

UTAH RETIREMENT SYSTEM AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

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

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ amends retiree reemployment provisions by prohibiting a participating employer from making a retirement related contribution that exceeds the normal cost rate for all reemployed retirees not just full-time employees;
- ▶ increases the amount that is required to be corrected in payments made by the office if an error is discovered that results in a modification of the benefit amount;
- ▶ amends provisions related to benefit information forms that must be signed by each employee;
- ▶ allows the retirement office to communicate with members, beneficiaries, participating employers, and others through electronic means;
- ▶ provides that an employee of an institution of higher education who participates in other retirement systems is excluded from membership in the Utah Retirement Systems;
- ▶ expands the offsets used in determining long-term disability benefits to include any benefit earned for the same period of disability as the benefit was based;
- ▶ clarifies the date of termination of long-term disability benefits for exempted employees and volunteer firefighters;
- ▶ establishes investment requirements for employer contributions made on behalf of certain employees who exempt from the four-year vesting requirements in the Tier II systems;
- ▶ provides that employees who are exempt from the four-year vesting requirement in the Tier II systems and who terminate before the one-year election period are

33 entitled to all employer contributions and associated investment gains and loses; and
34 ▶ makes technical changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 49-11-102, as last amended by Laws of Utah 2012, Chapter 298
- 42 49-11-504, as last amended by Laws of Utah 2011, Chapter 439
- 43 49-11-607, as last amended by Laws of Utah 2003, Chapter 240
- 44 49-11-616, as last amended by Laws of Utah 2012, Chapter 298
- 45 49-11-617, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 46 49-12-203, as last amended by Laws of Utah 2009, Chapter 51
- 47 49-12-204, as last amended by Laws of Utah 2010, Chapter 158
- 48 49-13-203, as last amended by Laws of Utah 2010, Chapter 280
- 49 49-13-204, as last amended by Laws of Utah 2010, Chapter 158
- 50 49-21-402, as last amended by Laws of Utah 2012, Chapter 298
- 51 49-21-403, as last amended by Laws of Utah 2011, Chapters 366 and 439
- 52 49-22-203, as enacted by Laws of Utah 2010, Chapter 266
- 53 49-22-401, as last amended by Laws of Utah 2012, Chapter 298
- 54 49-23-401, as last amended by Laws of Utah 2012, Chapter 298



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

57 Section 1. Section 49-11-102 is amended to read:

58 **49-11-102. Definitions.**

59 As used in this title:

- 60 (1) (a) "Active member" means a member who is employed or who has been employed
- 61 by a participating employer within the previous 120 days.
- 62 (b) "Active member" does not include retirees.
- 63 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the

64 basis of mortality tables as recommended by the actuary and adopted by the executive director,
65 including regular interest.

66 (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and
67 adopted by the board upon which the funding of system costs and benefits are computed.

68 (4) (a) "Agency" means:

69 (i) a department, division, agency, office, authority, commission, board, institution, or
70 hospital of the state;

71 (ii) a county, municipality, school district, local district, or special service district;

72 (iii) a state college or university; or

73 (iv) any other participating employer.

74 (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a
75 subdivision of another entity listed under Subsection (4)(a).

76 (5) "Allowance" or "retirement allowance" means the pension plus the annuity,
77 including any cost of living or other authorized adjustments to the pension and annuity.

78 (6) "Alternate payee" means a member's former spouse or family member eligible to
79 receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

80 (7) "Amortization rate" means the board certified percent of salary required to amortize
81 the unfunded actuarial accrued liability in accordance with policies established by the board
82 upon the advice of the actuary.

83 (8) "Annuity" means monthly payments derived from member contributions.

84 (9) "Appointive officer" means an employee appointed to a position for a definite and
85 fixed term of office by official and duly recorded action of a participating employer whose
86 appointed position is designated in the participating employer's charter, creation document, or
87 similar document, and:

88 (a) who earns \$500 or more per month, indexed as of January 1, 1990, as provided in
89 Section 49-12-407 for a Tier I appointive officer; and

90 (b) whose appointive position is full-time as certified by the participating employer for
91 a Tier II appointive officer.

92 (10) (a) "At-will employee" means a person who is employed by a participating
93 employer and:

94 (i) who is not entitled to merit or civil service protection and is generally considered

95 exempt from a participating employer's merit or career service personnel systems;

96 (ii) whose on-going employment status is entirely at the discretion of the person's
97 employer; or

98 (iii) who may be terminated without cause by a designated supervisor, manager, or
99 director.

100 (b) "At-will employee" does not include a career employee who has obtained a
101 reasonable expectation of continued employment based on inclusion in a participating
102 employer's merit system, civil service protection system, or career service personnel systems,
103 policies, or plans.

104 (11) "Beneficiary" means any person entitled to receive a payment under this title
105 through a relationship with or designated by a member, participant, covered individual, or
106 alternate payee of a defined contribution plan.

107 (12) "Board" means the Utah State Retirement Board established under Section
108 49-11-202.

109 (13) "Board member" means a person serving on the Utah State Retirement Board as
110 established under Section 49-11-202.

111 (14) "Certified contribution rate" means the board certified percent of salary paid on
112 behalf of an active member to the office to maintain the system on a financially and actuarially
113 sound basis.

