

Chapter 22 New Public Employees' Tier II Contributory Retirement Act

Part 1 General Provisions

49-22-101 Title.

This chapter is known as the "New Public Employees' Tier II Contributory Retirement Act."

Enacted by Chapter 266, 2010 General Session

49-22-102 Definitions.

As used in this chapter:

- (1) "Benefits normally provided" has the same meaning as defined in Section 49-12-102.
- (2)
 - (a) "Compensation" means, except as provided in Subsection (2)(c), the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:
 - (i) bonuses;
 - (ii) cost-of-living adjustments;
 - (iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;
 - (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and
 - (v) member contributions.
 - (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).
 - (c) "Compensation" does not include:
 - (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
 - (ii) the cost of any employment benefits paid for by the participating employer;
 - (iii) compensation paid to a temporary employee or an employee otherwise ineligible for service credit;
 - (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or
 - (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.
 - (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.
- (4) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (4)(a), (b), (c), (d), and (e).
 - (a) Except as provided in Subsection (4)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the

dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

- (b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (4)(a) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
- (c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
- (d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
- (e) The annual compensation used to calculate final average salary shall be based on:
 - (i) a calendar year for a member employed by a participating employer that is not an educational institution; or
 - (ii) a contract year for a member employed by an educational institution.
- (5) "Participating employer" means an employer which meets the participation requirements of:
 - (a) Sections 49-12-201 and 49-12-202;
 - (b) Sections 49-13-201 and 49-13-202;
 - (c) Section 49-19-201; or
 - (d) Section 49-22-201 or 49-22-202.
- (6)
 - (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.
 - (b) "Regular full-time employee" includes:
 - (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time or more;
 - (ii) a classified school employee:
 - (A) who is hired before July 1, 2013; and
 - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
 - (iii) an appointive officer whose appointed position is full time as certified by the participating employer;
 - (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the attorney general, and a state legislator;
 - (v) an elected official not included under Subsection (6)(b)(iv) whose elected position is full time as certified by the participating employer;
 - (vi) a faculty member or employee of an institution of higher education who is considered full time by that institution of higher education; and
 - (vii) an individual who otherwise meets the definition of this Subsection (6) who performs services for a participating employer through a professional employer organization or similar arrangement.
 - (c) "Regular full-time employee" does not include:
 - (i) a firefighter service employee as defined in Section 49-23-102;

- (ii) a public safety service employee as defined in Section 49-23-102;
- (iii) a classified school employee:
 - (A) who is hired on or after July 1, 2013; and
 - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;
- (iv) a classified school employee:
 - (A) who is hired before July 1, 2013;
 - (B) who did not qualify as a regular full-time employee before July 1, 2013;
 - (C) who does not receive benefits normally provided by the participating employer; and
 - (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or
 - (E) who is a person working on a contract:
 - (I) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
 - (II) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- (7) "System" means the New Public Employees' Tier II Contributory Retirement System created under this chapter.
- (8) "Years of service credit" means:
 - (a) a period consisting of 12 full months as determined by the board;
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or
 - (c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Amended by Chapter 227, 2016 General Session

Amended by Chapter 304, 2016 General Session

49-22-103 Creation of system.

- (1) There is created for members employed by a participating employer the "New Public Employees' Tier II Contributory Retirement System."
- (2) The New Public Employees' Tier II Contributory Retirement System includes:
 - (a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and
 - (b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.

Enacted by Chapter 266, 2010 General Session

49-22-104 Creation of trust fund.

- (1) There is created the "New Public Employees' Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Enacted by Chapter 266, 2010 General Session

Part 2 Membership Eligibility

49-22-201 System membership -- Eligibility.

- (1) Beginning July 1, 2011, a participating employer shall participate in this system.
- (2)
- (a) A person initially entering regular full-time employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, is eligible:
 - (i) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or
 - (ii) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan.
 - (b) A person initially entering regular full-time employment with a participating employer on or after July 1, 2011, shall:
 - (i) make an election to participate in the system created under this chapter:
 - (A) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or
 - (B) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan; and
 - (ii) electronically submit to the office notification of the member's election under Subsection (2)(b)(i) in a manner approved by the office.
 - (c) An election made by a person initially entering regular full-time employment with a participating employer under this Subsection (2) is irrevocable beginning one year from the date of eligibility for accrual of benefits.
 - (d) If no election is made under Subsection (2)(b)(i), the person shall become a member eligible for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System.
- (3) Notwithstanding the provisions of this section and except as provided in Subsection (4), an elected official initially entering office on or after July 1, 2011:
- (a) is only eligible to participate in the Tier II defined contribution plan established under Part 4, Tier II Defined Contribution Plan;
 - (b) is not eligible to participate in the Tier II hybrid retirement system established under Part 3, Tier II Hybrid Retirement System; and
 - (c) is vested immediately in the elected official's benefit and the benefit is nonforfeitable, including the total amount contributed by the participating employer and the total amount contributed by the member in the Tier II defined contribution plan.
- (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected official initially entering office on or after July 1, 2011, who has service credit accrued before July 1, 2011:
- (a) in a Tier I retirement system or plan administered by the board shall continue in the Tier I system or plan for which the legislator or full-time elected official is eligible; or

