

**RETIREMENT OFFICE AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ron Bigelow**

**This act modifies the Utah State Retirement Act to amend definitions, <sup>h</sup> service credit purchases, <sup>h</sup> contribution transfers, post retirement limitations, employer obligations, beneficiary payments, alternate payee benefits, the administrative hearing process, <sup>h</sup> membership exclusions, <sup>h</sup> and firefighter disability benefit provisions.**

**This act has an immediate effective date.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**<sup>h</sup> 49-1-407, as enacted by Chapter 202, Laws of Utah 1996 <sup>h</sup>**

**49-1-502, as last amended by Chapter 285, Laws of Utah 1990**

**49-1-505, as last amended by Chapter 283, Laws of Utah 2000**

**49-1-601, as last amended by Chapter 197, Laws of Utah 1995**

**49-1-606, as last amended by Chapter 283, Laws of Utah 2000**

**49-1-609, as last amended by Chapter 283, Laws of Utah 2000**

**49-1-610, as last amended by Chapter 226, Laws of Utah 1993**

**49-2-103, as last amended by Chapter 292, Laws of Utah 1999**

**49-3-103, as last amended by Chapter 292, Laws of Utah 1999**

**<sup>h</sup> 49-3-206, as last amended by Chapters 202 and 262, Laws of Utah 1998 <sup>h</sup>**

**49-3-410, as last amended by Chapters 83 and 328, Laws of Utah 1999**

**49-4-704, as last amended by Chapter 31, Laws of Utah 1997**

**49-4a-704, as last amended by Chapter 31, Laws of Utah 1997**

**49-5-502, as last amended by Chapter 267, Laws of Utah 1998**

**49-5-704, as last amended by Chapter 31, Laws of Utah 1997**

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



24a **h** Section 1. Section 49-1-407 is amended to read:

24b **49-1-407. Member with public service not otherwise qualifying for benefit may purchase**  
24c **credit.**

24d **(1) A member may purchase service credit equal to the member's service in the following:**

24e **(a) federal employment;**

24f **(b) private school employment;**

24g **(c) public employment in this or another state that does not qualify for service credit under a**  
24h **system administered by the board;**

24i **(d) employment in a university or a public school system if the**

24j **member is on a leave of absence for reasons relating to employment; [or]**

24k **(e) forfeited public service in this state if the member does not qualify for a retirement benefit**  
24l **for that service[-]; OR**

24m **(f) THE PERIOD OF TIME FOR WHICH DISABILITY BENEFITS WERE PAID IF:**

24n **(i) THE MEMBER WAS RECEIVING:**

24o **(A) LONG-TERM DISABILITY BENEFITS;**

24p **(B) SHORT-TERM DISABILITY BENEFITS; OR**

24q **(C) WORKER'S COMPENSATION DISABILITY BENEFITS; AND**

24r **(ii) THE MEMBER'S EMPLOYER HAD NOT ENTERED INTO A BENEFIT PROTECTION**

24s **CONTRACT PURSUANT TO SECTION 49-1-404 DURING THE PERIOD THE MEMBER WAS DISABLED**

24t **DUE TO SICKNESS OR ACCIDENT.**

24u **(2) To purchase credit, the member shall pay an amount fixed by the administrator that is**  
24v **established on an actuarial equivalent basis.**

24w **(3) The purchase may be made through payroll deductions or through a lump-sum deposit.**

24x **(4) The employer may make the purchase on behalf of the member.**

24y **(5) Total payment must be completed prior to retirement or service will be prorated in**  
24z **accordance with the amount paid. h**

25 Section **h** [~~1.~~] **2. h** Section **49-1-502** is amended to read:

26 **49-1-502. Refunds of vested contributions -- Transfers of contributions.**

27 **(1) If a member shall for any cause, except retirement, permanent or temporary disability,**

28 or death, cease to be employed in covered services for an employer then the member may:

29 (a) By signing a written request, affirming therein that the member has neither applied for,  
30 nor contemplates further employment with a covered unit, and directing the request to the  
31 retirement office, receive a refund of all accumulated contributions, less a withdrawal fee the  
32 amount of which the board shall establish by rule for the purpose of reimbursing its administrative  
33 fund for the cost entailed by the withdrawal. Notwithstanding the written request, if a member  
34 who has requested a refund accepts employment with another covered unit within the 60-day  
35 period, the member shall inform the retirement office immediately. In the event of this election,  
36 a terminating employee, upon later reemployment by an employer under this title, unless the  
37 employee redeposits the refund as permitted by this section, shall be treated as a new employee and  
38 the employee's service history and benefit rights shall then be based upon current services from the  
39 date of reemployment in covered services.

40 (b) Leave the member's account in the fund intact. In the event of this election, a  
41 terminating employee shall retain status as a member of the system, except for the lack of  
42 contributions paid into the fund by the member or on the member's behalf. In the event of  
43 reemployment by an employer for services covered by this title, the employee's service history and  
44 benefit rights shall be based upon the service credit accredited to the employee at the time of the  
45 employee's most recent termination of employment, as well as upon the current service credit that  
46 is acquired as the result of reemployment.

47 (2) Upon the attainment of retirement age, an inactive member has the same rights to  
48 retirement benefits, if so eligible, as any active employee member.