114 (15) "Contributions" means the total amount paid by the participating employer and the
115 member into a system or to the Utah Governors' and Legislators' Retirement Plan under
116 Chapter 19, Utah Governors' and Legislators' Retirement Act.

117 (16) "Council member" means a person serving on the Membership Council
118 established under Section 49-11-202.

119 (17) "Covered individual" means any individual covered under Chapter 20, Public
120 Employees' Benefit and Insurance Program Act.

121 (18) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16,
122 17, 18, and 19.

123 (19) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a
124 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's
125 spouse after retirement that is based on a set formula involving one or more of the following

126 factors:

- 127 (a) years of service;
128 (b) final average monthly salary; or
129 (c) a retirement multiplier.

130 (20) "Defined contribution" or "defined contribution plan" means any defined
131 contribution plan or deferred compensation plan authorized under the Internal Revenue Code
132 and administered by the board.

133 (21) "Educational institution" means a political subdivision or instrumentality of the
134 state or a combination thereof primarily engaged in educational activities or the administration
135 or servicing of educational activities, including:

- 136 (a) the State Board of Education and its instrumentalities;
137 (b) any institution of higher education and its branches;
138 (c) any school district and its instrumentalities;
139 (d) any vocational and technical school; and
140 (e) any entity arising out of a consolidation agreement between entities described under
141 this Subsection (21).

142 (22) "Elected official":

143 (a) means a person elected to a state office, county office, municipal office, school
144 board or school district office, local district office, or special service district office;

145 (b) includes a person who is appointed to serve an unexpired term of office described
146 under Subsection (22)(a); and

147 (c) does not include a judge or justice who is subject to a retention election under
148 Section 20A-12-201.

149 (23) (a) "Employer" means any department, educational institution, or political
150 subdivision of the state eligible to participate in a government-sponsored retirement system
151 under federal law.

152 (b) "Employer" may also include an agency financed in whole or in part by public
153 funds.

154 (24) "Exempt employee" means an employee working for a participating employer:

- 155 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,
156 49-14-203, 49-15-203, or 49-16-203; and

157 (b) for whom a participating employer is not required to pay contributions or
158 nonelective contributions.

159 (25) "Final average monthly salary" means the amount computed by dividing the
160 compensation received during the final average salary period under each system by the number
161 of months in the final average salary period.

162 (26) "Fund" means any fund created under this title for the purpose of paying benefits
163 or costs of administering a system, plan, or program.

164 (27) (a) "Inactive member" means a member who has not been employed by a
165 participating employer for a period of at least 120 days.

166 (b) "Inactive member" does not include retirees.

167 (28) (a) "Initially entering" means hired, appointed, or elected for the first time, in
168 current service as a member with any participating employer.

169 (b) "Initially entering" does not include a person who has any prior service credit on
170 file with the office.

171 (c) "Initially entering" includes an employee of a participating employer, except for an
172 employee that is not eligible under a system or plan under this title, who:

173 (i) does not have any prior service credit on file with the office;

174 (ii) is covered by a retirement plan other than a retirement plan created under this title;

175 and

176 (iii) moves to a position with a participating employer that is covered by this title.

177 (29) "Institution of higher education" means an institution described in Section
178 53B-2-101.

179 [~~(29)~~] (30) (a) "Member" means a person, except a retiree, with contributions on
180 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,
181 Utah Governors' and Legislators' Retirement Act, or with a terminated system.

182 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)
183 of the Internal Revenue Code, if the employees have contributions on deposit with the office.
184 If leased employees constitute less than 20% of the participating employer's work force that is
185 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,
186 "member" does not include leased employees covered by a plan described in Section 414(n)(5)
187 of the federal Internal Revenue Code.

188 ~~[(30)]~~ (31) "Member contributions" means the sum of the contributions paid to a
189 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
190 allowed by a system, and which are made by:

191 (a) the member; and

192 (b) the participating employer on the member's behalf under Section 414(h) of the
193 Internal Revenue Code.

194 ~~[(31)]~~ (32) "Nonelective contribution" means an amount contributed by a participating
195 employer into a participant's defined contribution account.

196 ~~[(32)]~~ (33) "Normal cost rate":

197 (a) means the percent of salary that is necessary for a retirement system that is fully
198 funded to maintain its fully funded status; and

199 (b) is determined by the actuary based on the assumed rate of return established by the
200 board.

201 ~~[(33)]~~ (34) "Office" means the Utah State Retirement Office.

202 ~~[(34)]~~ (35) "Participant" means an individual with voluntary deferrals or nonelective
203 contributions on deposit with the defined contribution plans administered under this title.

204 ~~[(35)]~~ (36) "Participating employer" means a participating employer, as defined by
205 Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
206 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,
207 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'
208 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges'
209 Noncontributory Retirement Act, or an agency financed in whole or in part by public funds
210 which is participating in a system or plan as of January 1, 2002.

211 ~~[(36)]~~ (37) "Pension" means monthly payments derived from participating employer
212 contributions.

213 ~~[(37)]~~ (38) "Plan" means the Utah Governors' and Legislators' Retirement Plan created
214 by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees'
215 Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution
216 Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by
217 Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created
218 under Section 49-11-801.

