

**RETIREMENT LAW RECODIFICATION**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ron Bigelow**

**This act recodifies the Retirement Code. This act has an effective date. This act provides a coordination clause**

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

AMENDS:

- 31A-22-703**, as last amended by Chapter 116, Laws of Utah 2001
- 35A-4-502**, as last amended by Chapter 116, Laws of Utah 1998
- 51-7-4**, as last amended by Chapter 222, Laws of Utah 2000
- 53-6-107**, as last amended by Chapter 79, Laws of Utah 1996
- 53-7-105**, as last amended by Chapter 282, Laws of Utah 1998
- 53-13-108**, as renumbered and amended by Chapter 282, Laws of Utah 1998
- 53A-17a-125**, as last amended by Chapter 335, Laws of Utah 2001
- 63-95-102**, as last amended by Chapters 210 and 222, Laws of Utah 2000
- 63-95-202**, as enacted by Chapter 210, Laws of Utah 2000
- 63E-1-102 (Effective 07/01/02)**, as enacted by Chapter 201, Laws of Utah 2001
- 63E-1-202 (Effective 07/01/02)**, as enacted by Chapter 201, Laws of Utah 2001
- 67-8-3**, as last amended by Chapter 299, Laws of Utah 1995
- 67-20-7**, as last amended by Chapter 240, Laws of Utah 1996
- 67-22-1**, as last amended by Chapters 116 and 264, Laws of Utah 2001
- 67-22-2**, as last amended by Chapters 116 and 264, Laws of Utah 2001
- 78-7-35**, as renumbered and amended by Chapter 46, Laws of Utah 2001

ENACTS:

- 49-11-603**, Utah Code Annotated 1953
- 49-11-604**, Utah Code Annotated 1953
- 49-11-605**, Utah Code Annotated 1953
- 49-11-606**, Utah Code Annotated 1953

- 49-11-620**, Utah Code Annotated 1953
- 49-11-802**, Utah Code Annotated 1953
- 49-12-302**, Utah Code Annotated 1953
- 49-13-302**, Utah Code Annotated 1953
- 49-14-505**, Utah Code Annotated 1953
- 49-15-505**, Utah Code Annotated 1953
- 49-16-203**, Utah Code Annotated 1953
- 49-16-505**, Utah Code Annotated 1953
- 49-16-506**, Utah Code Annotated 1953
- 49-17-403**, Utah Code Annotated 1953
- 49-19-102**, Utah Code Annotated 1953
- 49-19-402**, Utah Code Annotated 1953
- 49-19-403**, Utah Code Annotated 1953
- 49-19-404**, Utah Code Annotated 1953
- 49-20-403**, Utah Code Annotated 1953

**RENUMBERS AND AMENDS:**

- 49-11-101**, (Renumbered from 49-1-101, as last amended by Chapter 231, Laws of Utah 1996)
- 49-11-102**, (Renumbered from 49-1-103, as last amended by Chapter 73, Laws of Utah 2001)
- 49-11-103**, (Renumbered from 49-1-102, as last amended by Chapter 231, Laws of Utah 1996)
- 49-11-201**, (Renumbered from 49-1-201, as last amended by Chapter 210, Laws of Utah 2000)
- 49-11-202**, (Renumbered from 49-1-202, as last amended by Chapter 243, Laws of Utah 1996)
- 49-11-203**, (Renumbered from 49-1-203, as last amended by Chapter 31, Laws of Utah 1997)

**49-11-204**, (Renumbered from 49-1-204, as last amended by Chapter 231, Laws of Utah 1996)

**49-11-301**, (Renumbered from 49-1-301, as last amended by Chapter 283, Laws of Utah 2000)

**49-11-302**, (Renumbered from 49-1-302, as last amended by Chapter 79, Laws of Utah 1996)

**49-11-303**, (Renumbered from 49-1-303, as enacted by Chapter 1, Laws of Utah 1987)

**49-11-304**, (Renumbered from 49-1-304, as last amended by Chapter 231, Laws of Utah 1996)

**49-11-305**, (Renumbered from 49-1-305, as enacted by Chapter 1, Laws of Utah 1987)

**49-11-401**, (Renumbered from 49-1-401, as last amended by Chapter 31, Laws of Utah 1997)

**49-11-402**, (Renumbered from 49-1-402, as last amended by Chapter 197, Laws of Utah 1995)

**49-11-403**, (Renumbered from 49-1-407, as last amended by Chapter 141, Laws of Utah 2001)

**49-11-404**, (Renumbered from 49-1-404, as last amended by Chapter 231, Laws of Utah 1996)

**49-11-405**, (Renumbered from 49-1-406, as last amended by Chapter 31, Laws of Utah 1997)

**49-11-501**, (Renumbered from 49-1-502, as last amended by Chapter 141, Laws of Utah 2001)

**49-11-502**, (Renumbered from 49-1-503, as last amended by Chapter 292, Laws of Utah 1999)

**49-11-503**, (Renumbered from 49-1-504, as last amended by Chapter 292, Laws of Utah 1999)

**49-11-504**, (Renumbered from 49-1-505, as last amended by Chapter 141, Laws of Utah 2001)

- 49-11-601**, (Renumbered from 49-1-601, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-602**, (Renumbered from 49-1-602, as last amended by Chapter 157, Laws of Utah 1992)
- 49-11-607**, (Renumbered from 49-1-603, as last amended by Chapter 81, Laws of Utah 1989)
- 49-11-608**, (Renumbered from 49-1-604, as last amended by Chapter 81, Laws of Utah 1989)
- 49-11-609**, (Renumbered from 49-1-606, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-610**, (Renumbered from 49-1-607, as last amended by Chapter 31, Laws of Utah 1997)
- 49-11-611**, (Renumbered from 49-1-608, as last amended by Chapters 2 and 7, Laws of Utah 1989, Second Special Session)
- 49-11-612**, (Renumbered from 49-1-609, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-613**, (Renumbered from 49-1-610, as last amended by Chapter 141, Laws of Utah 2001)
- 49-11-614**, (Renumbered from 49-1-613, as enacted by Chapter 273, Laws of Utah 1990)
- 49-11-615**, (Renumbered from 49-1-614, as enacted by Chapter 273, Laws of Utah 1990)
- 49-11-616**, (Renumbered from 49-1-615, as enacted by Chapter 229, Laws of Utah 1991)
- 49-11-617**, (Renumbered from 49-1-616, as enacted by Chapter 226, Laws of Utah 1993)
- 49-11-618**, (Renumbered from 49-1-403, as enacted by Chapter 1, Laws of Utah 1987)
- 49-11-619**, (Renumbered from 49-1-405, as enacted by Chapter 285, Laws of Utah 1990)
- 49-11-701**, (Renumbered from 49-1-701, as last amended by Chapter 90, Laws of Utah 1994)
- 49-11-801**, (Renumbered from 49-1-611, as last amended by Chapter 267, Laws of Utah 1998)

**49-12-101**, (Renumbered from 49-2-101, as enacted by Chapter 1, Laws of Utah 1987)  
**49-12-102**, (Renumbered from 49-2-103, as last amended by Chapter 141, Laws of Utah  
2001)  
**49-12-103**, (Renumbered from 49-2-201, as enacted by Chapter 1, Laws of Utah 1987)  
**49-12-104**, (Renumbered from 49-2-202, as enacted by Chapter 1, Laws of Utah 1987)  
**49-12-201**, (Renumbered from 49-2-203, as enacted by Chapter 1, Laws of Utah 1987)  
**49-12-202**, (Renumbered from 49-2-204, as last amended by Chapter 220, Laws of Utah  
2000)  
**49-12-203**, (Renumbered from 49-2-205, as last amended by Chapter 31, Laws of Utah  
1997)  
**49-12-204**, (Renumbered from 49-2-206, as enacted by Chapter 1, Laws of Utah 1987)  
**49-12-301**, (Renumbered from 49-2-301, as last amended by Chapter 157, Laws of Utah  
1992)  
**49-12-401**, (Renumbered from 49-2-401, as last amended by Chapter 292, Laws of Utah  
1999)  
**49-12-402**, (Renumbered from 49-2-402, as last amended by Chapter 10, Laws of Utah  
1997)  
**49-12-403**, (Renumbered from 49-2-404, as enacted by Chapter 1, Laws of Utah 1987)  
**49-12-404**, (Renumbered from 49-2-405, as last amended by Chapter 197, Laws of Utah  
1995)  
**49-12-405**, (Renumbered from 49-2-406, as last amended by Chapter 267, Laws of Utah  
1998)  
**49-12-406**, (Renumbered from 49-2-409, as enacted by Chapter 1, Laws of Utah 1987)  
**49-12-407**, (Renumbered from 49-2-601, as last amended by Chapter 157, Laws of Utah  
1992)  
**49-12-408**, (Renumbered from 49-2-602, as last amended by Chapter 353, Laws of Utah  
2000)  
**49-12-501**, (Renumbered from 49-2-701, as last amended by Chapter 90, Laws of Utah

1994)

**49-12-601**, (Renumbered from 49-2-503, as enacted by Chapter 1, Laws of Utah 1987)

**49-12-701**, (Renumbered from 49-2-802, as last amended by Chapter 226, Laws of Utah

1993)

**49-13-101**, (Renumbered from 49-3-101, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-102**, (Renumbered from 49-3-103, as last amended by Chapter 141, Laws of Utah

2001)

**49-13-103**, (Renumbered from 49-3-201, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-104**, (Renumbered from 49-3-202, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-201**, (Renumbered from 49-3-203, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-202**, (Renumbered from 49-3-204, as last amended by Chapter 220, Laws of Utah

2000)

**49-13-203**, (Renumbered from 49-3-206, as last amended by Chapter 141, Laws of Utah

2001)

**49-13-204**, (Renumbered from 49-3-207, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-205**, (Renumbered from 49-3-205, as last amended by Chapter 46, Laws of Utah

1995)

**49-13-301**, (Renumbered from 49-3-301, as last amended by Chapter 157, Laws of Utah

1992)

**49-13-303**, (Renumbered from 49-3-302, as last amended by Chapter 157, Laws of Utah

1992)

**49-13-401**, (Renumbered from 49-3-401, as last amended by Chapter 292, Laws of Utah

1999)

**49-13-402**, (Renumbered from 49-3-402, as last amended by Chapter 231, Laws of Utah

1996)

**49-13-403**, (Renumbered from 49-3-404, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-404**, (Renumbered from 49-3-405, as last amended by Chapter 197, Laws of Utah

1995)

**49-13-405**, (Renumbered from 49-3-406, as last amended by Chapter 267, Laws of Utah 1998)

**49-13-406**, (Renumbered from 49-3-409, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-407**, (Renumbered from 49-3-601, as enacted by Chapter 1, Laws of Utah 1987)