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

Amended by Chapter 227, 2016 General Session

49-22-202 Participation of employers -- Limitations -- Exclusions -- Admission requirements.

- (1) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.
- (2) The following employers may be excluded from participation in this system:
 - (a) an employer not initially admitted or included as a participating employer in this system before January 1, 1982, if:
 - (i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or
 - (ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;
 - (b) an employer that is a charter school authorized under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and does not elect to participate in accordance with Section 53A-1a-512; or
 - (c) an employer that is a risk management association initially created by interlocal agreement before 1986 for the purpose of implementing a self-insurance joint protection program for the benefit of member municipalities of the association.
- (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system regardless of whether the employer has applied for admission under Subsection (4).
- (4)
 - (a) An employer may, by resolution of its governing body, apply for admission to this system.
 - (b) Upon approval of the resolution by the board, the employer is a participating employer in this system and is subject to this title.
- (5) If a participating employer purchases service credit on behalf of a regular full-time employee for service rendered prior to the participating employer's admission to this system, the participating employer:
 - (a) shall purchase credit in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered; and
 - (b) shall comply with the provisions of Section 49-11-403.

Amended by Chapter 363, 2014 General Session

49-22-203 Exclusions from membership in system.

- (1) The following employees are not eligible for service credit in this system:
 - (a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;
 - (b) except as provided under Subsection (3), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period

- in which required contributions based on compensation have been paid on behalf of the employee by the employer;
- (c) an employee serving as an exchange employee from outside the state;
 - (d) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
 - (e) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-623(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-623(3)(b); or
 - (f) a person who files a written request for exemption with the office under Section 49-22-205.
- (2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:
- (a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or
 - (b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.
- (3) Upon cessation of the participating employer contributions, an employee under Subsection (1) (b) is eligible for service credit in this system.

Amended by Chapter 315, 2015 General Session

Amended by Chapter 364, 2015 General Session

49-22-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems.

- (1)
- (a) Regular full-time employees of institutions of higher education who are eligible to participate in either this system or in a retirement annuity contract with a public or private system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).
 - (b) The election is final, and no right exists to make any further election.
- (2)
- (a) A regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.
 - (b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:
 - (i) this system; or
 - (ii) a public or private system, organization, or company designated by the Board of Regents.
- (3) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system may elect to continue participation in this system upon change to an employment classification which requires

participation in a public or private system, organization, or company designated by the Board of Regents.

- (4) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system shall participate in this system.

Amended by Chapter 15, 2014 General Session

49-22-205 Exemptions from participation in system.

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

- (a) an executive department head of the state;
- (b) a member of the State Tax Commission;
- (c) a member of the Public Service Commission;
- (d) a member of a full-time or part-time board or commission;
- (e) an employee of the Governor's Office of Management and Budget;
- (f) an employee of the Governor's Office of Economic Development;
- (g) an employee of the Commission on Criminal and Juvenile Justice;
- (h) an employee of the Governor's Office;
- (i) an employee of the State Auditor's Office;
- (j) an employee of the State Treasurer's Office;
- (k) any other member who is permitted to make an election under Section 49-11-406;
- (l) a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision;
- (m) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and
- (n) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

- (2)
- (a) A participating employer shall prepare a list designating those positions eligible for exemption under Subsection (1).
 - (b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (1).

- (3)
- (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.
 - (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

- (4) Each participating employer shall:
- (a) file each employee exemption annually with the office; and
 - (b) update an employee exemption in the event of any change.

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

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

- (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the nonelective contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a); and
- (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- (b) for a member of the Tier II hybrid retirement system:
 - (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a);
 - (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
 - (iii) the member is not eligible for additional service credit in the system.
- (6) If an employee who is a member of the Tier II hybrid retirement system subsequently revokes the election of exemption made under Subsection (1), the provisions described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- (7)
 - (a) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election period under Subsection 49-22-201(2)(c) is expired if the employee:
 - (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) continues employment with the participating employer through the one-year election period under Subsection 49-22-201(2)(c).
 - (b) An employee is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses if the employee:
 - (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) terminates employment prior to the one-year election period under Subsection 49-22-201(2)(c).
- (8)
 - (a) The office shall make rules to implement this section.
 - (b) The rules made under this Subsection (8) shall include provisions to allow the exemption provided under Subsection (1) to apply to all contributions made beginning on or after July 1, 2011, on behalf of an exempted employee who began the employment before May 8, 2012.