219 ~~[(38)]~~ (39) (a) "Political subdivision" means any local government entity, including
220 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
221 legally separate and distinct from the state and only if its employees are not by virtue of their
222 relationship to the entity employees of the state.

223 (b) "Political subdivision" includes local districts, special service districts, or
224 authorities created by the Legislature or by local governments, including the office.

225 (c) "Political subdivision" does not include a project entity created under Title 11,
226 Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

227 ~~[(39)]~~ (40) "Program" means the Public Employees' Insurance Program created under
228 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'
229 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term
230 Disability Act.

231 ~~[(40)]~~ (41) "Public funds" means those funds derived, either directly or indirectly, from
232 public taxes or public revenue, dues or contributions paid or donated by the membership of the
233 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,
234 the governmental, educational, and social programs and systems of the state or its political
235 subdivisions.

236 ~~[(41)]~~ (42) "Qualified defined contribution plan" means a defined contribution plan
237 that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

238 ~~[(42)]~~ (43) (a) "Reemployed," "reemploy," or "reemployment" means work or service
239 performed after retirement, in exchange for compensation.

240 (b) Reemployment includes work or service performed on a contract if the retiree is:

241 (i) listed as the contractor; or

242 (ii) an owner, partner, or principle of the contractor.

243 ~~[(43)]~~ (44) "Refund interest" means the amount accrued on member contributions at a
244 rate adopted by the board.

245 ~~[(44)]~~ (45) "Retiree" means an individual who has qualified for an allowance under this
246 title.

247 ~~[(45)]~~ (46) "Retirement" means the status of an individual who has become eligible,
248 applies for, and is entitled to receive an allowance under this title.

249 ~~[(46)]~~ (47) "Retirement date" means the date selected by the member on which the

250 member's retirement becomes effective with the office.

251 ~~[(47)]~~ (48) "Retirement related contribution":

252 (a) means any employer payment to any type of retirement plan or program made on
253 behalf of an employee; and

254 (b) does not include Social Security payments or Social Security substitute payments
255 made on behalf of an employee.

256 ~~[(48)]~~ (49) "Service credit" means:

257 (a) the period during which an employee is employed and compensated by a
258 participating employer and meets the eligibility requirements for membership in a system or the
259 Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are
260 paid to the office; and

261 (b) periods of time otherwise purchasable under this title.

262 ~~[(49)]~~ (50) "System" means the individual retirement systems created by Chapter 12,

263 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'

264 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,

265 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'

266 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges'

267 Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement

268 Act, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part

269 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid

270 Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

271 ~~[(50)]~~ (51) "Tier I" means a system or plan under this title for which an employee is

272 eligible to participate if the employee initially enters regular full-time employment before July

273 1, 2011.

274 ~~[(51)]~~ (52) (a) "Tier II" means a system or plan under this title provided in lieu of a

275 Tier I system or plan for which an employee is eligible to participate, if the employee initially

276 enters regular full-time employment on or after July 1, 2011.

277 (b) "Tier II" includes:

278 (i) the Tier II hybrid system established under:

279 (A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or

280 (B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and

281 (ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:

282 (A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or

283 (B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

284 [~~52~~] (53) "Unfunded actuarial accrued liability" or "UAAL":

285 (a) is determined by the system's actuary; and

286 (b) means the excess, if any, of the accrued liability of a retirement system over the
287 actuarial value of its assets.

288 [~~53~~] (54) "Voluntary deferrals" means an amount contributed by a participant into
289 that participant's defined contribution account.

290 Section 2. Section **49-11-504** is amended to read:

291 **49-11-504. Reemployment of a retiree -- Restrictions.**

292 (1) As used in this section, "full-time" means:

293 (a) employment requiring 20 or more hours of work per week; or

294 (b) at least a half-time teaching contract.

295 (2) (a) Except for the provisions of Subsection (3), the provisions of this section do not
296 apply to a person who is subject to the provisions of Section 49-11-505.

297 (b) This section does not apply to employment as an elected official.

298 (3) A person who is not a retiree under this title is not subject to any postretirement
299 restrictions under this title.

300 (4) A retiree of an agency who is reemployed may not earn additional service credit, if
301 the retiree is reemployed by:

302 (a) a different agency; or

303 (b) the same agency after six months from the retirement date.

304 (5) A retiree of an agency who is reemployed on a full-time basis by the same agency
305 within six months of the date of retirement is subject to the following:

306 (a) the agency shall immediately notify the office;

307 (b) the office shall cancel the retiree's allowance and reinstate the retiree to active
308 member status;

309 (c) the allowance cancellation and reinstatement to active member status is effective on
310 the first day of the month following the date of reemployment;

311 (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year

312 period from the date of cancellation of the original allowance, and if the retiree retires again
313 within the two-year period, the original allowance shall be resumed; and

314 (e) a reinstated retiree retiring after the two-year period shall be credited with the
315 service credit in the retiree's account at the time of the first retirement and from that time shall
316 be treated as a member of a system, including the accrual of additional service credit, but
317 subject to recalculation of the allowance under Subsection (9).