**49-13-408**, (Renumbered from 49-3-410, as last amended by Chapter 141, Laws of Utah 2001)

**49-13-501**, (Renumbered from 49-3-701, as last amended by Chapters 12 and 90, Laws of Utah 1994)

**49-13-701**, (Renumbered from 49-3-802, as last amended by Chapter 226, Laws of Utah 1993)

**49-14-101**, (Renumbered from 49-4-101, as enacted by Chapter 1, Laws of Utah 1987)

**49-14-102**, (Renumbered from 49-4-103, as last amended by Chapter 92, Laws of Utah 1999)

**49-14-103**, (Renumbered from 49-4-201, as enacted by Chapter 1, Laws of Utah 1987)

**49-14-104**, (Renumbered from 49-4-202, as enacted by Chapter 1, Laws of Utah 1987)

**49-14-201**, (Renumbered from 49-4-203, as last amended by Chapter 92, Laws of Utah 1999)

**49-14-202**, (Renumbered from 49-4-204, as enacted by Chapter 1, Laws of Utah 1987)

**49-14-203**, (Renumbered from 49-4-205, as last amended by Chapter 110, Laws of Utah 2001)

**49-14-301**, (Renumbered from 49-4-301, as last amended by Chapter 169, Laws of Utah 1996)

**49-14-401**, (Renumbered from 49-4-401, as last amended by Chapter 292, Laws of Utah 1999)

**49-14-402**, (Renumbered from 49-4-402, as enacted by Chapter 1, Laws of Utah 1987)

**49-14-403**, (Renumbered from 49-4-601, as last amended by Chapter 31, Laws of Utah 1997)

**49-14-501**, (Renumbered from 49-4-701, as last amended by Chapter 285, Laws of Utah

1990)

**49-14-502**, (Renumbered from 49-4-702, as enacted by Chapter 1, Laws of Utah 1987)

**49-14-503**, (Renumbered from 49-4-703, as last amended by Chapter 292, Laws of Utah

1999)

**49-14-504**, (Renumbered from 49-4-704, as last amended by Chapter 141, Laws of Utah

2001)

**49-15-101**, (Renumbered from 49-4a-101, as enacted by Chapter 260, Laws of Utah 1989)

**49-15-102**, (Renumbered from 49-4a-103, as last amended by Chapter 92, Laws of Utah

1999)

**49-15-103**, (Renumbered from 49-4a-201, as enacted by Chapter 260, Laws of Utah 1989)

**49-15-104**, (Renumbered from 49-4a-202, as enacted by Chapter 260, Laws of Utah 1989)

**49-15-201**, (Renumbered from 49-4a-203, as last amended by Chapter 92, Laws of Utah

1999)

**49-15-202**, (Renumbered from 49-4a-204, as enacted by Chapter 260, Laws of Utah 1989)

**49-15-203**, (Renumbered from 49-4a-206, as last amended by Chapter 305, Laws of Utah

1999)

**49-15-204**, (Renumbered from 49-4a-205, as last amended by Chapter 268, Laws of Utah

1998)

**49-15-301**, (Renumbered from 49-4a-301, as last amended by Chapter 157, Laws of Utah

1992)

**49-15-401**, (Renumbered from 49-4a-401, as last amended by Chapter 292, Laws of Utah

1999)

**49-15-402**, (Renumbered from 49-4a-402, as last amended by Chapter 273, Laws of Utah

1990)

**49-15-403**, (Renumbered from 49-4a-601, as enacted by Chapter 260, Laws of Utah 1989)

**49-15-501**, (Renumbered from 49-4a-701, as last amended by Chapter 366, Laws of Utah

1998)

**49-15-502**, (Renumbered from 49-4a-702, as enacted by Chapter 260, Laws of Utah 1989)

**49-15-503**, (Renumbered from 49-4a-703, as last amended by Chapter 292, Laws of Utah 1999)

**49-15-504**, (Renumbered from 49-4a-704, as last amended by Chapter 141, Laws of Utah 2001)

**49-16-101**, (Renumbered from 49-5-101, as enacted by Chapter 1, Laws of Utah 1987)

**49-16-102**, (Renumbered from 49-5-103, as last amended by Chapter 73, Laws of Utah 2001)

**49-16-103**, (Renumbered from 49-5-201, as enacted by Chapter 1, Laws of Utah 1987)

**49-16-104**, (Renumbered from 49-5-202, as enacted by Chapter 1, Laws of Utah 1987)

**49-16-201**, (Renumbered from 49-5-203, as last amended by Chapter 283, Laws of Utah 2000)

**49-16-202**, (Renumbered from 49-5-204, as enacted by Chapter 1, Laws of Utah 1987)

**49-16-301**, (Renumbered from 49-5-301, as last amended by Chapters 131 and 292, Laws of Utah 1999)

**49-16-401**, (Renumbered from 49-5-401, as last amended by Chapter 292, Laws of Utah 1999)

**49-16-402**, (Renumbered from 49-5-402, as last amended by Chapter 51, Laws of Utah 1990)

**49-16-403**, (Renumbered from 49-5-601, as last amended by Chapter 31, Laws of Utah 1997)

**49-16-501**, (Renumbered from 49-5-701, as last amended by Chapter 293, Laws of Utah 1999)

**49-16-502**, (Renumbered from 49-5-702, as last amended by Chapter 267, Laws of Utah 1998)

**49-16-503**, (Renumbered from 49-5-703, as last amended by Chapter 90, Laws of Utah 1994)

**49-16-504**, (Renumbered from 49-5-704, as last amended by Chapter 141, Laws of Utah 2001)

**49-16-601**, (Renumbered from 49-5-501, as last amended by Chapter 283, Laws of Utah 2000)

**49-16-602**, (Renumbered from 49-5-502, as last amended by Chapter 141, Laws of Utah 2001)

**49-16-603**, (Renumbered from 49-5-503, as enacted by Chapter 1, Laws of Utah 1987)

**49-16-701**, (Renumbered from 49-5-802, as enacted by Chapter 1, Laws of Utah 1987)

**49-17-101**, (Renumbered from 49-6-101, as enacted by Chapter 1, Laws of Utah 1987)

**49-17-102**, (Renumbered from 49-6-103, as last amended by Chapter 31, Laws of Utah 1997)

**49-17-103**, (Renumbered from 49-6-201, as last amended by Chapter 198, Laws of Utah 1996)

**49-17-104**, (Renumbered from 49-6-202, as enacted by Chapter 1, Laws of Utah 1987)

**49-17-201**, (Renumbered from 49-6-203, as last amended by Chapter 198, Laws of Utah 1996)

**49-17-301**, (Renumbered from 49-6-301, as last amended by Chapter 198, Laws of Utah 1996)

**49-17-401**, (Renumbered from 49-6-401, as last amended by Chapter 292, Laws of Utah 1999)

**49-17-402**, (Renumbered from 49-6-402, as last amended by Chapter 75, Laws of Utah 1990)

**49-17-404**, (Renumbered from 49-6-404, as last amended by Chapter 7, Laws of Utah 1991, Second Special Session)

**49-17-405**, (Renumbered from 49-6-601, as enacted by Chapter 1, Laws of Utah 1987)

**49-17-501**, (Renumbered from 49-6-701, as last amended by Chapter 285, Laws of Utah 1990)

**49-17-502**, (Renumbered from 49-6-702, as enacted by Chapters 1 and 168, Laws of Utah 1987)

**49-17-701**, (Renumbered from 49-6-801, as enacted by Chapter 84, Laws of Utah 1996)

**49-18-101**, (Renumbered from 49-6a-101, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-102**, (Renumbered from 49-6a-103, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-103**, (Renumbered from 49-6a-201, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-104**, (Renumbered from 49-6a-202, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-201**, (Renumbered from 49-6a-203, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-301**, (Renumbered from 49-6a-301, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-401**, (Renumbered from 49-6a-401, as last amended by Chapter 292, Laws of Utah  
1999)  
**49-18-402**, (Renumbered from 49-6a-402, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-403**, (Renumbered from 49-6a-501, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-501**, (Renumbered from 49-6a-601, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-502**, (Renumbered from 49-6a-602, as enacted by Chapter 356, Laws of Utah 1997)  
**49-18-701**, (Renumbered from 49-6a-701, as enacted by Chapter 267, Laws of Utah 1998)  
**49-19-101**, (Renumbered from 49-7-101, as enacted by Chapter 1, Laws of Utah 1987)  
**49-19-103**, (Renumbered from 49-7-201, as enacted by Chapter 1, Laws of Utah 1987)  
**49-19-104**, (Renumbered from 49-7-202, as enacted by Chapter 1, Laws of Utah 1987)  
**49-19-201**, (Renumbered from 49-7-203, as last amended by Chapter 197, Laws of Utah  
1995)  
**49-19-301**, (Renumbered from 49-7-301, as enacted by Chapter 1, Laws of Utah 1987)  
**49-19-401**, (Renumbered from 49-7-401, as last amended by Chapter 292, Laws of Utah  
1999)  
**49-19-501**, (Renumbered from 49-7-403, as last amended by Chapter 197, Laws of Utah  
1995)  
**49-20-101**, (Renumbered from 49-8-101, as enacted by Chapter 1, Laws of Utah 1987)  
**49-20-102**, (Renumbered from 49-8-103, as last amended by Chapter 292, Laws of Utah  
1999)  
**49-20-103**, (Renumbered from 49-8-201, as enacted by Chapter 1, Laws of Utah 1987)  
**49-20-104**, (Renumbered from 49-8-202, as enacted by Chapter 1, Laws of Utah 1987)