Amended by Chapter 227, 2016 General Session

Part 3

Tier II Hybrid Retirement System

49-22-301 Contributions.

- (1) Participating employers and members shall pay the certified contribution rates to the office to maintain the defined benefit portion of this system on a financially and actuarially sound basis.
- (2)
 - (a) A participating employer shall pay up to 10% of compensation toward the certified contribution rate to the office for the defined benefit portion of this system.
 - (b) A member shall only pay to the office the amount, if any, of the certified contribution rate for the defined benefit portion of this system that exceeds the percent of compensation paid by the participating employer under Subsection (2)(a).

- (c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3) A participating employer may not elect to pay all or part of the required member contributions under Subsection (2)(b), in addition to the required participating employer contributions.
- (4)
 - (a) A member contribution is credited by the office to the account of the individual member.
 - (b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.
 - (c) A member contribution is vested and nonforfeitable.
- (5)
 - (a) Each member is considered to consent to payroll deductions of member contributions.
 - (b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.
- (6) Benefits provided under the defined benefit portion of the Tier II Hybrid Retirement System created under this part:
 - (a) may not be increased unless the actuarial funded ratios of all systems under this title reach 100%; and
 - (b) may be decreased only in accordance with the provisions of Section 49-22-310.

Amended by Chapter 439, 2011 General Session

49-22-302 Purchase of service credit.

A member who works 20 or more hours per week for a participating employer participating in this system, but who does not meet other eligibility requirements for service credit, may purchase the service credit in accordance with Section 49-11-403.

Enacted by Chapter 266, 2010 General Session

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

- (1)
 - (a) A participating employer shall make a nonelective contribution on behalf of each regular full-time employee who is a member of this system in an amount equal to 10% minus the contribution rate paid by the employer under Subsection 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:
 - (i) is sponsored by the board; and
 - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
 - (b) The member may make voluntary deferrals to:
 - (i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (1); or
 - (ii) at the member's option, another defined contribution plan established by the participating employer.
- (2)
 - (a) The total amount contributed by the participating employer under Subsection (1)(a), including associated investment gains and losses, vests to the member upon accruing four years of service credit under this title.

- (b) The total amount contributed by the member under Subsection (1)(b) vests to the member's benefit immediately and is nonforfeitable.
- (c)
 - (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to which the member may be entitled.
 - (ii) At the time of vesting, if a member's years of service credit is within one-tenth of one year of the total years required for vesting, the member shall be considered to have the total years of service credit required for vesting.
- (3)
 - (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).
 - (b) A member may direct the investment of contributions made by a participating employer under Subsection (1)(a) only after the contributions have vested in accordance with Subsection (2)(a).
 - (c) A member may direct the investment of contributions made by the member under Subsection (1)(b).
- (4) No loans shall be available from contributions made by a participating employer under Subsection (1)(a).
- (5) No hardship distributions shall be available from contributions made by a participating employer under Subsection (1)(a).
- (6)
 - (a) Except as provided in Subsection (6)(b) and Section 49-22-205, if a member terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a), all contributions, including associated investment gains and losses, made by a participating employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.
 - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:
 - (i) all contributions made by the previous participating employer on behalf of the member, including associated investment gains and losses, shall be reinstated upon employment as a regular full-time employee; and
 - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (2)(a).
 - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.
- (7) The office may request from any other qualified 401(k) plan under Subsection (1) or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.
- (8) The office may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Amended by Chapter 227, 2016 General Session

49-22-304 Defined benefit eligibility for an allowance -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least four years of service credit and has attained an age of 65 years;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;
 - (iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or
 - (iv) the member has accrued at least 35 years of service credit.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
 - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
 - (b) A member who is employed by a participating employer and who is also a part-time appointed board member is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
 - (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).

Amended by Chapter 310, 2016 General Session

49-22-305 Defined benefit service retirement plans -- Calculation of retirement allowance -- Social Security limitations.

- (1)
 - (a) The retirees of this system may choose from the six retirement options described in this section.
 - (b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.
- (2) The Option One benefit is an annual allowance calculated as follows:
 - (a) If the retiree is at least 65 years of age or has accrued at least 35 years of service credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011.