318 (6) A retiree of an agency who is reemployed by the same agency within six months of
319 retirement on a less than full-time basis by the same agency is subject to the following:

320 (a) the retiree may earn, without penalty, compensation from that position which is not
321 in excess of the exempt earnings permitted by Social Security;

322 (b) if a retiree receives compensation in a calendar year in excess of the Social Security
323 limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;

324 (c) the effective date of a suspension and reinstatement of an allowance shall be set by
325 the office; and

326 (d) any suspension of a retiree's allowance under this Subsection (6) shall be applied
327 on a calendar year basis.

328 (7) For six months immediately following retirement, the retiree and participating
329 employer who are subject to Subsection (6) shall:

330 (a) maintain an accurate record of gross earnings in employment;

331 (b) report the gross earnings at least monthly to the office;

332 (c) immediately notify the office in writing of any postretirement earnings under
333 Subsection (6); and

334 (d) immediately notify the office in writing whether postretirement earnings equal or
335 exceed the exempt earnings under Subsection (6).

336 (8) (a) If a participating employer hires a retiree, [~~on a full-time basis, who may not~~
337 ~~earn additional service credit under Subsection (4),~~] the participating employer may not make a
338 retirement related contribution in an amount that exceeds the normal cost rate as defined under
339 Section 49-11-102 on behalf of the retiree under Subsections (8)(b) and (c).

340 (b) The contributions under Subsection (8)(a) are not required, but if paid, shall be paid
341 to a retiree-designated:

342 (i) qualified defined contribution plan administered by the board, if the participating

343 employer participates in a qualified defined contribution plan administered by the board; or
344 (ii) qualified defined contribution plan offered by the participating employer if the
345 participating employer does not participate in a qualified defined contribution plan
346 administered by the board.

347 (c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not
348 participating in a qualified defined contribution plan administered by the board, the employer
349 may elect to pay the contributions under Subsection (8)(a) to a deferred compensation plan
350 administered by the board.

351 (9) A retiree who has returned to work, accrued additional service credit, and again
352 retires shall have the retiree's allowance recalculated using:

353 (a) the formula in effect at the date of the retiree's original retirement for all service
354 credit accrued prior to that date; and

355 (b) the formula in effect at the date of the subsequent retirement for all service credit
356 accrued between the first and subsequent retirement dates.

357 (10) The board may make rules to implement this section.

358 Section 3. Section **49-11-607** is amended to read:

359 **49-11-607. Determination of benefits -- Errors in records or calculations --**
360 **Correction of errors by the office.**

361 (1) After the retirement date, which shall be set by a member in the member's
362 application for retirement, no alteration, addition, or cancellation of a benefit may be made
363 except as provided in Subsections (2), (3), and (4) or other law.

364 (2) (a) Errors in the records or in the calculations of the office which result in an
365 incorrect benefit to any member, retiree, participant, covered individual, alternate payee, or
366 beneficiary shall be corrected by the office if the correction results in a modification of the
367 benefit amount of [~~\$1~~] \$5 or more.

368 (b) Future payments shall be made to any member, retiree, participant, covered
369 individual, alternate payee, or beneficiary to:

370 (i) pay the benefit to which the member or beneficiary was entitled; or

371 (ii) recover any overpayment.

372 (3) (a) Errors in the records or calculation of a participating employer which result in
373 an incorrect benefit to a member, retiree, participant, covered individual, alternate payee, or

374 beneficiary shall be corrected by the participating employer.

375 (b) If insufficient employer contributions have been received by the office, the
376 participating employer shall pay any delinquent employer contributions, plus interest under
377 Section 49-11-503, required by the office to maintain the system, plan, or program affected on
378 an actuarially sound basis.

379 (c) If excess contributions have been received by the office, the contributions shall be
380 refunded to the participating employer or member which paid the contributions.

381 (4) If a dispute exists between a participating employer and a member at the time of the
382 member's retirement which will affect the member's benefit calculation, and notice of the
383 dispute is given to the office prior to the calculation of a member's benefit, the benefit may be
384 paid based on the member's retirement date and the records available and then recalculated
385 upon settlement of the dispute.

386 Section 4. Section **49-11-616** is amended to read:

387 **49-11-616. Benefits information.**

388 (1) (a) The office shall provide [~~written general information~~] a form to each
389 participating employer [~~concerning~~] providing:

390 (i) general information on the benefits available under this title[-]; and

391 (ii) a place for each employee to sign verifying that the employee has received the
392 form.

393 (2) (a) A participating employer shall provide the [~~information~~] form under Subsection
394 (1) to each eligible employee immediately upon:

395 (i) termination of service;

396 (ii) leave of absence;

397 (iii) commencement of long-term disability benefits; or

398 (iv) retirement.

399 (b) When received from a participating employer under this section, an employee shall
400 sign the form under Subsection (1) verifying that the employee has received it.

401 [~~(b)~~] (c) (i) Each participating employer shall maintain the records necessary to
402 demonstrate that each employee has received the [~~information outlined in~~] form under
403 Subsection (1).

404 (ii) The records shall be made available to the office upon request.

