

RETIREMENT OFFICE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Ron Bigelow

This act modifies the Utah State Retirement Act to amend definitions, service credit purchases, contribution transfers, post retirement limitations, employer obligations, beneficiary payments, alternate payee benefits, the administrative hearing process, membership exclusions, and firefighter disability benefit provisions. This act has an immediate effective date.

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

AMENDS:

- 49-1-407**, as enacted by Chapter 202, Laws of Utah 1996
- 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
- 49-3-206**, as last amended by Chapters 202 and 262, Laws of Utah 1998
- 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:

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

49-1-407. Member with public service not otherwise qualifying for benefit may

purchase credit.

(1) A member may purchase service credit equal to the member's service in the following:
(a) federal employment;
(b) private school employment;
(c) public employment in this or another state that does not qualify for service credit under a system administered by the board;

(d) employment in a university or a public school system if the member is on a leave of absence for reasons relating to employment; ~~or~~

(e) forfeited public service in this state if the member does not qualify for a retirement benefit for that service~~[-]; or~~

(f) the period of time for which disability benefits were paid if:

(i) the member was receiving:

(A) long-term disability benefits;

(B) short-term disability benefits; or

(C) worker's compensation disability benefits; and

(ii) the member's employer had not entered into a benefit protection contract pursuant to Section 49-1-404 during the period the member was disabled due to sickness or accident.

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

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

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

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

Section 2. Section **49-1-502** is amended to read:

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

(1) If a member shall for any cause, except retirement, permanent or temporary disability, or death, cease to be employed in covered services for an employer then the member may:

(a) By signing a written request, affirming therein that the member has neither applied for,

nor contemplates further employment with a covered unit, and directing the request to the retirement office, receive a refund of all accumulated contributions, less a withdrawal fee the amount of which the board shall establish by rule for the purpose of reimbursing its administrative fund for the cost entailed by the withdrawal. Notwithstanding the written request, if a member who has requested a refund accepts employment with another covered unit within the 60-day period, the member shall inform the retirement office immediately. In the event of this election, a terminating employee, upon later reemployment by an employer under this title, unless the employee redeposits the refund as permitted by this section, shall be treated as a new employee and the employee's service history and benefit rights shall then be based upon current services from the date of reemployment in covered services.

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

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

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

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

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

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

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

Section 3. Section **49-1-505** is amended to read:

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

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

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

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

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

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

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

(b) (i) If the member is reemployed on a part-time basis or is not an elected official and is otherwise subject to Section 49-4-205, 49-4a-206, or 49-5-204, that member or employee may earn,

without penalty, compensation from that position or employment which is not in excess of the exempt earnings permitted by Social Security.

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

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

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

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

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

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

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

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

(b) If a member may not accrue additional service credit under Subsection (4)(a), then the member's employer shall contribute the same percentage of the member's salary that would have been contributed if the member were a member of the retirement system to a:

(i) defined contribution plan administered by the board [~~that would have been contributed~~

~~if the member were a member of the retirement system]~~ if the employer participates in the defined contribution plan administered by the board; or

(ii) defined contribution plan offered by the employer if the employer does not participate in the defined contribution plan administered by the board.

(5) For the purposes of this section:

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

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

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

Section 4. Section **49-1-601** is amended to read:

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

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

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

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

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

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

Section 5. Section **49-1-606** is amended to read:

49-1-606. Beneficiary designations -- Revocation of beneficiary designation --

Procedure -- Beneficiary not designated -- Payment to survivors in order established under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses.

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

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

(3) If no beneficiary is designated, all benefits payable from the retirement system[; ~~including retirement benefits accrued but not received prior to death;~~] may be paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.

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

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

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

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

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

Section 6. Section **49-1-609** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

by the board.

Section 7. Section **49-1-610** is amended to read:

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

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

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

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

(d) The hearing officer shall:

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

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

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

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

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

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

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

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

- (a) that the board acted in excess of its powers;
- (b) that the order or award was procured by fraud;
- (c) that the evidence does not justify the determination of the board; or
- (d) that the applicant has discovered new material evidence that could not, with reasonable diligence, have been discovered or procured at the hearing.