- (b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35 or more years of accrued credit in which event no reduction is made to the allowance.
- (c)
 - (i) Years of service includes any fractions of years of service to which the retiree may be entitled.
 - (ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within one-tenth of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.
- (d) An Option One allowance is only payable to the member during the member's lifetime.
- (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:
 - (a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
 - (c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
 - (d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:
 - (i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.
 - (e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:
 - (i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.
- (4)
 - (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.
 - (b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.
- (5) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

Amended by Chapter 439, 2011 General Session

49-22-306 Allowance payable by lump-sum payment.

- (1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.
- (2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Enacted by Chapter 266, 2010 General Session

49-22-307 Lump-sum death benefit for retiree and spouse.

- (1)
 - (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.
 - (b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.
 - (c) The board may make rules for the administration of this lump-sum death benefit.
- (2)
 - (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.
- (3)
 - (a) A retiree may elect to cancel the lump-sum death benefit under this section.
 - (b) The cancellation under this Subsection (3) is irrevocable.
 - (c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Enacted by Chapter 266, 2010 General Session

49-22-308 Defined benefit annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an original allowance paid under Section 49-22-305, if the allowance has been paid for at least one year; and
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
 - (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.
 - (b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Enacted by Chapter 266, 2010 General Session

49-22-309 Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.

- (1)
 - (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.
 - (b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.
 - (c) The member's retirement date shall be immediately after the purchase of years of service credit.
 - (d) The member shall pay at least 5% of the cost of the purchase.
 - (e) To qualify for a purchase of service credit under this section, the member shall:
 - (i) have at least five years of service credit; and
 - (ii) otherwise meet federal eligibility requirements.
- (2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.
- (3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.
- (4) Only members retiring from this system may purchase service credit under this section.

Enacted by Chapter 266, 2010 General Session

49-22-310 Defined benefit adjustments -- Conditions -- Process -- Future years accrual.

- (1) In accordance with this section, the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if the member's contribution required under Subsection 49-22-301(2)(b) to the certified contribution rate for the defined benefit portion of this system exceeds 2% of the member's salary and:
 - (a)
 - (i) the membership council created under Section 49-11-202 recommends an adjustment to the board in accordance with Subsection (2); and
 - (ii) the board recommends specific adjustments to the Legislature in accordance with Subsection (2); or
 - (b) an actuarial study that conforms with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board and requested or commissioned by the board or the Legislature concludes:
 - (i) there is a significant likelihood that contribution rates will continue to rise; and
 - (ii) that participating employers are liable for system costs above the contribution rate established under Subsection 49-22-301(2)(a).
- (2) If the conditions under Subsection (1)(a) or (b) are met, the Legislature may adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued or applied for future years of service including:
 - (a) the final average salary calculation provided under Section 49-22-102;
 - (b) the years of service required to be eligible to receive a retirement allowance under Section 49-22-304;
 - (c) the years of service credit multiplier established under Subsection 49-22-305(2)(a);

- (d) the annual cost-of-living adjustment under Section 49-22-308; or
 - (e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement System.
- (3)
- (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if an actuarial study described under Subsection (1)(b) concludes, due to current and projected economic conditions, member participation levels, and system structure, that the system:
 - (i) cannot reasonably be sustained under its current provisions;
 - (ii) is critically underfunded; and
 - (iii) has become unstable and is in risk of collapse.
 - (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:
 - (i) conversion to a different type of retirement plan;
 - (ii) equitable distribution of system assets to retirees and members; and
 - (iii) a closure of the system.

Enacted by Chapter 439, 2011 General Session

Part 4 Tier II Defined Contribution Plan

49-22-401 Contributions -- Rates.

- (1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 10% of the participant's compensation to a defined contribution plan.
- (2)
- (a) The participating employer shall contribute the 10% nonelective contribution described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:
 - (i) is sponsored by the board; and
 - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
 - (b) The member may make voluntary deferrals to:
 - (i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (2); or
 - (ii) at the member's option, another defined contribution plan established by the participating employer.
 - (c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3)
- (a) Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years of employment as a regular full-time employee under this title.
 - (b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.
 - (c) Upon filing a written request for exemption with the office, an eligible employee is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section 49-22-205.

- (d)
 - (i) Years of employment under Subsection (3)(a) includes any fraction of a year to which the member may be entitled.
 - (ii) At the time of vesting, if a member's years of service credit is within one-tenth of one year of the total years required for vesting, the member shall be considered to have the total years of employment required for vesting.
- (4)
 - (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).
 - (b) A member may direct the investment of contributions including associated investment gains and losses made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).
 - (c) A member may direct the investment of contributions made by the member under Subsection (3)(b).
- (5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).
- (6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).
- (7)
 - (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member including associated investment gains and losses under Subsection (2)(a) are subject to forfeiture.
 - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:
 - (i) all contributions made by the previous participating employer on behalf of the member including associated investment gains and losses shall be reinstated upon the member's employment as a regular full-time employee; and
 - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).
 - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.
- (8) The office may request from any other qualified 401(k) plan under Subsection (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.
- (9) The office may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Amended by Chapter 227, 2016 General Session

49-22-402 Defined contribution distributions for members with a disability.