405 ~~[(3)(a) The office shall provide each participating employer with a form to be signed~~
406 ~~by each employee which verifies that the employee has been given the information required by~~
407 ~~this section.]~~

408 ~~[(b) A copy of the signed form shall be immediately forwarded to the office by the~~
409 ~~participating employer or the employee.]~~

410 Section 5. Section **49-11-617** is amended to read:

411 **49-11-617. Original documents.**

412 (1) At the reasonable discretion of the office, any document relating to this title may be
413 treated as an original, whether created by photocopy, facsimile, e-mail, electronic transmission,
414 imaging, or other technology.

415 (2) The office may communicate with participating employers, members, beneficiaries,
416 and others through electronic means as determined appropriate by the office.

417 Section 6. Section **49-12-203** is amended to read:

418 **49-12-203. Exclusions from membership in system.**

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

420 (a) An employee whose employment status is temporary in nature due to the nature or
421 the type of work to be performed, provided that:

422 (i) if the term of employment exceeds six months and the employee otherwise qualifies
423 for service credit in this system, the participating employer shall report and certify to the office
424 that the employee is a regular full-time employee effective the beginning of the seventh month
425 of employment; or

426 (ii) if an employee, previously terminated prior to being eligible for service credit in
427 this system is reemployed within three months of termination by the same participating
428 employer, the participating employer shall report and certify that the member is a regular
429 full-time employee when the total of the periods of employment equals six months and the
430 employee otherwise qualifies for service credit in this system.

431 (b) (i) ~~[A current or future employee of a two-year or four-year college or university~~
432 ~~who holds, or is entitled to hold, under Section 49-12-204, a retirement annuity contract] An~~
433 employee of an institution of higher education who participates in a retirement system with the
434 Teachers' Insurance and Annuity Association of America or with any other public or private
435 retirement system, organization, or company during any period in which required contributions

436 based on compensation have been paid on behalf of the employee by the employer.

437 (ii) The employee, upon cessation of the participating employer contributions, shall
438 immediately become [~~eligible~~] ineligible for service credit in this system.

439 (c) An employee serving as an exchange employee from outside the state.

440 (d) An executive department head of the state, a member of the State Tax Commission,
441 the Public Service Commission, and a member of a full-time or part-time board or commission
442 who files a formal request for exemption.

443 (e) An employee of the Department of Workforce Services who is covered under
444 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

445 (f) (i) An employee who is employed on or after July 1, 2009 with an employer that has
446 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
447 49-12-202(2)(c).

448 (ii) Notwithstanding the provisions of this Subsection (1)(f), any eligibility for service
449 credit earned by an employee under this chapter before July 1, 2009 is not affected under this
450 Subsection (1)(f).

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

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

455 (b) an elected official;

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

459 (d) an employee of the Governor's Office of Planning and Budget;

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

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

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

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

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

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

466 (k) a person appointed as a city manager or chief city administrator or another person

467 employed by a municipality, county, or other political subdivision, who is an at-will employee;
468 and

469 (1) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
470 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
471 membership in a labor organization that provides retirement benefits to its members.

472 (3) (a) Each participating employer shall prepare a list designating those positions
473 eligible for exemption under Subsection (2).

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

476 (4) (a) In accordance with this section, a municipality, county, or political subdivision
477 may not exempt more than 50 positions or a number equal to 10% of the employees of the
478 municipality, county, or political subdivision whichever is lesser.

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

481 (5) Each participating employer shall:

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

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

484 (6) The office may make rules to implement this section.

485 Section 7. Section **49-12-204** is amended to read:

486 **49-12-204. Higher education employees' eligibility requirements -- Election**
487 **between different retirement plans -- Classification requirements -- Transfer between**
488 **systems -- One-time election window -- Rulemaking.**

489 (1) (a) A regular full-time employee of an institution of higher education who is
490 eligible to participate in either this system or [~~in a retirement annuity contract~~] with the
491 Teachers' Insurance and Annuity Association of America or with any other public or private
492 retirement system, organization, or company, designated by the Board of Regents, shall, not
493 later than January 1, 1979, elect to participate exclusively in this system or in an annuity
494 contract allowed under this Subsection (1).

495 (b) The election is final, and no right exists to make any further election.

496 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired
497 by an institution of higher education after January 1, 1979, may participate only in the

498 retirement plan which attaches to the person's employment classification.

499 (b) Each institution of higher education shall prepare or amend existing employment
500 classifications, under the direction of the Board of Regents, so that each classification is
501 assigned with either:

502 (i) this system;

503 (ii) the Teachers' Insurance and Annuity Association of America; or

504 (iii) another public or private system, organization, or company designated by the
505 Board of Regents.

506 (c) Notwithstanding a person's employment classification assignment under Subsection
507 (2)(b), a regular full-time employee who begins employment with an institution of higher
508 education on or after May 11, 2010, has a one-time irrevocable election to continue
509 participation in this system, if the employee has service credit in this system before the date of
510 employment.

511 (3) Notwithstanding an employment classification assignment change made under
512 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after
513 January 1, 1979, whose employment classification requires participation in this system may
514 elect to continue participation in this system.

515 (4) A regular full-time employee hired by an institution of higher education after
516 January 1, 1979, whose employment classification requires participation in this system shall
517 participate in this system.