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

Section 8. Section **49-2-103** is amended to read:

49-2-103. Definitions.

As used in this chapter:

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

(2) (a) "Compensation," "salary," or "wages" means the total amount of payments made by an employer to an employee for services rendered to the 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; and
- (iv) amounts that the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under

Internal Revenue Code Section 401(a)(17).

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

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

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

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

(4) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

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

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

(6) "Final average salary" means the amount computed by averaging the highest five years

of annual compensation preceding retirement subject to Subsections (6)(a), (b), (c), and (d).

(a) Except as provided in Subsection (6)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary 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 the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

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

- (i) the member has transferred from another employing unit; 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 and for purposes of computing the member's final average salary only, the member is considered to have been in service at the member's last salary rate from the date of the termination of employment to the date retirement becomes effective if the member so requests.

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

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

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

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

(10) (a) "Regular full-time employee," in qualifying for membership and accrual of service credit under this system, means an employee 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 employing unit.

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

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

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

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

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

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

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

Section 9. Section **49-3-103** is amended to read:

49-3-103. Definitions.

As used in this chapter:

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

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

(iv) amounts that the employee authorizes to be deducted or reduced for salary deferral or other benefit programs authorized by federal law.

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

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

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

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

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

(4) "Effective date" of the noncontributory system means 12:01 a.m., July 1, 1986.

(5) (a) "Employee" or "regular employee" means any regular full-time employee whose term of employment for an employer contemplates continued employment during a calendar or school year and who performs covered service for one or more employers.

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

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

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

(a) Except as provided in Subsection (7)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's salary 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 the Consumer Price Index prepared by the United States Bureau of Labor Statistics.

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

- (i) the member has transferred from another employing unit; 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 and for purposes of computing the member's final average salary only, the member is considered to have been in service at his last salary rate from the date of the termination of employment to the date retirement becomes effective if the member so requests.

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

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

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

(11) (a) "Regular full-time employee," in qualifying for membership and accrual of service credit under this system, means an employee 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 employing unit.

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

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

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

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

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

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

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

Section 10. Section **49-3-206** is amended to read:

49-3-206. Exclusions from membership in system.

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

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

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

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

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

(5) Elected officials who file a formal request for exemption.

(6) Executive department heads of the state or legislative directors, senior executives employed by the governor's office, members of the State Tax Commission, the Public Service Commission, the State Olympic Officer, and other members of full-time or part-time boards or commissions who file a formal request to be excluded from coverage.

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

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

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

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

(b) Employee exemption plans shall be filed annually with the retirement office, and the city,

town, county, or political subdivision shall update the exemption plan in the event of any change.

(c) The retirement office may promulgate rules to implement this section.

Section 11. Section **49-3-410** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Section **49-4-704** is amended to read:

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

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

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

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

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

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

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

Section 13. Section **49-4a-704** is amended to read:

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

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

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

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

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

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

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

Section 14. Section **49-5-502** is amended to read:

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

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

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

(a) the date the member is no longer disabled;

~~[(a)]~~ (b) the date the member has accumulated 20 years of service credit, including years earned while disabled; or

~~[(b)]~~ (c) the member has received disability benefits for the following time periods:

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

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

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

(iv) if the member is 64-65, the disability allowance is payable for three years;

(v) if the member is 66-68, the disability allowance is payable for two years; and

(vi) if the member is age 69 or older, the disability benefit is payable for one year.

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

(b) The disability retirement shall be converted to a service retirement at the time the

disability benefits terminate.

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

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

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

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

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

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

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

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

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

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

(7) Refusal or neglect to submit to an examination is sufficient cause for suspension or discontinuance of benefits and if the refusal or neglect continues for one year, the member's rights to all benefits may be revoked by the board.

(8) Retirants who receive benefits under this part shall file a sworn statement with the retirement office on or before January 15 of each year for the first five years a retirant receives

benefits. The sworn statement shall indicate whether or not the retirant engaged in any gainful employment during the preceding year and, if so, the amount of earnings received during the calendar year.

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

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

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

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

Section 15. Section **49-5-704** is amended to read:

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

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

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

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

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

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

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

Section 16. **Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.