49 (3) Refunds of vested contributions may not be made prior to 60 days from the last day the  
50 contributions were made, and only upon the termination of the member.

51 (4) No refund may be made to an active member of any retirement system administered  
52 by the board. Contributions made in error will be returned to the employing unit.

53 (5) Members who are exempted from a retirement system administered by the board but  
54 who remain employed by a covered unit may request a plan-to-plan transfer of vested, untaxed  
55 employee contributions to a salary deferral plan administered by the board, as permitted by federal  
56 law.

57 (6) An employee, who is no longer a member of a retirement system administered by the  
58 board because the employee's employing unit withdrew from the retirement systems under this

59 title, may request a plan transfer of vested employee contributions to a plan offered by the  
60 employer that is qualified to receive the transfer under federal law.

61 Section 2. Section **49-1-505** is amended to read:

62 **49-1-505. Reemployment of a retired member of a system administered by the board.**

63 The following laws govern the reemployment of a member of any system administered by  
64 the board who has retired from any agency and who returns to work at that agency after retirement.  
65 A member of any system administered by the board who has retired from any agency and who  
66 returns to work for a private employer or at a different agency from which the member retired is  
67 not subject to any reemployment restrictions under this section, except as provided in Subsection  
68 (4).

69 (1) (a) (i) If a member of any system administered by the board retires from any agency  
70 and is reemployed within a six month period by the agency from which the member retired,  
71 including exempt positions, but excluding part-time or full-time elected officials, the employer  
72 shall immediately notify the administrator.

73 (ii) If the member has full-time employment and is not subject to Subsection (1)(b), the  
74 administrator shall cancel the member's retirement allowance and reinstate the member to active  
75 member status.

76 (iii) This cancellation of retirement and reinstatement to active status is effective on the  
77 first day of the month following the date of reemployment.

78 (iv) If a member's retirement allowance is cancelled and the member is reinstated to active  
79 member status pursuant to this subsection, the member may not retire again with a recalculated  
80 benefit for a two-year period from the date of cancellation of the original retirement. If the  
81 member retires again within the two-year period, the original retirement benefit shall be resumed.

82 (v) A reinstated member shall be credited with the service credits standing to the member's  
83 account at the time of the first retirement and from that time shall be treated as a member of the  
84 system in all respects, including the accrual of additional service credits but subject to recalculation  
85 of the retirement allowance under Subsection (4).

86 (b) (i) If the member is reemployed on a part-time basis or is not an elected official and  
87 is otherwise subject to Section 49-4-205, 49-4a-206, or 49-5-204, that member or employee may  
88 earn, without penalty, compensation from that position or employment which is not in excess of  
89 the exempt earnings permitted by Social Security.

90 (ii) If a member or an employee receives compensation in a calendar year in excess of the  
91 limitation, 25% of the retirement allowance shall be suspended.

92 (iii) The effective date of a suspension and reinstatement of an allowance shall be set by  
93 the administrator.

94 (iv) Any suspension of a member's retirement allowance pursuant to Subsection (1)(b)(ii)  
95 shall be calculated on a calendar year basis.

96 (2) The member and employer shall maintain an accurate record of gross earnings in  
97 employment after retirement, shall report the gross earnings on a monthly basis to the retirement  
98 office, and shall immediately notify the administrator in writing of any postretirement earnings  
99 under Subsection (1)(a) and whether postretirement earnings equal or exceed the exempt earnings  
100 under Subsection (1)(b).

101 (3) If a member is reinstated to active service and subsequently retires after the two-year  
102 period as provided in Subsection (1)(a)(iv), the member's retirement allowance shall be calculated  
103 using:

104 (a) the formula in effect at the date of the member's original retirement for all service prior  
105 to that date; and

106 (b) the formula in effect at the date of the subsequent retirement for all service rendered  
107 between the first and the subsequent retirement dates.

108 (4) (a) A member who has retired from any agency and who returns to work at that agency  
109 or a different agency from which the member retired may not accrue any additional service credit,  
110 except that a member who cancels the retirement allowance under Subsection (1) may earn  
111 additional service credit.

112 (b) If a member may not accrue additional service credit under Subsection (4)(a), then the  
113 member's employer shall contribute the same percentage of the member's salary **h** THAT WOULD  
113a HAVE BEEN CONTRIBUTED IF THE MEMBER WERE A MEMBER OF THE RETIREMENT SYSTEM **h**  
113b to a **h** :

113c (i) **h** defined

114 contribution plan administered by the board **h** [~~that would have been contributed if the member were~~  
115 ~~a member of the retirement system~~] IF THE EMPLOYER PARTICIPATES IN THE DEFINED  
115a CONTRIBUTION PLAN ADMINISTERED BY THE BOARD; OR

115b (ii) DEFINED CONTRIBUTION PLAN OFFERED BY THE EMPLOYER IF THE EMPLOYER DOES  
115c NOT PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN ADMINISTERED BY THE BOARD **h** .

116 (5) For the purposes of this section:

117 (a) "full-time" employment means employment of 20 or more hours per week; and

118 (b) "part-time" employment means employment [contemplated as less than full-time by  
119 the employer at the time of hire] of less than 20 hours per week.