**49-20-105**, (Renumbered from 49-8-102, as last amended by Chapter 292, Laws of Utah 1999)

**49-20-201**, (Renumbered from 49-8-203, as last amended by Chapter 360, Laws of Utah 1998)

**49-20-202**, (Renumbered from 49-8-204, as last amended by Chapter 360, Laws of Utah 1998)

**49-20-301**, (Renumbered from 49-8-301, as enacted by Chapter 1, Laws of Utah 1987)

**49-20-401**, (Renumbered from 49-8-401, as last amended by Chapter 360, Laws of Utah 1998)

**49-20-402**, (Renumbered from 49-8-402, as enacted by Chapter 1, Laws of Utah 1987)

**49-20-404**, (Renumbered from 49-8-403, as last amended by Chapter 292, Laws of Utah 1999)

**49-20-405**, (Renumbered from 49-8-404, as last amended by Chapter 283, Laws of Utah 2000)

**49-20-406**, (Renumbered from 49-8-405, as last amended by Chapter 154, Laws of Utah 2000)

**49-21-101**, (Renumbered from 49-9-101, as enacted by Chapter 1, Laws of Utah 1987)

**49-21-102**, (Renumbered from 49-9-103, as last amended by Chapter 283, Laws of Utah 2000)

**49-21-103**, (Renumbered from 49-9-201, as last amended by Chapter 169, Laws of Utah 1988)

**49-21-104**, (Renumbered from 49-9-202, as enacted by Chapter 1, Laws of Utah 1987)

**49-21-105**, (Renumbered from 49-9-102, as last amended by Chapter 111, Laws of Utah 1987)

**49-21-201**, (Renumbered from 49-9-203, as last amended by Chapter 157, Laws of Utah 1992)

**49-21-301**, (Renumbered from 49-9-301, as last amended by Chapter 90, Laws of Utah 1994)

**49-21-401**, (Renumbered from 49-9-401, as last amended by Chapter 292, Laws of Utah 1999)

**49-21-402**, (Renumbered from 49-9-402, as last amended by Chapter 231, Laws of Utah 1996)

**49-21-403**, (Renumbered from 49-9-403, as last amended by Chapter 292, Laws of Utah 1999)

**49-21-404**, (Renumbered from 49-9-404, as enacted by Chapter 1, Laws of Utah 1987)

**49-21-405**, (Renumbered from 49-9-405, as last amended by Chapter 81, Laws of Utah 1989)

**49-21-406**, (Renumbered from 49-9-407, as enacted by Chapter 1, Laws of Utah 1987)

**49-21-407**, (Renumbered from 49-9-409, as last amended by Chapter 231, Laws of Utah 1996)

**REPEALS:**

**49-1-501**, as enacted by Chapter 1, Laws of Utah 1987

**49-1-605**, as enacted by Chapter 1, Laws of Utah 1987

**49-1-612**, as enacted by Chapter 273, Laws of Utah 1990

**49-1-617**, as last amended by Chapter 332, Laws of Utah 2001

**49-2-102**, as enacted by Chapter 1, Laws of Utah 1987

**49-2-403**, as last amended by Chapter 90, Laws of Utah 1994

**49-2-501**, as enacted by Chapter 1, Laws of Utah 1987

**49-2-702**, as enacted by Chapter 1, Laws of Utah 1987

**49-3-102**, as enacted by Chapter 1, Laws of Utah 1987

**49-3-403**, as last amended by Chapter 90, Laws of Utah 1994

**49-3-501**, as enacted by Chapter 1, Laws of Utah 1987

**49-3-702**, as enacted by Chapter 1, Laws of Utah 1987

**49-4-102**, as enacted by Chapter 1, Laws of Utah 1987

**49-4-403**, as enacted by Chapter 1, Laws of Utah 1987

**49-4a-102**, as enacted by Chapter 260, Laws of Utah 1989

- 49-4a-403**, as enacted by Chapter 260, Laws of Utah 1989
- 49-5-102**, as enacted by Chapter 1, Laws of Utah 1987
- 49-5-403**, as enacted by Chapter 1, Laws of Utah 1987
- 49-5-602**, as last amended by Chapter 285, Laws of Utah 1990
- 49-6-102**, as enacted by Chapter 1, Laws of Utah 1987
- 49-6-602**, as last amended by Chapter 75, Laws of Utah 1990
- 49-6a-102**, as enacted by Chapter 356, Laws of Utah 1997
- 49-7-102**, as enacted by Chapter 1, Laws of Utah 1987
- 49-7-402**, as enacted by Chapter 1, Laws of Utah 1987
- 49-7-404**, as last amended by Chapter 88, Laws of Utah 2000
- 49-9-302**, as enacted by Chapter 132, Laws of Utah 1987
- 49-9-406**, as last amended by Chapter 267, Laws of Utah 1998
- 49-9-408**, as last amended by Chapter 111, Laws of Utah 1987
- 49-10-303**, as enacted by Chapter 151, Laws of Utah 1995

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

Section 1. Section **31A-22-703** is amended to read:

**31A-22-703. Conversion rights on termination of group accident and health insurance coverage.**

(1) Except as provided in Subsections (2) through (5), all policies of accident and health insurance offered on a group basis under this title or Title 49, Chapter [8] 20, [~~Group~~] Public Employees' Insurance Program Act, shall provide that a person whose insurance under the group policy has been terminated for any reason, and who has been continuously insured under the group policy or its predecessor for at least six months immediately prior to termination, is entitled to choose a converted individual policy of accident and health insurance from the insurer which conforms to Section 31A-22-708 or an extension of benefits under the group policy as provided in Section 31A-22-714.

(2) Subsection (1) does not apply if the policy:

(a) provides catastrophic, aggregate stop loss, or specific stop loss benefits;

(b) provides benefits for specific diseases or for accidental injuries only, or for dental service; or

(c) is an income replacement policy.

(3) An employee or group member does not have conversion rights under Subsection (1) if:

(a) termination of the group coverage occurred because of failure of the group member to pay any required individual contribution;

(b) the individual group member acquires other group coverage covering all preexisting conditions including maternity, if the coverage existed under the replaced group coverage; or

(c) the person has:

(i) performed an act or practice that constitutes fraud; or

(ii) made an intentional misrepresentation of material fact under the terms of the coverage.

(4) Notwithstanding Subsections (1), (2), and (3), an employee or group member does not have conversion rights under Subsection (1) if the individual or group member qualifies to continue coverage under his existing group policy in accordance with the terms of his policy.

(5) (a) Notwithstanding Subsection 31A-22-613(1), an insurer may reduce benefits under a converted policy covering any person to the extent the benefits provided or available to that person under one or more of the sources listed under Subsection (5)(b), together with the benefits provided by the converted policy, would result in coverage that would result in payment of more than 100% of the amount of the claim.

(b) The benefits sources referred to under Subsection (5)(a) include:

(i) benefits under another insurance policy; and

(ii) benefits under any arrangement of coverage for individuals in a group, whether on an insured or an uninsured basis.

(6) (a) The conversion policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group policy or the conversion policy until termination of pregnancy that exists on the date of conversion if:

(i) one of the following is pregnant on the date of the conversion:

(A) the insured;

- (B) a spouse of the insured; or
- (C) a dependent of the insured; and
- (ii) the accident and health policy had maternity benefits.

(b) The requirements of this Subsection (6) do not apply to a pregnancy that occurs after the date of conversion.

Section 2. Section **35A-4-502** is amended to read:

**35A-4-502. Administration of Employment Security Act.**

(1) (a) The department shall administer this chapter through the division.

(b) The department may make, amend, or rescind any rules and special orders necessary for the administration of this chapter.

(c) The division may:

- (i) employ persons;
- (ii) make expenditures;
- (iii) require reports;
- (iv) make investigations;
- (v) make audits of any or all funds provided for under this chapter when necessary; and
- (vi) take any other action it considers necessary or suitable to that end.

(d) No later than the first day of October of each year, the department shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make any recommendations for amendments to this chapter as the department considers proper.

(e) (i) The report required under Subsection (1)(d) shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the division in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

(ii) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the

Legislature and make appropriate recommendations.

(2) (a) The department may make, amend, or rescind rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) The director of the division or the director's designee may adopt, amend, or rescind special orders after appropriate notice and opportunity to be heard. Special orders become effective ten days after notification or mailing to the last-known address of the individuals or concerns affected thereby.

(3) The director of the division or the director's designee shall cause to be printed for distribution to the public:

- (a) the text of this chapter;
- (b) the department's rules pertaining to this chapter;
- (c) the department's annual reports to the governor required by Subsection (1)(e); and
- (d) any other material the director of the division or the director's designee considers relevant and suitable and shall furnish them to any person upon application.

(4) (a) The division may delegate to any person so appointed the power and authority it considers reasonable and proper for the effective administration of this chapter and may bond any person handling moneys or signing checks under this authority.

(b) The department may, when permissible under federal and state law, make arrangements to voluntarily elect coverage under the United States Civil Service Retirement System or a comparable private retirement plan with respect to past as well as future services of individuals employed under this chapter who:

- (i) were hired prior to October 1, 1980; and
- (ii) have been retained by the department without significant interruption in the employees' services for the department.

(c) An employee of the department who no longer may participate in a federal or other retirement system as a result of a change in status or appropriation under this chapter may purchase credit in a retirement system created under Title 49, Chapter [3] 13, Public Employees' Noncontributory Retirement Act, with the employee's assets from the federal or other retirement

system in which the employee may no longer participate.

(5) There is created an Employment Advisory Council composed of the members listed in Subsections (5)(a) and (b).

(a) The executive director shall appoint:

(i) not less than five employer representatives chosen from individuals recommended by employers, employer associations, or employer groups;

(ii) not less than five employee representatives chosen from individuals recommended by employees, employee associations, or employee groups; and

(iii) five public representatives chosen at large.

(b) The executive director or the executive director's designee shall serve as a nonvoting member of the council.

(c) The employee representatives shall include both union and nonunion employees who fairly represent the percentage in the labor force of the state.

(d) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(e) (i) Except as required by Subsection (5)(e)(ii), as terms of current council members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (5)(e)(i), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(g) The executive director shall terminate the term of any council member who ceases to be representative as designated by the council member's original appointment.

(h) The council shall advise the department and the Legislature in formulating policies and

discussing problems related to the administration of this chapter including:

- (i) reducing and preventing unemployment;
- (ii) encouraging the adoption of practical methods of vocational training, retraining, and vocational guidance;
- (iii) monitoring the implementation of the Wagner-Peyser Act;
- (iv) promoting the creation and development of job opportunities and the reemployment of unemployed workers throughout the state in every possible way; and
- (v) appraising the industrial potential of the state.

(i) The council shall assure impartiality and freedom from political influence in the solution of the problems listed in Subsection (5)(h).

(j) The executive director or the executive director's designee shall serve as chair of the council and call the necessary meetings.

(k) (i) A member shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member may decline to receive per diem and expenses for the member's service.

(l) The department shall provide staff support to the council.

(6) In the discharge of the duties imposed by this chapter, the division director or the director's designee as designated by department rule, may in connection with a disputed matter or the administration of this chapter:

- (a) administer oaths and affirmations;
- (b) take depositions;
- (c) certify to official acts; and
- (d) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records necessary as evidence.

(7) (a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business,

upon application by the director of the division or the director's designee shall have jurisdiction to issue to that person an order requiring the person to appear before the director or the director's designee to produce evidence, if so ordered, or give testimony regarding the matter under investigation or in question. Any failure to obey that order of the court may be punished by the court as contempt.

(b) Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in that person's power to do so, in obedience to a subpoena of the director or the director's designee shall be punished as provided in Subsection 35A-1-301(1)(b). Each day the violation continues is a separate offense.

(c) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

(8) (a) In the administration of this chapter, the division shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take action, through the adoption of appropriate rules by the department and administrative methods and standards, as necessary to secure to this state and its citizens all advantages available under the provisions of:

- (i) the Social Security Act that relate to unemployment compensation;
- (ii) the Federal Unemployment Tax Act; and
- (iii) the Federal-State Extended Unemployment Compensation Act of 1970.

(b) In the administration of Section 35A-4-402, which is enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304, the division shall take any action necessary to ensure that the section is interpreted and applied to meet the requirements of the federal act, as interpreted by the United States Department of Labor and to secure to this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter that are reimbursable under the federal act.

Section 3. Section **49-11-101**, which is renumbered from Section 49-1-101 is renumbered and amended to read:

**TITLE 49. UTAH STATE RETIREMENT AND INSURANCE BENEFIT ACT  
CHAPTER 11. UTAH STATE RETIREMENT SYSTEMS ADMINISTRATION**

**Part 1. General Provisions**

**[49-1-101]. 49-11-101. Title.**

(1) This title is known as the "Utah State Retirement and Insurance Benefit Act."

(2) This chapter is known as the "Utah State Retirement Systems Administration."

Section 4. Section **49-11-102**, which is renumbered from Section 49-1-103 is renumbered and amended to read:

**[49-1-103]. 49-11-102. Definitions.**

As used in this title:

~~[(1) "Accumulated contributions" means the sum of the contributions made by or on behalf of a member and standing to the credit of the member's individual account, including regular interest where allowed by law.]~~

(1) (a) "Active member" means a member who is employed or who has been employed by a participating employer within the previous 120 days.