For a person with a disability who receives contributions under Subsection 49-11-404(4)(b), the member with a disability may begin receiving distributions from the defined contributions made by the participating employer on behalf of the member with a disability when the person would have

been eligible to retire if the person was covered by the defined benefit portion of the Tier II hybrid retirement system under Part 3, Tier II Hybrid Retirement System.

Amended by Chapter 366, 2011 General Session

49-22-403 Eligibility to receive a retirement allowance for a benefit tied to a retirement date for defined contribution members.

- (1) As used in this section, "eligible to receive a retirement allowance" means the date selected by the member who is a participant under this part on which the member has ceased employment and would be qualified to receive an allowance under Section 49-22-304 if the member had been under the Tier II Hybrid Retirement System for the same period of employment.
- (2) The office and a participating employer shall make an accounting of years of service credit accrued for a member who is a participant under this part in order to calculate when a member would be eligible to receive a retirement allowance for purposes of establishing when a member may be eligible for a benefit tied to a retirement date that may be provided under Section 67-19-14.4, this title, another state statute, or by a participating employer.

Enacted by Chapter 439, 2011 General Session

**Part 5
Death Benefit**

49-22-501 Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.

- (1) The office shall provide a death benefit for members of this system.
- (2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:
 - (a) benefit levels;
 - (b) classes of members; and
 - (c) a living benefit option.
- (3) This death benefit is payable when:
 - (a) the member dies prior to the member's retirement date or dies under circumstances which Subsection 49-22-305(4) requires to be treated as the death of a member before retirement;
 - (b) the office receives acceptable proof of death; and
 - (c) benefits are not payable under Section 49-22-307.
- (4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:
 - (a) the return of any member contributions under this chapter; plus
 - (b) a percentage of the final average salary of the member to be determined by the board.
- (5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.
- (6) The cost of the death benefit shall be paid by the participating employer in addition to the contribution rate established under Section 49-22-301 or 49-22-401.
- (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid to the beneficiary of an inactive member unless the death of the member occurs either:

- (a) within a period of 120 days after the last day of work for which the person received compensation; or
 - (b) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.
- (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.
- (9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.
- (10) Payment of the death benefit by the office constitutes a full settlement of any beneficiary's claim against the office and the office is not liable for any further or additional claims or assessments on behalf of the member.
- (11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.
- (12) A death benefit under this section may not be paid on behalf of a retiree under this system.

Amended by Chapter 316, 2013 General Session

49-22-502 Death of married members -- Service retirement benefits to surviving spouse.

- (1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-22-305 without an actuarial reduction.
- (2) Upon the request of a deceased member's surviving spouse, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:
- (a) the member has:
 - (i) 15 or more years of service credit;
 - (ii) attained age 62 with 10 or more years of service credit; or
 - (iii) attained age 65 with four or more years of service credit; and
 - (b) the member dies leaving a surviving spouse.
- (3) The surviving spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:
- (a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.
- (4) The allowance payable to a surviving spouse under Subsection (2) is as follows:
- (a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;
 - (b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive 2/3 of the member's full allowance;
 - (c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive 1/3 of the member's full allowance; or
 - (d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.

- (5) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (6) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-22-501 and shall constitute a full and final settlement of the claim of the surviving spouse or any other beneficiary filing a claim for benefits under Section 49-22-501.
- (7) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Amended by Chapter 84, 2016 General Session

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

- (1)
 - (a) If an active member dies, employer nonelective contributions made on behalf of the employee to a defined contribution plan under Section 49-22-303 or 49-22-401 are exempt from the vesting requirements of Subsections 49-22-303(2)(a) and 49-22-401(3)(a).
 - (b) The total amount of nonelective contributions made by the participating employer vests to the member upon death and the member's beneficiary is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses.
- (2) Employer contributions vested and distributed under this section are in addition to and separate from the benefits payable under Sections 49-22-501 and 49-22-502.

Enacted by Chapter 315, 2015 General Session

**Part 6
Disability**

49-22-601 Long-term disability coverage.

In accordance with Section 49-21-201, the state shall cover all of its eligible employees under Chapter 21, Public Employees' Long-Term Disability Act.

Enacted by Chapter 266, 2010 General Session