120 (6) The board may make rules to implement this section.

121 Section 3. Section **49-1-601** is amended to read:

122 **49-1-601. Payment of employer contributions, fees, and premium taxes -- Failure to**  
123 **comply -- Interest added -- Adjustments to be made.**

124 (1) The employer contributions, fees, and premium taxes shall be paid to the fund by the  
125 participating employer in accordance with rules adopted by the board.

126 (2) Any employing unit that fails to withhold the amount of any employee contributions  
127 is required to pay the contribution, together with any employer contribution, fee, or premium tax,  
128 to the fund, if necessary, out of its own funds.

129 (3) (a) If an employing unit does not make the payments required by this title as the  
130 payments become due, there is added as part of the amounts due, except for corrections in the  
131 amounts of contributions, fees, and premium taxes arising out of error in computation, interest  
132 established under this title.

133 (b) The board may waive all or any part of the interest if the board finds there were  
134 extenuating circumstances surrounding any delinquencies.

135 (4) If more or less than the correct amount of contributions, fees, and premium taxes  
136 required by this title is deducted with respect to any payment of compensation, the employer shall  
137 make the necessary adjustment with or without interest as required by the board.

138 Section 4. Section **49-1-606** is amended to read:

139 **49-1-606. Beneficiary designations -- Revocation of beneficiary designation --**  
140 **Procedure -- Beneficiary not designated -- Payment to survivors in order established under**  
141 **the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses.**

142 (1) The beneficiary designation in a member's file at the retirement office at the time of  
143 the member's death is binding in the payment of any benefits due under this title.

144 (2) A member may revoke a designation of beneficiary at any time and may file a different  
145 beneficiary designation by executing and filing with the retirement office a written beneficiary  
146 designation on forms provided by the retirement office, except where an optional continuing plan  
147 is chosen, or the law makes a specific benefit designation to a dependent spouse, in which case the  
148 beneficiary designation may not be revoked.

149 (3) If no beneficiary is designated, all benefits payable from the retirement system[;  
150 ~~including retirement benefits accrued but not received prior to death,~~] may be paid or applied to  
151 the benefit of the surviving next of kin of the deceased in the order of precedence established under

152 Title 75, Chapter 2, Intestate Succession and Wills.

153 (4) No payment may be made to persons included in any of these groups if at the date of  
154 payment there are living persons in any of the groups preceding it. Payment to the persons in any  
155 group based upon receipt from those persons of an affidavit in a form satisfactory to the  
156 administrator that:

157 (a) there are no living individuals in the group preceding it;

158 (b) that the probate of the estate of the deceased has not been commenced; and

159 (c) that more than three months have elapsed since the date of death of the decedent, shall  
160 be in full satisfaction and discharge of all claims for benefits under this title and payable by reason  
161 of the death of the decedent.

162 (5) If the location of the nominated beneficiary cannot be ascertained or if the nominated  
163 beneficiary is the estate of the deceased person, the administrator may pay the costs of the  
164 deceased's last illness, convalescent care, and funeral expenses directly to the undertaking  
165 establishment, hospital, doctor, or convalescent home which provided the service. The  
166 administrator shall require verified statements of the charges before making partial or full payment.  
167 The payment shall discharge the obligation of the system and of the fund up to the amount paid.

168 Section 5. Section **49-1-609** is amended to read:

169 **49-1-609. Nonassignability of benefits or payments -- Exemption from legal process**  
170 **-- Deduction of amounts owned.**

171 (1) Except as provided in Subsection (4), the right of any member or beneficiary to any  
172 benefit, payment, or any other right accrued or accruing to any person under this title and the assets  
173 of the fund created by this title are not subject to alienation or assignment by the member or  
174 beneficiary and are not subject to attachment, execution, garnishment, or any other legal or  
175 equitable process.

176 (2) This section may not be construed to prohibit the administrator from deducting medical  
177 or other insurance premiums from a retirant's allowance as requested by the retirant providing that  
178 any request is within limitations and rules prescribed by the board.

179 (3) (a) Notwithstanding Subsection (1), the retirement board shall provide for the division  
180 of a member's service retirement allowance, continuing monthly death benefit, or refund of  
181 contributions upon termination to former spouses and family members pursuant to an order of a  
182 court of competent jurisdiction with respect to domestic relations matters on file with the

183 retirement office.

184 (b) The court order shall specify the manner in which the retirement allowance or refund  
185 of contributions shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

186 (c) The board may also provide for the division of a member's defined contribution  
187 account.

188 (d) Once benefit payments under a domestic relations order begin, the period for which  
189 the payment shall be made may not be altered.

190 (e) Benefit payments to an alternate payee shall begin at the time the member or  
191 beneficiary begins receiving benefit payments.

192 (f) The alternate payee shall receive benefits in the same form as benefits are received by  
193 the member.

194 [~~g~~] (g) The board shall make rules to implement this section.

195 (4) In accordance with federal law, the board may deduct the required amount from any  
196 benefit, payment, or other right accrued or accruing to any member of a system, plan, or program  
197 under this title to offset any amount that member owes to a system, plan, or program administered  
198 by the board.