(b) "Active member" does not include retirees.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables ~~[adopted by the board]~~ as recommended by the actuary and adopted by the executive director, including regular interest.

(3) "Actuarial interest rate" means the interest rate as recommended by the actuary and adopted by the board ~~[upon the recommendation of the actuary and]~~ upon which the funding of ~~[retirement]~~ system costs and benefits are computed.

~~[(4) "Administrator" means the executive director of the board.]~~

~~[(5)]~~ (4) "Agency" means:

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

(b) a county, municipality, school district, or special district;

(c) a state college or university; or

(d) any other [~~individual employing unit that participates in a system administered by the board~~] participating employer.

~~[(6)]~~ (5) "Allowance" means the pension plus the annuity, including any cost of living or other authorized adjustments to the pension and annuity.

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

(7) "Annuity" means [~~annual~~] monthly payments [~~for life~~] derived from member contributions [~~made by the employee~~].

(8) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of a participating employer, and who earns during the first full month of the term of office \$500 or more, indexed as of January 1, 1989, as provided in Section 49-12-407.

~~[(8)]~~ (9) "Beneficiary" means any person entitled to receive a [~~retirement allowance or other benefit provided by~~] payment under this title through a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.

~~[(9)]~~ (10) "Board" [~~or "retirement board"~~] means the Utah State Retirement Board established under [~~this title~~] Section 49-11-202.

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

~~[(10)]~~ (12) "Contributions" means the [~~contributions~~] total amount paid by the participating employer and the member[~~, if any,~~] into a [~~retirement fund~~] system or to the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governor's and Legislators' Retirement Act.

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

(14) "Covered Individual" means any individual covered under Chapter 20, Public Employees Benefit and Insurance Program Act.

~~[(11)]~~ (15) "Current service" means covered service [~~rendered after the effective date of each system~~] as defined in Chapters 12, 13, 14, 15, 16, 17, 18, and 19.

~~[(12) "Department" means any department, office, board, commission, instrumentality, or other agency of the state.]~~

~~[(13) "Dependent beneficiary" means a spouse, child, or children under 21 years of age, a child or children with a physical or mental disability, regardless of age, or a parent, or person, regardless of age or relationship, who is or are financially dependent upon the member. The dependency of a person other than a spouse or child shall be proved by written verified documents acceptable to the board or by a copy of the member's state income tax return for the last reportable year listing the person as a dependent. All documents are subject to review and approval of the administrator.]~~

(16) "Defined contribution" or "defined contribution plan" means any defined contribution plan authorized under the Internal Revenue Code and administered by the board.

(17) "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 education 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 described under this Subsection (16).

~~[(14)]~~ (18) (a) "Employer" [or "employing unit"] means any department, educational institution, or political subdivision[, organization, or agency financed in whole or in part by public funds for which any employee or member performs services subject to this title] of the state eligible to participate in a government-sponsored retirement system under federal law.

(b) "Employer" may also include an agency financed in whole or in part by public funds as allowed under Chapter 12 or 13.

(19) "Final average monthly salary" means the amount computed by dividing the compensation received during the final average salary period under each system by the number of

months in the final average salary period.

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

~~[(15)]~~ (21) (a) "Inactive member" means a member who has [received no compensation for a period longer than four months] not been employed by a participating employer for a period of at least 120 days.

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

~~[(16) (a) "Member" means any person included in the membership of any retirement system administered by the board. (b) A]~~

(22) (a) "Member" means a person [is considered to be a member if he has], except a retiree, with contributions on deposit with [the retirement] a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, or with [the] a terminated system.

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

(23) "Member contributions" means the sum of the contributions paid to a system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a system, and which are made by:

(a) the member; and

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

(24) "Nonelective contribution" means an amount contributed by a participating employer into a participant's defined contribution account.

~~[(17)]~~ (25) "Office" [or "retirement office"] means the Utah State Retirement Office.

(26) "Participant" means an individual with voluntary deferrals or nonelective contributions

on deposit with the defined contribution plans administered under this title.

~~[(18)]~~ (27) "Participating employer" ~~[or "participating employing unit" means any employer or employing unit participating in the system whose employees are members of the system]~~ means a participating employer, as defined by Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public funds which is participating in a system or plan as of January 1, 2002.

~~[(19) "Payroll" means a register, warrant, or any other document upon which all persons receiving salary payments are listed.]~~

~~[(20)]~~ (28) "Pension" means ~~[annual]~~ monthly payments [for life] derived from participating employer contributions [made by employers].

(29) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by Chapter 19 or the defined contribution plans created under Section 49-11-801.

~~[(21)]~~ (30) (a) "Political subdivision" means any ~~[political subdivision of the state]~~ local government entity, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity[;] or employees of the state [or one of its departments].

~~[(a) The term]~~

(b) "Political subdivision" includes special districts or authorities created by the Legislature or by local governments, including ~~[mosquito abatement districts, sewer or water districts, water associations and companies, libraries, and any entity arising out of a consolidation agreement between political subdivisions. (b) The term includes]~~ the ~~[retirement]~~ office.

(c) ~~[The term]~~ "Political subdivision" does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act.

~~[(22) "Prior service" means service rendered prior to the effective date of each system.]~~

~~[(23) "Refund" means a return of contributions to a terminating member.]~~

(31) "Program" means the Public Employees' Insurance Program created under Chapter 20, Public Employees' Insurance Program Act, or the Public Employees' Long-Term Disability program created under Chapter 21, Public Employees' Long-Term Disability Act.

(32) "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.

~~[(24) "Regular]~~ (33) "Refund interest" means ~~[interest compounded annually at a rate]~~ the amount accrued on member contributions at a rate adopted by the board [in accordance with this title].

~~[(25)]~~ (34) "Retiree" means ~~[a retired member]~~ an individual who ~~[is receiving retirement benefits]~~ has qualified for an allowance under this title.

~~[(26)]~~ (35) "Retirement" means ~~[withdrawal from active service with a retirement allowance granted under this title]~~ the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.

(36) "Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.

~~[(27)]~~ (37) "Service credit" ~~[or "covered service"]~~ means ~~[service used in the computation of benefits.];~~

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

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

(38) "System" means the individual retirement systems created by Chapters 12, 13, 14, 15, 16, 17, and 18.

(39) "Voluntary deferrals" means an amount contributed by a participant into that participant's defined contribution account.

Section 5. Section **49-11-103**, which is renumbered from Section 49-1-102 is renumbered and amended to read:

~~[49-1-102].~~ **49-11-103. Purpose -- Liberal construction.**

(1) The purpose of this ~~[chapter]~~ title is to establish ~~[a central administrative office and a board to administer the various];~~

(a) retirement systems [established by the Legislature.] and the Utah Governors' and Legislators' Retirement Plan for members which provide:

(i) a uniform system of membership;

(ii) retirement requirements;

(iii) benefits for members;

(iv) funding on an actuarially sound basis;

(v) contributions; and

(vi) economy and efficiency in public service; and

(b) a central administrative office and a board to administer the various systems, plans, and programs established by the Legislature or the board.

(2) This title shall be liberally construed to provide maximum benefits and protections consistent with sound fiduciary and actuarial principals.

Section 6. Section **49-11-201**, which is renumbered from Section 49-1-201 is renumbered and amended to read:

## **Part 2. Retirement Office and Board**

**[49-1-201]. 49-11-201. Establishment of retirement office -- An independent state agency -- Office exemption.**

(1) (a) There is established the Utah State Retirement Office.

(b) The office shall administer the ~~[state retirement]~~ systems, plans, and programs and perform all other functions assigned to it ~~[by law]~~ under this title.

(2) (a) The office is an independent state agency.

(b) It is subject to legislative and executive department budgetary ~~[examination]~~ review and comment.

(3) The office ~~[shall be housed in Salt Lake City, but branches of the office may be established in other areas of the state]~~ may establish branch offices upon approval of the board.

(4) ~~(a)~~ The board ~~[is]~~ and office are exempt from those acts which are applicable to state and other governmental entities under this code.

~~[(b) Notwithstanding Subsection (4)(a), the board shall:]~~

~~[(i) adopt, where not in conflict with its trust and fiduciary responsibilities or other law, rules governing the operation of the retirement office that are substantially similar to those governing other public agencies; and]~~

~~[(ii) report the rules and any amendments to the rules adopted under Subsection (4)(b)(i) to the Legislative Quasi-Governmental Entities Committee on an annual basis or as otherwise requested by the Legislative Quasi-Governmental Entities Committee.]~~

Section 7. Section **49-11-202**, which is renumbered from Section 49-1-202 is renumbered and amended to read:

~~[49-1-202].~~ **49-11-202. Establishment of Utah State Retirement Board -- Quorum -- Terms -- Officers -- Expenses and per diem -- Membership council established.**

(1) There is established the Utah State Retirement Board composed of seven board members determined as follows:

(a) Four board members, with experience in investments or banking, shall be appointed by the governor from the general public.

(b) One board member shall be a school employee appointed by the governor from at least three nominations submitted by the governing board of [a] the school employees' association that is representative of a majority of the school employees who are members of [the school employees' retirement] a system administered by the board.

(c) One board member shall be a public employee appointed by the governor from at least three nominations submitted by the governing board of [a] the public employee association that is representative of a majority of the public employees who are members of [the public employees' retirement] a system administered by the board.

(d) One board member shall be the state treasurer[~~, who shall serve as an ex officio member with full voting privileges~~].

(2) Four board members constitute a quorum for the [~~purpose of doing all~~] transaction of business.

(3) (a) All appointments to the board shall be made on a nonpartisan basis, with the advice and consent of the Senate.

(b) ~~[Members]~~ Board members shall serve until their successors are appointed and take the constitutional oath of office.

(c) When a vacancy occurs ~~[in the membership]~~ on the board for any reason, the replacement shall be appointed for the unexpired term.

~~[(d) Members appointed to the board between sessions of the Legislature shall serve with full authority until acted upon by the Senate in session.]~~

(4) (a) Except as required by Subsection (4)(b), all appointed board members shall serve for four-year terms.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) ~~[Public employees or educators]~~ A board member who is appointed as a school employee or as a public employee who [retire] retires or [otherwise terminate their employment] who is no longer employed with a [covered unit] participating employer shall immediately resign from the board.

(5) (a) Each year the board shall elect a president and ~~[vice-president]~~ vice president from its membership. ~~[Each member shall be reimbursed for expenses incurred in service to the board.]~~

(b) Each board member shall receive a per diem plus ~~[travel]~~ expenses for attending regularly constituted meetings and conferences as provided by [law for attending board meetings] board action.

(6) (a) ~~[The board shall establish]~~ There is established a Membership Council to [advise and counsel with the board and the director on policies affecting members of the various systems administered by the retirement office] perform the duties under Subsection (10).

(b) The board may pay the travel expenses of council members who attend council meetings.

(7) ~~[Beginning July 1, 1991, the]~~ The Membership Council shall be composed of 13 council members selected as follows:

(a) Three council members shall be school employees selected by the governing board of an association representative of a majority of school employees who are members of ~~[the Public~~

~~Employees' Retirement System or the Public Employees' Noncontributory Retirement System]~~ a system administered by the board.