518 (5) (a) Notwithstanding any other provision of this section, a regular full-time
519 employee of an institution of higher education shall have a one-time irrevocable election to
520 participate in this system if the employee:

521 (i) was hired after January 1, 1979;

522 (ii) whose employment classification assignment under Subsection (2)(b) required
523 participation in a retirement program other than this system; and

524 (iii) has service credit in a system under this title.

525 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

526 (c) All forms required by the office must be completed and received by the office no
527 later than June 30, 2010, for the election to participate in this system to be effective.

528 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher

529 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue
530 service credit in this system.

531 (6) A regular full-time employee of an institution of higher education who elects to be
532 covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment
533 while covered under another retirement program sponsored by the institution of higher
534 education by complying with the requirements of Section 49-11-403.

535 (7) The board shall make rules to implement this section.

536 Section 8. Section **49-13-203** is amended to read:

537 **49-13-203. Exclusions from membership in system.**

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

539 (a) An employee whose employment status is temporary in nature due to the nature or
540 the type of work to be performed, provided that:

541 (i) if the term of employment exceeds six months and the employee otherwise qualifies
542 for service credit in this system, the participating employer shall report and certify to the office
543 that the employee is a regular full-time employee effective the beginning of the seventh month
544 of employment; and

545 (ii) if an employee, previously terminated prior to becoming eligible for service credit
546 in this system, is reemployed within three months of termination by the same participating
547 employer, the participating employer shall report and certify to the office that the member is a
548 regular full-time employee when the total of the periods of employment equals six months and
549 the employee otherwise qualifies for service credit in this system.

550 (b) (i) [~~A current or future employee of a two-year or four-year college or university~~
551 ~~who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract]~~ An
552 employee of an institution of higher education who participates in a retirement system with the
553 Teachers' Insurance and Annuity Association of America or with any other public or private
554 retirement system, organization, or company during any period in which required contributions
555 based on compensation have been paid on behalf of the employee by the employer.

556 (ii) The employee, upon cessation of the participating employer contributions, shall
557 immediately become [~~eligible~~] ineligible for service credit in this system.

558 (c) An employee serving as an exchange employee from outside the state.

559 (d) An executive department head of the state or a legislative director, senior executive

560 employed by the governor's office, a member of the State Tax Commission, a member of the
561 Public Service Commission, and a member of a full-time or part-time board or commission
562 who files a formal request for exemption.

563 (e) An employee of the Department of Workforce Services who is covered under
564 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

565 (f) (i) An employee who is employed with an employer that has elected to be excluded
566 from participation in this system under Subsection 49-13-202(5), effective on or after the date
567 of the employer's election under Subsection 49-13-202(5).

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

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

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

575 (b) an elected official;

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

579 (d) an employee of the Governor's Office of Planning and Budget;

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

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

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

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

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

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

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

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

591 (m) an employee of the Utah Science Technology and Research Initiative created under
592 Title 63M, Chapter 2, Utah Technology Research and Governing Authority Act.

593 (3) (a) Each participating employer shall prepare a list designating those positions
594 eligible for exemption under Subsection (2).

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

597 (4) (a) In accordance with this section, a municipality, county, or political subdivision
598 may not exempt more than 50 positions or a number equal to 10% of the employees of the
599 municipality, county, or political subdivision, whichever is lesser.

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

602 (5) Each participating employer shall:

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

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

605 (6) The office may make rules to implement this section.

606 Section 9. Section **49-13-204** is amended to read:

607 **49-13-204. Higher education employees' eligibility requirements -- Election**
608 **between different retirement plans -- Classification requirements -- Transfer between**
609 **systems -- One-time election window -- Rulemaking.**

610 (1) (a) A regular full-time employee of an institution of higher education who is
611 eligible to participate in either this system or in a retirement [~~annuity contract~~] system with the
612 Teachers' Insurance and Annuity Association of America or with any other public or private
613 retirement system, organization, or company, designated by the Board of Regents, shall, not
614 later than January 1, 1979, elect to participate exclusively in this system or in an annuity
615 contract allowed under this Subsection (1)(a).

616 (b) The election is final, and no right exists to make any further election.

617 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired
618 by an institution of higher education after January 1, 1979, may participate only in the
619 retirement plan which attaches to the person's employment classification.

620 (b) Each institution of higher education shall prepare or amend existing employment
621 classifications, under the direction of the Board of Regents, so that each classification is

622 assigned with either:

623 (i) this system;

624 (ii) the Teachers' Insurance and Annuity Association of America; or

625 (iii) another public or private system, organization, or company designated by the
626 Board of Regents.

627 (c) Notwithstanding a person's employment classification assignment under Subsection
628 (2)(b), a regular full-time employee who begins employment with an institution of higher
629 education on or after May 11, 2010, has a one-time irrevocable election to continue
630 participation in this system, if the employee has service credit in this system before the date of
631 employment.

632 (3) Notwithstanding an employment classification assignment change made under
633 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after
634 January 1, 1979, whose employment classification requires participation in this system may
635 elect to continue participation in this system.

636 (4) A regular full-time employee hired by an institution of higher education after
637 January 1, 1979, whose employment classification requires participation in this system shall
638 participate in this system.