199 Section 6. Section **49-1-610** is amended to read:

200 **49-1-610. Right of appeal to hearing officer -- Council review of hearings -- Further**  
201 **board review -- Rules of procedure applied -- Judicial review.**

202 (1) (a) All members of a system, plan, or program under this title shall acquaint themselves  
203 with their rights and obligations as members.

204 (b) A member shall request a ruling by the administrator on any benefit claim or legal right  
205 under this title.

206 (c) Any person who is dissatisfied by a ruling of the administrator with respect to any  
207 benefit claim or legal right under any system, plan, or program under this title shall request a  
208 review of that claim by a hearing officer.

209 (d) The hearing officer shall:

210 (i) be hired by the executive director after consultation and review with the membership  
211 council; and

212 (ii) follow the procedures and requirements of Title 63, Chapter 46b, Administrative  
213 Procedures Act.



214 (2) (a) (i) The hearing officer shall hear and determine all facts pertaining to applications  
215 for benefits under any retirement system, plan, or program under this title and all matters  
216 pertaining to the administration of the system.

217 (ii) The membership council may examine the record of the hearing, provide a  
218 recommendation to the board, and recommend any necessary changes in retirement policy or  
219 procedure to the Legislature.

220 (b) (i) If the executive officer of the board cannot determine from the records or other  
221 information available the length of service, compensation, or age of any member, the executive  
222 officer may estimate, for the purpose of any determination required to be made, any of these  
223 factors.

224 (ii) The board shall review all decisions of the hearing officer.

225 (3) The moving party in any proceeding brought under this section shall bear the burden  
226 of proof.

227 [~~3~~] (4) Any applicant may file an application for reconsideration according to the  
228 procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, upon any  
229 of the following grounds:

230 (a) that the board acted in excess of its powers;

231 (b) that the order or award was procured by fraud;

232 (c) that the evidence does not justify the determination of the board; or

233 (d) that the applicant has discovered new material evidence that could not, with reasonable  
234 diligence, have been discovered or procured at the hearing.

235 [~~4~~] (5) A member aggrieved by the board's decision may obtain judicial review by  
236 complying with the procedures and requirements of Title 63, Chapter 46b, Administrative  
237 Procedures Act.

238 Section 7. Section **49-2-103** is amended to read:

239 **49-2-103. Definitions.**

240 As used in this chapter:

241 (1) "Appointive officer" means an employee appointed to a position for a definite and  
242 fixed term of office by official and duly recorded action of the governing body of an employing  
243 unit who earns \$500 or more per month over a 12-month period adjusted annually by the Bureau  
244 of Labor Statistics Consumer Price Index.

245 (2) (a) "Compensation," "salary," or "wages" means the total amount of payments made  
246 by an employer to an employee for services rendered to the employer, including:

- 247 (i) bonuses;
- 248 (ii) cost-of-living adjustments;
- 249 (iii) other payments currently includable in gross income and that are subject to Social  
250 Security deductions, including any payments in excess of the maximum amount subject to  
251 deduction under Social Security law; and
- 252 (iv) amounts that the employee authorizes to be deducted or reduced for salary deferral or  
253 other benefit programs authorized by federal law.

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

256 (c) "Compensation," "salary," or "wages" does not include:

- 257 (i) the monetary value of remuneration paid in kind, such as a residence or use of  
258 equipment;
- 259 (ii) all contributions made by an employer under any plan for the benefit of a participant;
- 260 (iii) salary paid to an employee working under the minimum number of hours required for  
261 membership;
- 262 (iv) salary paid to a temporary or exempt employee;
- 263 (v) any payments upon termination, including accumulated vacation, sick leave payments,  
264 or any other special payments; or
- 265 (vi) uniform, travel, or similar allowances.

266 (3) "Educational institution" means a political subdivision or instrumentality of the state  
267 or a combination thereof primarily engaged in educational activities or the administration or  
268 servicing of educational activities, including:

- 269 (a) the State Board of Education and its instrumentalities;
- 270 (b) any institution of higher learning and its branches;
- 271 (c) any school district and its instrumentalities;
- 272 (d) any vocational and technical school; and
- 273 (e) any entity arising out of a consolidation agreement between entities under this  
274 definition.

275 (4) (a) "Employee" or "regular employee" means any regular full-time employee whose

276 term of employment for an employer contemplates continued employment during a calendar or  
277 school year and who performs covered service for one or more employers.

278 (b) "Employee" or "regular employee" means an officer, elective or appointive, who  
279 receives as compensation from an employer \$500 or more per month over a 12-month period  
280 adjusted annually by the Bureau of Labor Statistics Consumer Price Index.

281 (5) "Employer" or "employing unit" means any department, educational institution,  
282 political subdivision, or organization or agency financed in whole or in part by public funds for  
283 which any employee or member performs services subject to this chapter.

284 (6) "Final average salary" means the amount computed by averaging the highest five years  
285 of annual compensation preceding retirement subject to Subsections (6)(a), (b), (c), and (d).

286 (a) Except as provided in Subsection (6)(b), the percentage increase in annual  
287 compensation in any one of the years used may not exceed the previous year's salary by more than  
288 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar  
289 during the previous year, as measured by the Consumer Price Index prepared by the United States  
290 Bureau of Labor Statistics.