(b) One council member shall be a classified school employee selected by the governing board of [~~an~~] the association representative of a majority of classified school employees who are members of [~~the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System]~~ a system administered by the board.

(c) Two council members shall be public employees selected by the governing board of [~~an~~] the association representative of a majority of the public employees who are members of [~~the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System]~~ a system administered by the board.

(d) One council member shall be a [~~city or town~~] municipal officer or employee selected by the governing board of [~~an~~] the association representative of a majority of the [~~cities and towns~~] municipalities who [~~are members of the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System]~~ participate in a system administered by the board.

(e) One council member shall be a county officer or employee selected by the governing board of [~~an~~] the association representative of a majority of counties who [~~are members of the Public Employees' Retirement System or the Public Employees' Noncontributory Retirement System]~~ participate in a system administered by the board.

(f) One council member shall be a representative of members of the Judges' Noncontributory Retirement System selected by the Judicial Council.

(g) One council member shall be a representative of members of the Public Safety Retirement [~~System~~] Systems selected by the governing board of [~~an~~] the association representative of the majority of peace officers who are members of the Public Safety Retirement [~~System~~] Systems.

(h) One council member shall be a representative of members of the Firefighters' Retirement System selected by the governing board of [~~an~~] the association representative of the majority of paid professional firefighters who are members of the Firefighters' Retirement System.

(i) One council member shall be a [~~retired member~~] retiree selected by the Utah Association

of Retired Public Employees.

(j) One council member shall be a ~~[retired member]~~ retiree selected by the Utah Retired School Employees' Association.

(8) (a) ~~[Members shall be appointed as provided for in Subsection (7)]~~ Each entity granted authority to select council members under Subsection (7) may also revoke the selection at any time.

(b) ~~[Except as required by Subsection (c), as terms of current council members expire, the board shall appoint each new member or reappointed member to a four-year term]~~ Each term on the council shall be for a period of four years, subject to Subsection (8)(a).

~~[(c) Notwithstanding the requirements of Subsection (b), the board shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.]~~

~~[(d)]~~ (c) Each term begins on July 1 and expires on June 30 ~~[in the year of expiration].~~

~~[(e)]~~ (d) When a vacancy occurs ~~[in]~~ on the ~~[membership]~~ council for any reason, the replacement shall be ~~[appointed]~~ selected for the remainder of the unexpired term.

(9) The council shall annually designate one council member as chair ~~[annually].~~

(10) The council shall:

(a) recommend to the board and to the Legislature benefits and policies for members of any system or plan administered by the board ~~[to the board and to the Legislature];~~

(b) recommend procedures and practices to improve the administration of the ~~[system]~~ systems and plans and the public employee relations responsibilities of the board and office;

(c) examine the record of all decisions affecting retirement benefits made by a hearing officer under Section 49-11-613;

(d) submit nominations to the board for the position of executive director if that position is vacant; ~~[and]~~

(e) advise and counsel with the board and the director on policies affecting members of the various systems administered by the office; and

~~[(e) act upon all]~~ (f) perform other duties assigned to it by the board.

Section 8. Section **49-11-203**, which is renumbered from Section 49-1-203 is renumbered

and amended to read:

~~[49-1-203].~~ **49-11-203. Powers and duties of board.**

(1) The board shall:

(a) appoint an executive director to administer the ~~[retirement]~~ office;

(b) receive and act upon reports covering the operations of the systems, plans, programs, and funds administered by the ~~[retirement]~~ office;

(c) ensure that the systems, plans, programs, and funds are administered according to law;

(d) ~~[sit as a board of appeal on any appeal filed by a member of a system, plan, or program or by a covered employer]~~ review any final order of a hearing officer and approve or modify the order at the board's discretion in accordance with Section 49-11-613;

(e) examine and approve an annual operating budget for the ~~[retirement]~~ office;

(f) serve as investment trustees of the ~~[retirement fund]~~ Utah State Retirement Investment Fund as provided under this title;

(g) maintain, in conjunction with participating employers and members, the systems, plans, and programs on an actuarially sound ~~[or approved]~~ basis~~[-, subject to the responsibility of the Legislature to adjust benefits and contribution rates when recommended by the board];~~

(h) report annually to the governor, the Legislature, and each participating employer the contribution rates, premium rates, and any adjustments necessary to maintain the systems, plans, and programs on a financially and actuarially sound basis;

~~[(h)]~~ (i) receive and act upon recommendations of the executive director;

~~[(i)]~~ (j) recommend to the governor and Legislature, through the executive director, any necessary or desirable changes [in the statutes governing the systems, plans, and programs administered by the retirement office] to this title;

~~[(j)]~~ (k) develop broad policy for the long-term operation of the various [retirement] systems, plans, and programs [and is granted] under broad discretion and power to perform [its] the board's policymaking functions, including the specific authority to interpret and define any provision or term under this title when the board or office provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains

the actuarial soundness of the systems, plans, or programs;

(l) adopt interest rates, premium rates, and annual contribution rates after reviewing actuarial recommendations;

~~[(k)]~~ (m) establish the compensation of the executive director and adopt compensation plans and policies based on market surveys for [fiduciary and administrative] positions in the office;

~~[(l) regulate the duties of employing units and other public authorities which are imposed upon them by this title and specify the time, place, and manner in which contributions shall be withheld and paid, and obtain any reports necessary for the administration of this title;]~~

~~[(m) adopt rules consistent with this title for the management of the systems, plans, and programs in order to carry out the purposes of this title, and perform all other acts necessary for the administration of the retirement systems, plans, and programs;]~~

~~[(n) comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its adjudicative proceedings;]~~

~~[(o) otherwise exercise the powers and perform the duties conferred on it by this title; and]~~

(n) take action consistent with this title for the administration of the systems, plans, and programs in order to carry out the purposes of this title;

~~[(p)]~~ (o) provide for audits of the [retirement system] systems, plans, programs, and funds;

(p) take actions not in conflict with the board's trust and fiduciary responsibilities or other law, with respect to the governance of the office which are substantially similar to those governing other public agencies; and

(q) otherwise exercise the powers and perform the duties conferred on the board by this title.

(2) The board may:

(a) subpoena witnesses and compel their attendance to testify before it, for which purpose each board member ~~[and the secretary of the board]~~ may administer oaths and affirmations to witnesses and others transacting business of the ~~[retirement system]~~ office;

(b) establish ~~[membership]~~ membership councils to ~~[advise]~~ recommend to the board and the executive director ~~[on]~~ policies affecting members of any ~~[system]~~ systems, plans, and programs administered by the board ~~[and may];~~

- (c) pay the travel expenses of council members who attend council meetings; and  
 [(e)] (d) sue and be sued in its own name.

Section 9. Section **49-11-204**, which is renumbered from Section 49-1-204 is renumbered and amended to read:

**[49-1-204]. 49-11-204. Powers and duties of executive director.**

The executive director shall:

- (1) act as the executive officer of the board and the [retirement] office;
- (2) administer the various [acts,] systems, plans, programs, and functions assigned to the board or office;
- (3) subject to board review, develop and [promulgate, with the approval of the board, administrative rules which are within the authority granted by this title, in the administration of the various retirement systems, plans, and programs] implement internal policies and procedures which administer and govern the day-to-day operations of the systems, plans, and programs;
- (4) transmit orders of a hearing officer made under Section 49-11-613 to the board [any appeals received from members of any retirement system, plan, or program under this title, or any covered employer, arising out of a ruling of the director, and to arrange a hearing before the board for any affected party];
- (5) [~~keep the board, the governor, the Legislature, and its agencies, and other affected officers, associations, and groups informed on the operations of the retirement office]~~ provide information concerning the operation of the office to the board, the governor, the Legislature, participating employers, and employer and employee associations, unless otherwise restricted under Section 49-11-618;
- (6) [~~recommend to the board]~~ inform the Legislature of any recommendations from the board regarding any necessary or desirable changes [in the retirement statutes] to this title;
- (7) [~~serve as a consultant]~~ consult with the Legislature on all [retirement] legislation under this title;
- (8) (a) recommend to the board an annual administrative budget covering the operations of the [retirement] office and, upon approval, submit the budget along with the actuarial status of the

[fund] funds to the governor and the Legislature for [examination] review and comment; [after which the director shall] and

(b) direct and control the subsequent expenditures of the budget;

(9) employ, within the limitations of the budget, [staff] personnel [~~and consultants~~] to administer the [retirement] systems, plans, programs, and funds assigned to the [retirement] office, including consultants, actuaries, attorneys, medical examiners, investment counselors, and accountants[~~, and clerical and other assistants~~] to accomplish the [purpose] purposes of [the retirement office] this title;

~~[(10) develop, with approval of the board, common administrative procedures and rules for each of the retirement systems, plans, and programs administered by the retirement office;]~~

~~[(11)]~~ (10) establish[~~, with approval of the board,~~] independent financial records for each of the [retirement] systems, plans, and programs or combine all financial records using acceptable principles of [fund] accounting to identify the assets and vested interests of each [retirement] system, plan, or program;

~~[(12) credit contributions of employers and other accounts with interest at the rate adopted in accordance with Subsection (13);]~~

~~[(13) from time to time, upon the recommendation of the consulting actuary, adopt interest rates, mortality tables, and other tables necessary for the administration of the systems, plans, and programs;]~~

~~[(14) keep in convenient form all records and accounts necessary for the administration of the systems, plans, and programs and data for investigation of its experience and its actuarial valuation;]~~

(11) maintain individual records necessary to provide benefits under this title;

(12) keep in convenient form all records, accounts, and data necessary for the administration and actuarial valuation of the systems, plans, and programs;

(13) adopt fees, charges, and upon the recommendation of the actuary, interest rates and tables for the administration of the systems, plans, and programs;

~~[(15)]~~ (14) consolidate into one [warrant] payment all monthly [~~payments of annuities,~~

~~pensions, and subsistence payments made to each retired member as long as] allowances and any defined contribution distributions if the integrity of the various funds is maintained through appropriate accounting records [which shall be established];~~

~~[(16) comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in any adjudicative proceedings conducted by the director; and (17) from time to time, but]~~

~~(15) at least biennially[, and in cooperation with the Office of Legislative Research and General Counsel,];~~

~~(a) make an actuarial investigation into the mortality, service, and other experience of the members [and], participants, beneficiaries, and covered individuals of the systems, plans, and programs[-];~~

~~(b) actuarially value the assets and liabilities of the administered funds and accounts[-]; and~~

~~(c) determine the rate of interest being earned by the funds[-, and, based upon all these determinations and factors, including items requested by the Office of Legislative Research and General Counsel, shall confer with that office and];~~

~~(16) report to the board findings [of the investigation] under Subsection (15), with recommendations, [to the Legislature along with any] including proposed changes in the rates of contribution or benefits that are necessary to [the security] maintain the actuarial soundness of the [system, plan, or program. Costs of the investigation, as well as all actuarial consulting and other services, shall be paid from the interest earnings of the fund.] systems, plans, or programs;~~

~~(17) regulate participating employers by:~~

~~(a) educating them on their duties imposed by this title;~~

~~(b) specifying the time, place, and manner in which contributions shall be withheld and paid;~~

~~and~~

~~(c) requiring any reports necessary for the administration of this title; and~~

~~(18) otherwise exercise the powers and perform the duties conferred on the executive director by this title.~~

Section 10. Section **49-11-301**, which is renumbered from Section 49-1-301 is renumbered

and amended to read:

### Part 3. Investment Fund

~~[49-1-301].~~ **49-11-301. Creation -- Board to act as trustees of the fund --  
Commingling and pooling of funds -- Interest earnings.**

(1) There is created ~~[for the purpose of enlarging the investment base and simplifying investment procedures and functions]~~ a common trust fund known as the "Utah State Retirement Investment Fund[-]" for the purpose of enlarging the investment base and simplifying investment procedures and functions.