639 (5) (a) Notwithstanding any other provision of this section, a regular full-time
640 employee of an institution of higher education whose employment classification assignment
641 under Subsection (2)(b) required participation in a retirement program other than this system
642 shall have a one-time irrevocable election to participate in this system.

643 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

644 (c) All forms required by the office must be completed and received by the office no
645 later than June 30, 2010, for the election to participate in this system to be effective.

646 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher
647 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue
648 service credit in this system.

649 (6) A regular full-time employee of an institution of higher education who elects to be
650 covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment
651 while covered under another retirement program by complying with the requirements of
652 Section 49-11-403.

653 (7) The board shall make rules to implement this section.

654 Section 10. Section **49-21-402** is amended to read:

655 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**

656 **Application for other benefits required.**

657 (1) A monthly disability benefit may be terminated unless:

658 (a) the eligible employee is under the ongoing care and treatment of a physician other
659 than the eligible employee; and

660 (b) the eligible employee provides the information and documentation requested by the
661 office.

662 (2) The monthly disability benefit shall be reduced or reimbursed by any amount
663 received by, or payable to, the eligible employee from the following sources for the same
664 period of time during which the eligible employee is entitled to receive a monthly disability
665 benefit:

666 (a) Social Security disability benefits, including all benefits received by the eligible
667 employee, the eligible employee's spouse, and the eligible employee's children as determined
668 by the Social Security Administration;

669 (b) workers' compensation indemnity benefits;

670 (c) any money received by judgment, legal action, or settlement from a third party
671 liable to the employee for the disability;

672 (d) unemployment compensation benefits;

673 (e) automobile no-fault, medical payments, or similar insurance payments;

674 (f) any money received by a judgment, settlement, or other payment as a result of a
675 claim against an employer; and

676 (g) any payments made for sick leave, annual leave, or similar payments.

677 (3) The monthly disability benefit shall be reduced by any amount in excess of
678 one-third of the eligible employee's regular monthly salary received by, or payable to, the
679 eligible employee from the following sources for the same period of time during which the
680 eligible employee is entitled to receive a monthly disability benefit:

681 (a) any [~~employer-sponsored retirement programs~~] retirement payment earned through
682 or provided by public or private employment; and

683 (b) any disability benefit resulting from the disability for which benefits are being

684 received under this chapter.

685 (4) After the date of disability, cost-of-living increases to any of the benefits listed in
686 Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability
687 benefit.

688 (5) Any amounts payable to the eligible employee from one or more of the sources
689 under Subsection (2) are considered as amounts received whether or not the amounts were
690 actually received by the eligible employee.

691 (6) (a) An eligible employee shall first apply for all disability benefits from
692 governmental entities under Subsection (2) to which the eligible employee is or may be
693 entitled, and provide to the office evidence of the applications.

694 (b) If the eligible employee fails to make application under this Subsection (6), the
695 monthly disability benefit shall be suspended.

696 Section 11. Section **49-21-403** is amended to read:

697 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

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

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

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

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

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

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

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

715 Retirement Act;

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

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

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

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

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

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

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

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

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

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

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

743 (3) An eligible employee who is eligible for service credit in a system, but has
744 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
745 eligible employee would have received by being eligible for service credit in the system

746 covering the eligible employee on the date of disability, except for the accrual of service credit,
747 in accordance with this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

776 Section 12. Section **49-22-203** is amended to read:

777 **49-22-203. Exclusions from membership in system.**

778 The following employees are not eligible for service credit in this system:

779 (1) An employee whose employment status is temporary in nature due to the nature or
780 the type of work to be performed, provided that:

781 (a) if the term of employment exceeds six months and the employee otherwise qualifies
782 for service credit in this system, the participating employer shall report and certify to the office
783 that the employee is a regular full-time employee effective the beginning of the seventh month
784 of employment; and

785 (b) if an employee, previously terminated prior to becoming eligible for service credit
786 in this system, is reemployed within three months of termination by the same participating
787 employer, the participating employer shall report and certify to the office that the member is a
788 regular full-time employee when the total of the periods of employment equals six months and
789 the employee otherwise qualifies for service credit in this system.

790 (2) (a) ~~[A current or future]~~ An employee of an institution of higher education who
791 ~~[holds, or is entitled to hold, under Section 49-22-204, a retirement annuity contract]~~
792 participates in a retirement system with the Teachers' Insurance and Annuity Association of
793 America or with any other public or private retirement system, organization, or company
794 during any period in which required contributions based on compensation have been paid on
795 behalf of the employee by the employer.

796 (b) The employee, upon cessation of the participating employer contributions, shall
797 immediately become ~~[eligible]~~ ineligible for service credit in this system.

798 (3) An employee serving as an exchange employee from outside the state.

799 (4) An employee of the Department of Workforce Services who is covered under
800 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

801 Section 13. Section **49-22-401** is amended to read:

802 **49-22-401. Contributions -- Rates.**

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

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

808 Internal Revenue Code which:

809 (i) is sponsored by the board; and

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

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

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

813 Subsection (2); or

814 (ii) at the member's option, another defined contribution plan established by the

815 participating employer.

816 (c) In addition to the percent specified under Subsection (2)(a), the participating

817 employer shall pay the corresponding Tier I system amortization rate of the employee's

818 compensation to the office to be applied to the employer's corresponding Tier I system liability.