291 (b) In cases where the employing unit provides acceptable documentation to the board, the  
292 limitation in Subsection (6)(a) may be exceeded if:

293 (i) the member has transferred from another employing unit; or

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

295 (c) If the member retires more than six months from the date of termination of employment  
296 and for purposes of computing the member's final average salary only, the member is considered  
297 to have been in service at the member's last salary rate from the date of the termination of  
298 employment to the date retirement becomes effective if the member so requests.

299 (d) If participating service is less than five years, final average salary means the average  
300 annual compensation paid to the member during the full period of participating service.

301 (7) "Normal retirement age" means the age of 65 years.

302 (8) "Organization or agency financed in whole or in part by public funds" means an  
303 agency, association, or organization that receives public funds. The term does not include political  
304 subdivisions, departments, or educational institutions.

305 (9) "Public funds" means those funds derived, either directly or indirectly, from public  
306 taxes or public revenue, dues or contributions paid or donated by the membership of the

307 organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the  
308 governmental, educational, and social programs and systems of the state or its political  
309 subdivisions.

310 (10) (a) "Regular full-time employee," in qualifying for membership and accrual of service  
311 credit under this system, means an employee whose employment normally requires an average of  
312 20 hours or more per week, except as modified by the board, and who receives benefits normally  
313 provided by the employing unit.

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

315 (i) a teacher who teaches half-time or more, or a classified school employee who works  
316 an average of 20 hours per week or more, regardless of benefits provided[-]; and

317 (ii) an individual who otherwise meets the definition of this Subsection (10) who performs  
318 services for a participating employer through an employee leasing or similar arrangement.

319 (11) "Years of service" or "service years" means:

320 (a) the number of periods, each to consist of 12 full months as determined by the board;

321 (b) a period determined by the board, whether consecutive or not, during which an  
322 employee performed services for an employer or employers, including any time the employee  
323 rendered service in the armed forces of the United States before membership in the system or was  
324 absent on a paid leave of absence granted by an employer or absent in the service of the United  
325 States government on military duty as provided by this chapter; or

326 (c) for a teacher, school administrator, or other contract employee of an educational  
327 institution, not less than eight months of full-time service constitutes a service year.

328 Section 8. Section **49-3-103** is amended to read:

329 **49-3-103. Definitions.**

330 As used in this chapter:

331 (1) "Appointive officer" means an employee appointed to a position for a definite and  
332 fixed term of office by official and duly recorded action of the governing body of an employing  
333 unit and who earns \$500 or more per month over a 12-month period adjusted by the Bureau of  
334 Labor Statistics Consumer Price Index.

335 (2) (a) "Compensation," "salary," or "wages" means the total amount of payments made  
336 by an employer to an employee for services rendered to the employer, including:

337 (i) bonuses;

- 338 (ii) cost-of-living adjustments;
- 339 (iii) other payments currently includable in gross income and that are subject to Social  
340 Security deductions, including any payments in excess of the maximum amount subject to  
341 deduction under Social Security law; and
- 342 (iv) amounts that the employee authorizes to be deducted or reduced for salary deferral or  
343 other benefit programs authorized by federal law.
- 344 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under  
345 Internal Revenue Code Section 401(a)(17).
- 346 (c) "Compensation," "salary," or "wages" does not include:
- 347 (i) the monetary value of remuneration paid in kind, such as a residence or use of  
348 equipment;
- 349 (ii) all contributions made by an employer under any plan for the benefit of a participant;
- 350 (iii) salary paid to an employee working under the minimum number of hours required for  
351 membership;
- 352 (iv) salary paid to a temporary or exempt employee;
- 353 (v) any payments upon termination, including accumulated lump-sum vacation, sick leave  
354 payments, or any other special payments; or
- 355 (vi) uniform, travel, or similar allowances.
- 356 (3) "Educational institution" means a political subdivision or instrumentality of the state  
357 or a combination thereof primarily engaged in educational activities or the administration or  
358 servicing of educational activities, including:
- 359 (a) the State Board of Education and its instrumentalities;
- 360 (b) any institution of higher learning and its branches;
- 361 (c) any school district and its instrumentalities;
- 362 (d) any vocational and technical school; and
- 363 (e) any entity arising out of a consolidation agreement between entities under this  
364 definition.
- 365 (4) "Effective date" of the noncontributory system means 12:01 a.m., July 1, 1986.
- 366 (5) (a) "Employee" or "regular employee" means any regular full-time employee whose  
367 term of employment for an employer contemplates continued employment during a calendar or  
368 school year and who performs covered service for one or more employers.

369 (b) "Employee" or "regular employee" means an officer, elective or appointive, who  
370 receives as compensation from an employer \$500 or more per month over a 12-month period  
371 adjusted by the Bureau of Labor Statistics Consumer Price Index.

372 (6) "Employer" or "employing unit" means any department, educational institution,  
373 political subdivision, or eligible organization, or agency financed in whole or in part by public  
374 funds for which any employee or member performs services subject to this chapter.

375 (7) "Final average salary" means the amount computed by averaging the highest three years  
376 of annual compensation preceding retirement subject to Subsections (7)(a), (b), and (c).