(2) (a) The board shall act as trustees of the ~~[fund,]~~ Utah State Retirement Investment Fund and, through ~~[its]~~ the executive ~~[officer]~~ director, may commingle and pool the funds and investments of any ~~[retirement]~~ system, plan, or program into the Utah State Retirement Investment Fund, ~~[as long as]~~ if the principal amounts of the participating funds do not lose their individual identity and are maintained as separate trust funds on the books of the ~~[retirement]~~ office.

(b) (i) In combining the investments of any fund, each of the participating funds shall be credited initially with its share of the total assets transferred to the Utah State Retirement Investment Fund~~[-, the calculation being made on the basis of the fair market value of the various investments at the time the investments are credited to the Utah State Retirement Investment Fund].~~

(ii) The value of the transferred assets shall be calculated in accordance with generally accepted accounting principles.

(c) Subsequent transfers of additional capital from participating funds shall be credited similarly to its respective trust account.

(d) ~~[Funds may be withdrawn or transferred out of the Utah State Retirement Investment Fund and credited back to a participating fund, but at no time may the]~~ The income or principal or equity credit belonging to one participating fund may not be transferred to another, except for the purpose of:

(i) actuarially recommended transfers in order to adjust employer contribution rates for an employer that participates in both contributory and noncontributory systems[-]; or

(ii) transfers which reflect the value of service credit accrued in different systems during a

member's career.

(3) The assets of the [~~participating~~] funds are for the exclusive benefit of the members, participants, and covered individuals and may not be diverted or appropriated for any purpose other than that permitted by this [~~chapter or the chapters covering the individual participating funds~~] title.

(4) (a) Interest and other earnings shall be credited to each participating fund on a pro rata equity position basis [~~monthly, or otherwise as directed by the board~~].

(b) (i) A portion of the interest and other earnings of the common trust fund may be credited to a reserve account within the Utah State Retirement Investment Fund to meet adverse experiences arising from investments or other contingencies.

(ii) Each participating fund shall retain its proportionate equity in the reserve account.

Section 11. Section **49-11-302**, which is renumbered from Section 49-1-302 is renumbered and amended to read:

~~[49-1-302].~~ **49-11-302. Board duties with respect to fund.**

(1) The board [~~shall~~]:

(a) shall review and establish the asset allocation of [~~all funds assigned to the board or retirement office~~] the Utah State Retirement Investment Fund for investment, and [~~through its~~] with the executive [~~officer~~] director, shall determine the method of investing the funds [~~to ensure the greatest return commensurate with sound financing adequately safeguarded. The board,];~~

(b) through [~~its~~] the executive [~~officer, may~~] director:

(i) shall invest [~~and reinvest~~] the money in the [~~retirement fund or funds and~~] Utah State Retirement Investment Fund; and

(ii) may provide for the holding, purchasing, selling, assigning, transferring, and disposing of any of the securities and investments in which any of the money of the [~~fund~~] Utah State Retirement Investment Fund is invested. [~~The board shall appoint a custodian for the funds and securities under its control.~~]

(2) Fees for all services shall be paid from the interest earnings of the [~~investment fund~~] Utah State Retirement Investment Fund.

~~[(2)]~~ (3) [~~The board may hold title~~] Title to real estate or any other fund investment may be:

(a) held in the name of the Utah State Retirement Investment Fund; or [may by rule determine under what name or names it holds title to real estate or any other fund investment.]

(b) held in another name or names as determined by the board.

Section 12. Section **49-11-303**, which is renumbered from Section 49-1-303 is renumbered and amended to read:

**[49-1-303]. 49-11-303. Fund investment standard -- Prudent investor rule.**

The [~~fund~~] Utah State Retirement Investment Fund shall be invested in accordance with the prudent [~~man~~] investor rule [~~established~~] under Section 75-7-302.

Section 13. Section **49-11-304**, which is renumbered from Section 49-1-304 is renumbered and amended to read:

**[49-1-304]. 49-11-304. Administrative costs -- Payable from fund.**

General administrative costs of operating the [~~retirement~~] office shall be assessed to the [~~retirement~~] systems, plans, programs, and funds [~~administered upon the basis of cost and service performed. Special costs, such as actuarial studies and service, investment counsel, legal fees, and medical examiner charges, which are or can be directly attributable to a system, plan, program, or fund shall be paid directly from the respective fund involved. Since the administrative funds are derived from the systems, plans, and programs administered by the retirement office, rather than an administrative appropriation from the General Fund, any balance in the administrative fund at the end of a fiscal or biennial period shall remain in the fund, but shall be taken into consideration in preparing a subsequent budget] on a pro rata basis and shall be paid from earnings of the Utah State Retirement Investment Fund.~~

Section 14. Section **49-11-305**, which is renumbered from Section 49-1-305 is renumbered and amended to read:

**[49-1-305]. 49-11-305. Self-insurance option -- Purchase of liability insurance.**

(1) The [~~retirement~~] office may self insure and may purchase commercial insurance[~~, self insure, or purchase excess commercial insurance in excess of~~] in any amount.

(2) The office may also purchase excess commercial insurance above the limits provided by the Governmental Immunity Act against any;

(a) risk created or recognized by the Governmental Immunity Act; or ~~[any]~~

(b) other action for which the board, office, or any of its employees, may be held liable.

Section 15. Section ~~49-11-401~~, which is renumbered from Section 49-1-401 is renumbered and amended to read:

#### Part 4. Service Credits

##### ~~[49-1-401].~~ **49-11-401. Transfer of service credit -- Eligibility for service credit -- Computation of service credit.**

(1) (a) The ~~[board]~~ office shall make the transfer of service ~~[credits]~~ credit, together with related member and participating employer contributions, from one ~~[retirement]~~ system to another upon terms and conditions established by the board.

(b) The terms and conditions may not result in a loss of accrued benefits.

(2) Transfer of employment from a position covered by one ~~[public retirement]~~ system to a position covered by another system does not ~~[either: (a)]~~ cause the employee to lose active ~~[membership]~~ member status ~~[in the system; or]~~.

~~[(b) constitute a termination of employment prerequisite to qualifying for a refund of contributions.]~~

~~[(2)]~~ (3) In the ~~[establishment]~~ accrual of service ~~[credits]~~ credit, the following provisions apply:

~~[(a) Any member of a retirement system who performs covered services shall receive service credit for the service.]~~

~~[(b) Any member who is not in an active service status because of sickness, injury, leave of absence, including service in the armed forces of the United States, or because the member is in the process of transfer from one employing unit to another shall, upon returning to active status, have the same rights and be subject to the same requirements as other employees under this title.]~~

~~[(c) (i) For the purpose of computing the amount of a member's retirement allowance, no service credit may be given to any member for the period during which the member is on leave of absence without compensation, except as otherwise provided in this title or Subsection (2)(c)(ii).]~~

~~[(ii) A member with full-time public service while on an approved leave of absence may~~

~~purchase, or the employer may purchase on their behalf, credit equal to the public service by making contributions fixed by the administrator.]~~

~~[(d) No service credit may be given to a member for the period during which the member was in any inactive status unless the service is purchased according to the provisions of this title.]~~

~~[(e) Credit for service shall be granted in proportion to the work performed under rules adopted by the board. (f) In no case may a retirement]~~

(a) A person employed and compensated by a participating employer who meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan shall receive service credit for the term of the employment provided that all required contributions are paid to the office.

(b) An allowance or other benefit [be granted] may not accrue under this title which is based upon the same [service] period of employment as has been the basis for any retirement benefits under some other [state] public retirement system.

~~[(g) Members shall be credited with any fractions of years of service to which they are entitled.]~~

~~[(h)]~~ (c) The board shall fix the minimum time per day, per month, and per year upon the basis of which one year of service and proportionate parts of a year shall be credited toward qualification for retirement. Service may be computed on a fiscal or calendar year basis and portions of years served shall be accumulated and counted as service. In any event, all of the service rendered in any one fiscal or calendar year may not count for more than one year.

~~[(i) Any employee who is transferred to the Division of Information of Technology Service from the Department of Public Safety, and who was a member in the Public Safety Retirement System or Public Safety Noncontributory Retirement System, shall be entitled to remain a member in the system he participated in prior to being transferred regardless of whether the employee's current position is covered by the respective public safety system. This exception does not apply to any person hired on or after January 1, 1992.]~~

(d) Service credit shall be accrued on a fiscal or calendar year basis as determined by the participating employer.

(e) A member may not accrue more than one year of service credit per fiscal or calendar year as determined by the office.

(f) Fractions of years of service credit shall be accumulated and counted in proportion to the work performed.

(4) The office may estimate the amount of service credit, compensation, or age of any member, participant, or alternate payee, if information is not contained in the records.

~~[(3) (a) The board may adopt rules under which a member may make the necessary contributions to the system for purchases or redeposits under this title through a direct transfer, direct rollover or rollover from a qualified plan under Section 401, Internal Revenue Code, or an eligible individual retirement account.]~~

~~[(b) The board may reject any contributions if the board determines the tax status of the system would be jeopardized by allowing the contribution.]~~

~~[(c) For purposes of this section, a direct rollover shall be determined under the provisions of Section 401(a)(31), Internal Revenue Code.]~~

Section 16. Section **49-11-402**, which is renumbered from Section 49-1-402 is renumbered and amended to read:

~~[49-1-402].~~ **49-11-402. Purchase of military service credit.**

~~[(1) (a) Members with full-time military service not qualifying for service credit under this title may purchase credit for that military service or the employer may make the purchase on behalf of the member by making contributions to the system in an amount recommended by the consulting actuary.]~~

~~[(b) Contributions shall be based on age and salary and the purchase shall be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.]~~

~~[(c) Military service credit acquired in this manner is limited to a maximum of four years.]~~

~~[(d) Total payment must be completed prior to retirement or service will be prorated in accordance with the amount paid. (2) Any employee of a covered unit, who has status as a ]~~

(1) A member [of a retirement system authorized by this title and] who is absent from employment with a participating employer by reason of an official call to full-time United States

military service [in the armed forces of the United States,] may receive service credit for that military service as follows:

(a) the member [and], the participating employer, or the member and participating employer jointly shall make the [appropriate contributions] required payments, as determined by the office, to the [retirement] system in which the member participated at the time of the official call, according to the law governing that particular system;

(b) prior to a member's retirement date, the [contributions] required payments shall be made:

(i) during the period of [the official call, or a contribution adjustment shall be made subsequent to the official call, but at least five years prior to the member's retirement date;] full-time United States military service;

(ii) after the military service, but within a period not to exceed three times the period of military service up to a maximum of five years; or

(iii) as otherwise allowed by federal law;

(c) required payments shall be based on the member's compensation at the time of the official military call;

(d) if a required payment is not made within the time allowed under Subsection (1)(b), the member or participating employer may purchase the service credit as allowed in Subsection (2); and

~~[(c)]~~ (e) the member [must] shall return to [covered service] employment with the participating employer upon receiving an honorable discharge from military service and there may not be intervening employment outside of [covered service ; and] the employment with the participating employer.