819 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the

820 participating employer under Subsection (2)(a) vests to the member upon accruing four years

821 employment as a regular full-time employee under this title.

822 (b) The total amount contributed by the member under Subsection (2)(b) vests to the

823 member's benefit immediately and is nonforfeitable.

824 (c) Upon filing a written request for exemption with the office, the following

825 employees are exempt from the vesting requirements of Subsection (3)(a):

826 (i) an executive department head of the state;

827 (ii) a member of the State Tax Commission;

828 (iii) a member of the Public Service Commission;

829 (iv) an employee of the Governor's Office of Planning and Budget;

830 (v) an employee of the Governor's Office of Economic Development;

831 (vi) an employee of the Commission on Criminal and Juvenile Justice;

832 (vii) an employee of the Governor's Office;

833 (viii) an employee of the State Auditor's Office;

834 (ix) an employee of the State Treasurer's Office;

835 (x) a person appointed as a city manager or appointed as a city administrator or another

836 at-will employee of a municipality, county, or other political subdivision;

837 (xi) an employee of an interlocal cooperative agency created under Title 11, Chapter

838 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided

839 through membership in a labor organization that provides retirement benefits to its members;
840 and

841 (xii) an employee of the Utah Science Technology and Research Initiative created
842 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

843 (d) (i) A participating employer shall prepare a list designating those positions eligible
844 for exemption under Subsection (3)(c).

845 (ii) An employee may not be exempted unless the employee is employed in a position
846 designated by the participating employer under Subsection (3)(c).

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

850 (A) elects to be exempt in accordance with Subsection (3)(c); and

851 (B) continues employment with the participating employer through the one year
852 election period under Subsection 49-22-201(2)(c).

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

855 (A) elects to be exempt in accordance with Subsection (3)(c); and

856 (B) terminates employment prior to the one year election period under Subsection
857 49-22-201(2)(c).

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

861 (ii) A municipality, county, or political subdivision may exempt at least one regular
862 full-time employee.

863 ~~(g)~~ (g) Each participating employer shall:

864 (i) file each employee exemption annually with the office; and

865 (ii) update an employee exemption in the event of any change.

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

867 (ii) The rules made under Subsection ~~(3)(g)(i)~~ (3)(h)(i) shall include provisions to
868 allow the exemption provided under Subsection (3)(c) to apply to all contributions made
869 beginning on or after July 1, 2011, on behalf of an exempted employee who began the

870 employment before May 8, 2012.

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

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

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

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

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

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

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

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

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

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

900 (8) The office may request from any other qualified 401(k) plan under Subsection (2)

901 any relevant information pertaining to the maintenance of its tax qualification under the
902 Internal Revenue Code.

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

905 Section 14. Section **49-23-401** is amended to read:

906 **49-23-401. Contributions -- Rates.**

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

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

913 (i) is sponsored by the board; and

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

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

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

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

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

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

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

928 (c) Upon filing a written request for exemption with the office, the following
929 employees are exempt from the vesting requirements of Subsection (3)(a) if the employee is a
930 public safety service employee and is:

931 (i) an executive department head of the state;

- 932 (ii) an elected or appointed sheriff of a county; or
- 933 (iii) an elected or appointed chief of police of a municipality.
- 934 (d) (i) A participating employer shall prepare a list designating those positions eligible
- 935 for exemption under Subsection (3)(c).
- 936 (ii) An employee may not be exempted unless the employee is employed in a position
- 937 designated by the participating employer under Subsection (3)(c).
- 938 (e) (i) All employer contributions made on behalf of an employee shall be invested in
- 939 accordance with Subsection 49-23-302(3)(a) until the one year election period under
- 940 Subsection 49-23-201(2)(c) is expired if the employee:
- 941 (A) elects to be exempt in accordance with Subsection (3)(c); and
- 942 (B) continues employment with the participating employer through the one year
- 943 election period under Subsection 49-23-201(2)(c).
- 944 (ii) An employee is entitled to receive a distribution of the employer contributions
- 945 made on behalf of the employee and all associated investment gains and losses if the employee:
- 946 (A) elects to be exempt in accordance with Subsection (3)(c); and
- 947 (B) terminates employment prior to the one year election period under Subsection
- 948 49-23-201(2)(c).
- 949 ~~(e)~~ (f) Each participating employer shall:
- 950 (i) file each employee exemption annually with the office; and
- 951 (ii) update an employee exemption in the event of any change.
- 952 ~~(f)~~ (g) (i) The office shall make rules to implement this Subsection (3).
- 953 (ii) The rules made under Subsection ~~(f)(i)~~ (3)(g)(i) shall include provisions to
- 954 allow the exemption provided under Subsection (3)(c) to apply to all contributions made
- 955 beginning on or after July 1, 2011, on behalf of an exempted employee who began the
- 956 employment before May 8, 2012.
- 957 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
- 958 invested in a default option selected by the board until the member is vested in accordance with
- 959 Subsection (3)(a).
- 960 (b) A member may direct the investment of contributions, including associated
- 961 investment gains and losses, made by a participating employer under Subsection (2)(a) only
- 962 after the contributions have vested in accordance with Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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