

1736 (6) No hardship distributions shall be available from contributions made by a
1737 participating employer under Subsection (2)(a).

1738 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1739 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1740 contributions made by a participating employer on behalf of the member under Subsection
1741 (2)(a), including associated investment gains and losses are subject to forfeiture.

1742 (b) If a member who terminates employment with a participating employer prior to the
1743 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1744 another participating employer within 10 years of the termination date of the previous
1745 employment:

1746 (i) all contributions made by the previous participating employer on behalf of the
1747 member, including associated investment gains and losses, shall be reinstated upon the
1748 member's employment as a regular full-time employee; and

1749 (ii) the length of time that the member worked with the previous employer shall be
1750 included in determining whether the member has completed the vesting period under
1751 Subsection (3)(a).

1752 (c) The office shall establish a forfeiture account and shall specify the uses of the
1753 forfeiture account, which may include an offset against administrative costs of employer
1754 contributions made under this section.

1755 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1756 any relevant information pertaining to the maintenance of its tax qualification under the
1757 Internal Revenue Code.

1758 (9) The office may take any action which in its judgment is necessary to maintain the
1759 tax-qualified status of its 401(k) defined contribution plan under federal law.

1760 Section 21. Section **67-19-14.4** is amended to read:

1761 **67-19-14.4. Unused Sick Leave Retirement Program II -- Creation --**
1762 **Remuneration upon eligibility for allowance -- Medical expense account after retirement.**

1763 (1) (a) There is created the "Unused Sick Leave Retirement Program II."

1764 (b) An agency shall offer the Unused Sick Leave Retirement Option Program II to an
1765 employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah
1766 State Retirement and Insurance Benefit Act.

1767 (c) An employee who is participating in the Unused Sick Leave Retirement Program I
1768 under Section 67-19-14.2 may make a one-time and irrevocable election to transfer all unused

1769 sick leave hours which shall include all converted sick leave hours under Section 67-19-14.1
1770 for use under the Unused Sick Leave Retirement Program II under this section.

1771 (2) (a) The Unused Sick Leave Retirement Program II provides that upon becoming
1772 eligible to receive a retirement allowance an employee employed by the state between January
1773 1, 2006, and January 3, 2014, shall receive remuneration for the employee's unused
1774 accumulated sick leave and converted sick leave accrued between January 1, 2006, and January
1775 3, 2014, in accordance with this section as follows:

1776 (i) subject to federal requirements and limitations, a contribution at the employee's rate
1777 of pay at the time of retirement for 25% of the employee's unused accumulated sick leave and
1778 converted sick leave shall be transferred directly to the employee's defined contribution plan
1779 qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah
1780 State Retirement Board; and

1781 (ii) participation in a benefit plan that provides for reimbursement for medical
1782 expenses using money deposited at the employee's rate of pay at the time of retirement from
1783 remaining unused accumulated sick leave and converted sick leave balances.

1784 (b) If the amount calculated under Subsection (2)(a)(i) exceeds the federal contribution
1785 limitations, the amount representing the excess shall be deposited under Subsection (2)(a)(ii).

1786 (c) An employee's rate of pay at the time of retirement for purposes of Subsection
1787 (2)(a)(ii) may not be less than the average rate of pay of state employees who retired in the
1788 same retirement system under Title 49, Utah State Retirement and Insurance Benefit Act,
1789 during the previous calendar year.

1790 (3) The Utah State Retirement Office shall develop and maintain a program to provide
1791 a benefit plan that provides for reimbursement for medical expenses under Subsection (2)(a)(ii)
1792 with~~[-(a)]~~ money deposited under Subsection (2)(a)(ii)~~[-and (b) accrued earnings]~~.