~~[(d) contributions shall be based on the member's compensation at the time of the official military call.]~~

(2) (a) A member, a participating employer, or a member and a participating employer jointly, may purchase service credit for full-time United States military service, resulting from an official call to duty, if the member has four or more years of service credit and the military service does not otherwise qualify for service credit under this title.

(b) Payment to the office for a military service credit purchase shall be made to the system

under which the member is currently covered in an amount determined by the office based on a formula recommended by the actuary and adopted by the board.

(c) The purchase shall be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.

(d) If total payment is not completed prior to retirement, service credit shall be prorated in accordance with the amount paid.

(3) For purposes of Subsection (2), full-time United States military service does not include any regularly scheduled or annual military service that is required by a reserve unit, National Guard unit, or any other United States military unit.

(4) (a) If any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated.

(b) If the recalculated cost exceeds the amount paid for the purchase, the member may:

(i) pay the increased cost, plus interest, to receive the full amount of service credit; or

(ii) not pay the increased cost and have the purchased service credit prorated.

(5) If the recalculated cost under Subsection (4) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.

(6) (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.

(b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.

Section 17. Section **49-11-403**, which is renumbered from Section 49-1-407 is renumbered and amended to read:

**[~~49-1-407~~]. 49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

(1) A member, a participating employer, or a member and a participating employer jointly may purchase service credit equal to the period of the member's [service] employment in the following:

(a) United States federal employment;

(b) [~~private school~~] employment in a private school based in the United States;

(c) public employment in [~~this or~~] another state [~~that does not qualify for service credit under a system administered by the board~~] which qualifies the member for membership in the public plan or system covering the employment, but only if the member does not qualify for any retirement benefits based on the employment;

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

~~[(e) (d) forfeited [public] service credit in this state if the member does not qualify for [a retirement benefit for that service; or] an allowance based on the service credit;~~

~~(e) full-time public service while on an approved leave of absence; 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~~] under Section [49-1-404] 49-11-404 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.]~~

(2) A member shall have:

(a) at least four years of service credit before a purchase can be made under this section; and

(b) forfeited service credit under any other retirement system or plan based on the public

employment for which service credit is being purchased.

(3) To purchase credit under this section, the member, a participating employer, or a member and a participating employer jointly shall make payment to the system in an amount determined by the office based on a formula recommended by the actuary and adopted by the board.

(4) The purchase may be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.

(5) Total payment must be completed prior to the member's effective date of retirement or service credit will be prorated in accordance with the amount paid.

(6) (a) If any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated.

(b) If the recalculated cost exceeds the amount paid for the purchase, the member, a participating employer, or a member and a participating employer jointly may:

- (i) pay the increased cost, plus interest, to receive the full amount of service credit; or
- (ii) not pay the increased cost and have the purchased service credit prorated.

(7) If the recalculated cost under Subsection (6) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.

(8) (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.

(b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.

Section 18. Section **49-11-404**, which is renumbered from Section 49-1-404 is renumbered and amended to read:

**[49-1-404]. 49-11-404. Benefit protection contract authorized.**

~~[(1) Any department or political subdivision covered by any system administered by the retirement office that has established a paid salary protection program under which its officers or employees, during periods of disability arising out of sickness or accident, are paid by it or by an insurance underwriter at the disabled member's rate of compensation in effect at the time disability~~

~~occurred and the program is substantially equivalent to the program offered under Title 49, Chapter 9, may with the approval of the board, enter into a "benefit protection contract" with the retirement office.]~~

(1) (a) A participating employer may establish a salary protection program under which its employees are paid during periods of disability.

(b) If a salary protection program is established, a participating employer may enter into benefit protection contracts with the office.

(c) A salary protection program shall:

(i) pay benefits based on the disabled member's rate of compensation at the time of disability;

(ii) be substantially equivalent to the long-term disability programs offered under Chapter 21, Public Employees' Long-Term Disability Act; and

(iii) comply with requirements adopted by the board.

~~(2) [The] A~~ A benefit protection contract shall ~~[provide a means whereby]~~ allow:

~~(a) the disabled member [is] to be considered [to be] an active [participating] member [of this retirement] in a system and [as such continues] continue to accrue [full-time] service credit and salary [credits during the time employer contributions;] credit based [upon] on the member's [full] rate of pay in effect at the time disability [began, are paid to the retirement office] commences;~~

(b) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;

~~[(b)] (c) the disabled member [or beneficiary remains] to remain eligible during the contract period for any [retirement system] benefits provided by the [retirement] system that covers the member; and~~

~~[(c)] (d) the benefit for the disabled member [is] to 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] member on the date the member is eligible to receive benefits under a benefit protection contract.~~

(3) (a) The [board] office shall establish the manner and times when employer contributions

are ~~[to be]~~ paid.

(b) A failure to make the required payments is cause for the ~~[board]~~ office to cancel ~~[the contracts as to any individual covered by the]~~ a contract.

(c) Service credit and salary ~~[credits]~~ credit granted and accrued up to the time of cancellation~~[-, however,]~~ may not be forfeited.

(4) The board may adopt rules to implement and administer this section.

Section 19. Section ~~49-11-405~~, which is renumbered from Section 49-1-406 is renumbered and amended to read:

~~[49-1-406].~~ **49-11-405. Service credit from different systems or plans -- Eligibility and calculation of service credit.**

(1) ~~[Any]~~ (a) A member who has [years of] service credit from two or more systems or [plans administered by the board which is not concurrent service] one or more systems and the Utah Governors' and Legislators' Retirement Plan may combine [these credits] service credit for purposes of determining eligibility for retirement.

(b) The provisions of Subsection (1)(a) do not apply to concurrent service.

(2) To be eligible for the calculation under Subsection (3), the member's [years of] service [credits] credit earned under the [two or more] different [retirement] systems or the Utah Governors' and Legislators' Retirement Plan shall at least equal the minimum [number of years] amount of service credit required to retire [under the system from which the member is seeking to retire] from the system which most recently covered the member.

(3) If [the] a member meets the requirements of Subsection (2), the [board] office shall calculate the member's [retirement] allowance using all [credits] service credit earned from any [retirement] system or the Utah Governors' and Legislators' Retirement Plan, with no actuarial reduction applied to the allowance, except the [years of] service credit used to calculate the benefit shall be increased or decreased to reflect the value of the assets transferred [to effectuate the calculation of the allowance].

(4) The [retirement board] office shall [adopt rules to] establish the standards used for calculating any increase or decrease in the [years of] service credit.

(5) This section does not apply to a retiree who is subject to Section 49-11-504.

Section 20. Section **49-11-501**, which is renumbered from Section 49-1-502 is renumbered and amended to read:

### **Part 5. General Member Provisions**

#### **[~~49-1-502~~]. 49-11-501. Refunds of member contributions -- Transfers of contributions to defined contribution plan.**

(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~~] terminate employment with a participating employer the member may[:] leave the member contributions in the fund or may receive a refund of the member contributions as provided under this section.

~~[(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.]~~

(2) A member who applies for a refund of member contributions shall apply in writing on forms provided by the office.

(3) A refund of member contributions may not be made to a member within 60 days from the last date of the pay period for which contributions are made by or on behalf of the member.

(4) If the member is reemployed by a participating employer within the time period under Subsection (3), the member is not eligible for a refund.

(5) A member who receives a refund of member contributions forfeits the service credit based on those contributions.

~~[(5) Members]~~ (6) A member who [are] is exempted from a [retirement] system [administered by the board] but who [remain] remains employed by a [covered unit] participating employer 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] member contributions to a qualified defined contribution plan administered by the board.

~~[(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.]~~

(7) A member who remains employed with an employer which has withdrawn from a system may request a plan-to-plan transfer of member contributions to a qualified defined contribution plan administered by the board or a qualified plan offered by the member's employer.

(8) Refund interest shall be paid on refunds of member contributions under this section.

Section 21. Section **49-11-502**, which is renumbered from Section 49-1-503 is renumbered

and amended to read:

**[49-1-503]. 49-11-502. Redeposits of refunds -- Time period.**

(1) ~~[A]~~ (a) If a member [of any system who withdraws accumulated contributions upon a previous termination of employment and who returns to covered employment in a status prerequisite for membership may redeposit or the member's employer may redeposit the accumulated] receives a refund of member contributions and is subsequently reemployed in a position covered by a system or the Utah Governors' and Legislators' Retirement Plan, the participating employer or the member may redeposit an amount equal to the member contributions [withdrawn, together with] refunded and interest charged under Section 49-11-503.

(b) The interest shall be compounded annually from the date of refund through the month of payment[; at rates compounded annually under Section 49-1-504].

(c) If a redeposit is made, service credit shall be restored [and credited to the same retirement system from which the refund was taken providing that the total redeposit is made prior to retirement] to the member's account and credited to the same system or the Utah Governors' and Legislator's Retirement Plan from which the refund was taken.

(2) (a) A member may redeposit [a previous] an amount equal to a prior refund of member contributions and interest charges in one lump sum or [may redeposit the refund amount and interest charges] in monthly installments by payroll deduction in a time period determined by the [executive director] office.

(b) If the total redeposit is not made prior to the member's retirement date, the amount of redeposit paid to the office shall be refunded to the member without interest and the member is not entitled to service credit based on the amount of the refund.

(c) The interest rate charged during the installment period shall be a fixed rate calculated at the time of the first installment payment in accordance with Section 49-11-503.

(3) A member who redeposits a refund of member contributions under this section shall receive the amount of service credit forfeited in taking the refund.

(4) (a) For purposes of this section, the Public Employees' Contributory Retirement System created under Chapter 12, and the Public Employees' Noncontributory Retirement System created

under Chapter 13, are considered one system.

(b) For purposes of this section, the Public Safety Contributory Retirement System created under Chapter 14, and the Public Safety Noncontributory Retirement System created under Chapter 15, are considered one system.

(c) For purposes of this section, the Judges' Contributory Retirement System created under Chapter 17, and the Judges' Noncontributory Retirement System created under, Chapter 18, are considered one system.

(5) (a) The board may make rules to allow a member to make the necessary payments to the office for redeposits under this title as permitted by federal law.

(b) The office may reject any payments if the office determines the tax status of the systems, plans, or programs may be jeopardized by allowing the payment.

Section 22. Section **49-11-503**, which is renumbered from Section 49-1-504 is renumbered and amended to read:

**[49-1-504]. 49-11-503. Rate of interest on redeposits, purchases, and delinquent payments.**

The rate of interest charged on redeposits of refunds, ~~[withdrawals]~~ purchases, or delinquent ~~[contributions]~~ payments is the greater of:

(1) ~~[the average rate of the effective yield for the previous five years, rounded off to the nearest whole or quarter percent rate, which has been earned by the Utah State Retirement Investment Fund at the end of each preceding calendar year, as determined by the executive director and]~~ the interest rate as determined under a formula approved by the board; or

(2) the actuarial interest rate as of the preceding June 30.