377 (a) Except as provided in Subsection (7)(b), the percentage increase in annual  
378 compensation in any one of the years used may not exceed the previous year's salary by more than  
379 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar  
380 during the previous year, as measured by the Consumer Price Index prepared by the United States  
381 Bureau of Labor Statistics.

382 (b) In cases where the employing unit provides acceptable documentation to the board, the  
383 limitation in Subsection (a) may be exceeded if:

384 (i) the member has transferred from another employing unit; or

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

386 (c) If the member retires more than six months from the date of termination of employment  
387 and for purposes of computing the member's final average salary only, the member is considered  
388 to have been in service at his last salary rate from the date of the termination of employment to the  
389 date retirement becomes effective if the member so requests.

390 (8) "Normal retirement age" means the age of 65 years.

391 (9) "Organization or agency financed in whole or in part by public funds" means an  
392 agency, association, or organization that receives public funds. The term does not include political  
393 subdivisions, departments, or educational institutions.

394 (10) "Public funds" means those funds derived, either directly or indirectly, from public  
395 taxes or public revenue, dues, or contributions paid or donated by the membership of the  
396 organization used to finance an activity whose objective is to improve, on a nonprofit basis, the  
397 governmental, educational, and social programs and systems of the state or its political  
398 subdivisions.

399 (11) (a) "Regular full-time employee," in qualifying for membership and accrual of service

400 credit under this system, means an employee whose employment normally requires an average of  
 401 20 hours or more per week, except as modified by the board, and who receives benefits normally  
 402 provided by the employing unit.

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

404 (i) a teacher who teaches half-time or more or a classified school employee who works an  
 405 average of 20 hours per week or more, regardless of benefits provided[-]; and

406 (ii) an individual who otherwise meets the definition of this Subsection (11) who performs  
 407 services for a participating employer through an employee leasing or similar arrangement.

408 (12) "Years of service" or "service years" means:

409 (a) the number of periods, each to consist of 12 full months as determined by the board;

410 (b) a period determined by the board, whether consecutive or not, during which an  
 411 employee performed services for an employer or employers, including any time the employee  
 412 rendered service in the armed forces of the United States before membership in the system or was  
 413 absent on a paid leave of absence granted by an employer or absent in the service of the United  
 414 States government on military duty as provided by this chapter; or

415 (c) for a teacher, school administrator, or other contract employee of an educational  
 416 institution, not less than eight months of full-time service constitutes a service year.

416a **h Section 9. Section 49-3-206 is amended to read:**

416b **49-3-206. Exclusions from membership in system.**

416c **The following employees are excluded from membership in the retirement system:**

416d **(1) Every employee whose employment status is temporary in nature due to the nature or the**  
 416e **type of work to be performed. If the term of employment exceeds six months, then for that employee**  
 416f **a regular full-time status shall be assumed, and the employee shall be enrolled in the system effective**  
 416g **the beginning of the seventh month of employment. If the same employee, previously terminated**  
 416h **prior to enrollment as a member, is again employed within three months of termination by the same**  
 416i **employer, the employee shall be immediately enrolled as a member if the work constitutes full-time as**  
 416j **defined in this chapter.**

416k **(2) Full-time students or the spouse of a full-time student and persons employed in a trainee**  
 416l **relationship may be excluded from coverage by rules adopted by the board.**

416m **(3) Every current or future employee of a two-year or four-year college or university who**  
 416n **holds, or is entitled to hold, pursuant to Section 49-2-206, a retirement annuity contract with the**  
 416o **Teachers' Insurance and Annuity Association of America or with any other public or private system,**  
 416p **organization, or company during any period in which that employee has received contributions**  
 416q **toward the premiums required on compensation from the employing unit. The employee, upon**  
 416r **cessation of the employer contributions, shall immediately become a contributing member.**

416s **(4) Every employee serving as an exchange employee from outside the state.**

416t **(5) Elected officials who file a formal request for exemption. h**

416u            **h (6) Executive department heads of the state h OR LEGISLATIVE DIRECTORS h , senior**  
 416v **executives employed by the governor's office, members of the State Tax Commission, the Public**  
 416w **Service Commission, the State Olympic Officer, and other members of full-time or part-time boards or**  
 416x **commissions who file a formal request to be excluded from coverage.**

416y            **(7) (a) Employees of the Department of Employment Security who are covered under another**  
 416z **retirement system allowed under Title 35A, Chapter 4, Employment Security Act; or**

416aa           **(b) employees of the Department of Workforce Services who were covered under Subsection**  
 416ab **(7)(a) and who are covered under another retirement system allowed under Title 35A, Chapter 4,**  
 416ac **Employment Security Act.**

416ad           **(8) Persons appointed as city managers or chief city administrators or other persons**  
 416ae **employed by a city, town, county, or other political subdivision, who are not entitled to merit or civil**  
 416af **service protection. Persons eligible for exclusion under this subsection shall file a formal request for**  
 416ag **exclusion from coverage and be employed in a position designated as exempt under an employee**  
 416ah **exemption plan developed by the city, town, county, or political subdivision. Employee exemption**  
 416ai **plans shall be subject to the following limitations:**

416aj           **(a) The total number of positions a city, town, county, or political subdivision may exempt**  
 416ak **may not exceed the lesser of 30 positions or a number equal to 10% of the employees of the city,**  
 416al **town, county, or political subdivision. However, every city, town, county, or political subdivision is**  
 416am **entitled to a minimum exemption of one eligible employee.**

416an           **(b) Employee exemption plans shall be filed annually with the retirement office, and the city,**  
 416ao **town, county, or political subdivision shall update the exemption plan in the event of any change.**

416ap           **(c) The retirement office may promulgate rules to implement this section. h**

417            Section **h [9.] 10. h** Section **49-3-410** is amended to read:

418            **49-3-410. Purchase of retirement credit -- Conditions -- Cost.**

419            (1) Any member of this system may receive retirement service credit in accordance with  
 420 Subsection (2).

421            (2) (a) A member may purchase or a member and an employing unit may jointly purchase  
 422 a combined maximum total of five years of retirement service credit which is not otherwise  
 423 purchasable under this chapter.

424            (b) The number of years of retirement service credit purchased may exceed the number of  
 425 years or age required by the member to retire with no actuarial reduction.

426            (c) The purchase of retirement service credit must allow the member to meet the retirement  
 427 eligibility requirements of this system with no actuarial reduction.

428            (d) The member must retire effective immediately after the purchase of retirement service  
 429 credit is made.

430            (e) The member shall pay at least 5% of the cost of the purchase.



431 (3) The purchase price for the retirement service credit shall be calculated and paid for as  
432 provided in Section 49-1-407.

433 (4) (a) The employing unit may elect to purchase retirement service credit for a member  
434 under Subsection (2) while the member is on an unpaid leave of absence.

435 (b) If the member is on an unpaid leave of absence, the employing unit may make  
436 installment payments towards the purchase in amounts fixed by the administrator.

437 (c) The member shall retire when the purchase obligations are fulfilled.

438 (5) ~~[(a)]~~ A member who retires after the employer purchases retirement service credit  
439 under this section ~~[may not be reemployed by the employing unit from which the member retired]~~  
440 shall be subject to the provisions of Section 49-1-505.

441 ~~[(b) Subsection (5)(a) does not apply to a member if the member does not earn~~  
442 ~~compensation in excess of the exempt earnings permitted by Social Security.]~~

443 (6) Prior to making any purchase of service credit under this section, an employing unit  
444 shall adopt a purchase policy that includes nondiscriminatory participation standards for all  
445 employees.

446 Section 10. Section **49-4-704** is amended to read:

447 **49-4-704. Death of retired member -- Benefits.**

448 (1) ~~[Except as provided in Subsection (3), if]~~ If the member retired under Division A or  
449 Division B, the death benefit payable to the dependent spouse after the death of the retired member  
450 of this system is a monthly amount equal to 65% of the allowance that was being paid to the retired  
451 member at the time of death.

452 (2) (a) ~~[Except as provided in Subsection (3), if]~~ If the member retired solely under  
453 Division B or dies leaving dependent children, the children shall qualify for a benefit as prescribed  
454 for children under Section 49-4-702, with the total being paid as limited by that section.

455 (b) The effective date of accrual of this pension is on the first day of the month following  
456 the month in which the retirant died.

457 (c) ~~[Except as provided in Subsection (3), payment]~~ Payment of the full pension for this  
458 latter month shall be made to the dependent beneficiary in lieu of the deceased member.

459 ~~[(3)(a) In the event of a court order complying with Section 49-1-609, a former spouse~~  
460 ~~of a retired member is entitled to the court designated share of the retired member's monthly~~  
461 ~~retirement benefit and the same percentage share of the spouse's death benefit.]~~

462 ~~[(b) This subsection supersedes conflicting subsections of this section.]~~

463 Section 11. Section **49-4a-704** is amended to read:

464 **49-4a-704. Death of retired member -- Benefits.**

465 (1) ~~[Except as provided in Subsection (3), if]~~ If the member retired under Division A or  
 466 Division B, the death benefit payable to the dependent spouse after the death of the retired member  
 467 of this system is a monthly amount equal to 65% of the allowance that was being paid to the retired  
 468 member at the time of death.

469 (2) (a) ~~[Except as provided in Subsection (3), if]~~ If the member retired solely under  
 470 Division B or dies leaving dependent children, the children shall qualify for a benefit as prescribed  
 471 for children under Section 49-4a-702, with the total being paid as limited by that section.

472 (b) The effective date of accrual of this pension is on the first day of the month following  
 473 the month in which the retirant died.

474 (c) ~~[Except as provided in Subsection (3), payment]~~ Payment of the full pension for this  
 475 latter month shall be made to the dependent beneficiary in lieu of the deceased member.

476 ~~[(3) (a) In the event of a court order complying with Section 49-1-609, a former spouse  
 477 of a retired member is entitled to a court designated share of the retired member's monthly  
 478 retirement benefit and the same percentage share of the spouse's death benefit.]~~

479 ~~[(b) This subsection supersedes conflicting subsections of this section.]~~

480 Section 12. Section **49-5-502** is amended to read:

481 **49-5-502. Disability retirement -- Disability allowance eligibility -- Conversion to**  
 482 **service retirement -- Examinations -- Reemployment.**

483 The following rules apply to all members applying for disability retirement under this part:

484 (1) Any member who applies and is qualified for disability retirement shall receive a  
 485 disability allowance until the earlier of:

486 (a) the date the member is no longer disabled ~~h~~ **[from performing firefighter duties]** ~~h~~ ;

487 ~~{a}~~ (b) the date the member has accumulated 20 years of service credit, including years  
 488 earned while disabled; or

489 ~~{b}~~ (c) the member has received disability benefits for the following time periods:

490 (i) if the member is under age 60, the disability allowance is payable until age 65;

491 (ii) if the member is 60-61, the disability allowance is payable for five years;

492 (iii) if the member is 62-63, the disability allowance is payable for four years;

- 493 (iv) if the member is 64-65, the disability allowance is payable for three years;  
494 (v) if the member is 66-68, the disability allowance is payable for two years; and  
495 (vi) if the member is age 69 or older, the disability benefit is payable for one year.

496 (2) (a) The member shall receive service credit in this system during the period of  
497 disability. However, if the member is employed by a participating employer during the period of  
498 disability, the member may not receive service credit for that employment.

499 (b) The disability retirement shall be converted to a service retirement at the time the  
500 disability benefits terminate.

501 (3) The board shall approve or disapprove applications for disability retirement based upon  
502 both:

503 (a) the evaluation and recommendations of one or more physicians along with medical  
504 records relating to the disability which may, at the board's option, be reviewed by an independent  
505 medical examiner selected by the board, to the effect that the member is mentally or physically  
506 totally disabled; and

507 (b) receipt of proof by the board from the employer that the member has become totally  
508 disabled.

509 (4) Any disability retirant who regains health and is regularly employed shall have the  
510 disability allowance reduced or suspended as the retirant's earnings justify.

511 (5) (a) Members receiving benefits under this section shall, upon request of the  
512 administrator, submit to a medical examination by one or more physicians as directed by the board.

513 (b) If the member resides outside the state and is requested to submit to an examination,  
514 the member shall be examined under the same rules in the area in which the member resides.

515 (c) If, after an examination, the examiners report that the retirant is physically able and  
516 capable of resuming employment, the retirant shall be reinstated at the retirant's former  
517 classification and rank, and disability benefits terminate.

518 (d) Examinations may not be required more than once every year.

519 (e) A retirant who returns to employment [~~of~~] with a participating employer in this system  
520 shall immediately commence accruing service credit that shall be added to that credit that has been  
521 accrued by virtue of previous service, including service credited while disabled.

522 (6) Retired members are not subject to medical examinations after reaching age 55.

523 (7) Refusal or neglect to submit to an examination is sufficient cause for suspension or

524 discontinuance of benefits and if the refusal or neglect continues for one year, the member's rights  
525 to all benefits may be revoked by the board.

526 (8) Retirants who receive benefits under this part shall file a sworn statement with the  
527 retirement office on or before January 15 of each year for the first five years a retirant receives  
528 benefits. The sworn statement shall indicate whether or not the retirant engaged in any gainful  
529 employment during the preceding year and, if so, the amount of earnings received during the  
530 calendar year.

531 (a) If the retirant has been gainfully employed, the retirant's benefit payments shall be  
532 reduced in the year following employment so that the total payments, when added to the  
533 compensation received for employment, do not exceed 125% of the retirant's final average salary.

534 (b) If any retirant refuses or neglects to file a sworn statement as required, the  
535 administrator may suspend payment of any and all benefits pending receipt of the statement. Upon  
536 filing the statement, the retirant's payments shall be resumed.

537 (9) The disability allowance shall be improved by the annual cost-of-living increase factor  
538 applied to retired members of the system that covered the employee at the time of disability.

539 (10) A line of duty disability allowance paid on or after January 1, 2002, under Subsection  
540 49-5-501(1) is exempt from taxation to the extent permitted under federal law.

541 Section 13. Section **49-5-704** is amended to read:

542 **49-5-704. Death of retired member -- Benefits.**

543 (1) (a) [~~Except as provided in Subsection (3), the~~] The death benefit payable to a  
544 dependent spouse after death of the retirant is a monthly amount equal to 75% of the allowance  
545 being paid to the retirant at the time of death.

546 (b) The effective date of accrual of this pension is the first day of the month following the  
547 month the retirant died.

548 (c) [~~Except as provided in Subsection (3), payment~~] Payment of the full pension for this  
549 latter month shall be made to the dependent beneficiary instead of the deceased member.

550 (2) If the member retires under Division B and dies leaving dependent children, they  
551 qualify for benefits prescribed for children under Section 49-5-701 or 49-5-702.

552 [~~(3)(a) In the event of a court order complying with Section 49-1-609, a former spouse~~  
553 ~~of a retired member is entitled to the court designated share of the retirant's monthly retirement~~  
554 ~~benefit and the same percentage share of the spouse's death benefit.]~~

555           ~~[(b) This subsection supersedes conflicting subsections of this section.]~~  
556           Section 14. **Effective date.**  
557           If approved by two-thirds of all the members elected to each house, this act takes effect  
558 upon approval by the governor, or the day following the constitutional time limit of Utah  
559 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the  
560 date of veto override.

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**Legislative Review Note**  
**as of 11-30-00 9:32 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Quasi-Governmental Entities Committee recommended this bill.