Section 23. Section **49-11-504**, which is renumbered from Section 49-1-505 is renumbered and amended to read:

**[49-1-505]. 49-11-504. Reemployment of a retiree -- Restrictions.**

~~[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 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 of less than 20 hours per week.]~~

(1) A person who retires from a nonparticipating employer is not subject to any

postretirement restrictions under this title.

(2) A retiree of an agency who returns to work at a different agency is not subject to any postretirement restrictions under this section and may not earn additional service credit.

(3) For the purposes of Subsections (4) and (5), "full-time" employment means employment requiring compensation for 20 hours per week or more or at least a half-time teaching contract.

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

(a) the agency shall immediately notify the office;

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

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

(d) the reinstated retiree may not retire again with a recalculated benefit for a two-year period from the date of cancellation of the original allowance, and if the retiree retires again within the two-year period, the original allowance shall be resumed; and

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

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

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

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

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

(d) any suspension of a retiree's allowance under this Subsection (5) shall be applied on a

calendar year basis.

(6) For six months immediately following retirement, the retiree and participating employer shall:

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

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

(c) immediately notify the office in writing of any postretirement earnings under Subsection (4); and

(d) immediately notify the office in writing whether postretirement earnings equal or exceed the exempt earnings under Subsection (5).

(7) A retiree of an agency who is reemployed by the same agency after six months from the retirement date is not subject to any postretirement penalties under this title and may not earn additional service credit.

(8) If a participating employer hires a retiree that may not earn additional service credit under this section, the participating employer shall contribute the same percentage of a retiree's salary that the participating employer would have been required to contribute if the retiree were an active member, up to the amount allowed by federal law, to a retiree designated:

(a) defined contribution plan administered by the board, if the participating employer participates in the defined contribution plan administered by the board; or

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

(9) Notwithstanding any other provision of this section, a retiree who has returned to work, accrued additional service credit, and again retires shall have the retiree's allowance recalculated using:

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

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

(10) This section does not apply to elected positions.

~~[(6)]~~ (11) The board may make rules to implement this section.

Section 24. Section **49-11-601**, which is renumbered from Section 49-1-601 is renumbered and amended to read:

### **Part 6. Procedures and Records**

~~[49-1-601].~~ **49-11-601. Payment of employer contributions -- Penalties for failure to comply -- Adjustments to be made.**

(1) The employer contributions, fees, ~~[and]~~ premium taxes, contribution adjustments, and other required payments shall be paid to the ~~[fund]~~ office by the participating employer ~~[in accordance with rules adopted by the board]~~ as determined by the executive director.

(2) ~~[Any employing unit]~~ A participating employer that fails to withhold the amount of any ~~[employee]~~ member 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],~~ as soon as administratively possible, shall also pay the member contributions to the office out of its own funds.

(3) ~~[(a)]~~ If ~~[an employing unit]~~ a participating employer does not make the ~~[payments]~~ contributions 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.]~~ within 60 days of the end of the pay period, the participating employer is liable to the office as provided in Section 49-11-604 for:

- (a) delinquent contributions;
- (b) refund interest on the delinquent contributions; and
- (c) a 12% per annum penalty on delinquent contributions.

~~[(b)]~~ (4) The ~~[board]~~ executive director may waive all or any part of the interest, penalties, expenses, and fees if the ~~[board]~~ executive director finds there were extenuating circumstances surrounding ~~[any delinquencies]~~ the participating employer's failure to comply with this section.

~~[(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.]~~

(5) Contributions made in error will be refunded to the participating employer or member

that made the contributions.

Section 25. Section **49-11-602**, which is renumbered from Section 49-1-602 is renumbered and amended to read:

**[49-1-602]. 49-11-602. Participating employer to maintain records -- Time limit -- Penalties for failure to comply.**

(1) ~~[Each employing unit]~~ A participating employer shall maintain records [and file reports relating to compensation, employees, service, and other factors relating to the proper administration of this title under rules adopted by the board] necessary to calculate benefits under this title and other records necessary for proper administration of this title as required by the office.

~~[(2) A penalty of 1% of the covered unit's last monthly employer contribution to the system may be assessed by the board for each week a required payroll report of members' earnings and employer contributions is delinquent beyond a 60-day grace period beginning with the month after the month in which the report is due.]~~

(2) A participating employer shall maintain the records required under Subsection (1) until three years after the latest of:

(a) the date of retirement of the employee from a system or plan; or

(b) the date of death of the employee.

(3) A participating employer shall be liable to the office for:

(a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to members, resulting from the participating employer's failure to maintain records under this section; and

(b) 12% per annum penalty of those liabilities and expenses.

(4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

(5) The executive director may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.

Section 26. Section **49-11-603** is enacted to read:

**49-11-603. Participating employer to report and certify -- Time limit -- Penalties for failure to comply.**

(1) As soon as administratively possible, but in no event later than 60 days after the end of each pay period, a participating employer shall report and certify to the office:

(a) the eligibility for service credit accrual of:

(i) all current members;

(ii) each new member as they begin employment; and

(iii) any changes to eligibility for service credit accrual of each member.

(b) the compensation of each current member eligible for service credit; and

(c) other factors relating to the proper administration of this title as required by the executive director.

(2) Each participating employer shall submit the reports required under Subsection (1) in a form approved by the office.

(3) A participating employer shall be liable to the office for:

(a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to members, resulting from the participating employer's failure to correctly report and certify records under this section;

(b) 12% per annum penalty of those liabilities and expenses; and

(c) attorneys' fees.

(4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

(5) The executive director may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.

Section 27. Section **49-11-604** is enacted to read:

**49-11-604. Office audits of participating employers -- Penalties for failure to comply.**

(1) (a) The office may perform on-site compliance audits of participating employers to determine compliance with reporting, contribution, and certification requirements under this title.

(b) The office may request records to be provided by the participating employer at the time of the audit.

(c) Audits shall be conducted at the sole discretion of the office after reasonable notice to the participating employer of at least five working days.

(d) The participating employer shall extract and provide records as requested by the office in an appropriate, organized, and usable format.

(e) Failure of a participating employer to allow access, provide records, or comply in any way with an office audit shall result in the participating employer being liable to the office for:

(i) any liabilities and expenses, including administrative expenses and travel expenses, resulting from the participating employer's failure to comply with the audit; and

(ii) a 1% penalty of the participating employer's last month's contributions.

(2) If the audit reveals a participating employer's failure to make contributions as required under Section 49-11-601, a failure to maintain records as required under Section 49-11-602, or a failure to correctly report or certify eligibility as required under Section 49-11-603, the participating employer shall reimburse the office for the cost of the audit.

(3) If the audit reveals that an incorrect benefit has been paid by the office to a member, participant, alternate payee, or beneficiary due to a participating employer's failure to comply with the requirements of Section 49-11-601, 49-11-602, or 49-11-603, in addition to the liabilities contained in Subsection (2), the participating employer shall be liable to the office for the following:

(a) the actuarial cost of correcting the incorrect benefit; and

(b) administrative expenses.

(4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

Section 28. Section **49-11-605** is enacted to read:

**49-11-605. Notification and correction of violations.**

If a participating employer discovers that it has violated Section 49-11-601, 49-11-602, or 49-11-603 prior to the office becoming aware of the violation, notifies the office of the violation in

writing, and corrects the violation within a period agreed to by the office, the penalties under those sections shall be waived.

Section 29. Section **49-11-606** is enacted to read:

**49-11-606. Full participation.**

Except as provided in Sections 49-12-203, 49-12-204, 49-13-203, 49-13-204, 49-14-203, and 49-15-203, participating employers shall cover all employees eligible for service credit under this title.

Section 30. Section **49-11-607**, which is renumbered from Section 49-1-603 is renumbered and amended to read:

**[49-1-603]. 49-11-607. Determination of benefits -- Errors in records or calculations -- Correction of errors by the office.**

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

(2) (a) Errors in the records or in the calculations of the [retirement] office which result in an incorrect benefit to any member, retiree, participant, covered individual, alternate payee, or beneficiary [receiving more or less than the member or beneficiary is entitled to receive] shall be corrected by the [administrator] office.

(b) Future payments shall be made to any member, retiree, participant, covered individual, alternate payee, or beneficiary[, insofar as practicable, on an actuarially equivalent basis so as] to:

~~[(a)]~~ (i) pay the benefit to which the member or beneficiary was entitled; or

~~[(b)]~~ (ii) recover any overpayment.

~~[(3) When it is documented that an incorrect calculation by an employing unit has resulted in a decreased benefit to a retirant, and the incorrect calculation is due to a bona fide error in employer records, the error may be corrected by the administrator, if the employing unit makes the calculation adjustment required by the administrator to keep the retirement system affected actuarially sound.]~~

(3) (a) Errors in the records or calculation of a participating employer which result in an

incorrect benefit to a member, retiree, participant, covered individual, alternate payee, or beneficiary shall be corrected by the participating employer.

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

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

(4) If a [salary] dispute exists between [~~an employing unit~~] a participating employer and [~~an employee~~] a member at the time of the [~~employee's~~] member's retirement which will affect the [~~employee's retirement~~] member's benefit calculation, and notice of the dispute is given to the [~~retirement~~] office prior to the calculation of a member's benefit, the benefit may be paid based on the member's [~~stated~~] retirement date and [~~on~~] the records available [~~at that time~~] and then recalculated upon settlement of the dispute [~~according to Subsection (2)~~].

Section 31. Section **49-11-608**, which is renumbered from Section 49-1-604 is renumbered and amended to read:

**[~~49-1-604~~]. 49-11-608. False statements or records -- Unlawfully cashing benefit checks.**

(1) [~~Any~~] A person who knowingly makes any false statement, or who falsifies or permits to be falsified any record necessary for carrying out the intent of this title is in violation of Section 76-6-504.

(2) [~~Any~~] A person cashing a benefit check to which that person is not entitled is in violation of Section 76-6-501.

Section 32. Section **49-11-609**, which is renumbered from Section 49-1-606 is renumbered and amended to read:

**[~~49-1-606~~]. 49-11-609. 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) As used in this section, "member" includes a member, retiree, participant, covered individual, a spouse of a retiree participating in the insurance benefits created by Sections 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a defined contribution account.

~~[(1)]~~ (2) The most recent beneficiary [designation in a member's file at the retirement office] designations contained in office records, including electronic records, at the time of the member's death [is] are binding in the payment of any benefits due under this title.

~~[(2)-A]~~ (3) (a) Except where an optional continuing benefit is chosen, or the law makes a specific benefit designation to a dependent spouse, a member may revoke a beneficiary designation [of beneficiary] at any time and may execute and 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.] with the office.

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

(4) (a) All benefits payable by the office 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, if:

~~[(3)-H]~~ (i) no beneficiary is designated[; all benefits payable from the retirement system 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.];

(ii) the location of the beneficiary cannot be ascertained by the office within 12 months of the date beneficiaries are provided with the forms; or

(iii) the beneficiary has not completed the forms necessary to pay the benefits within six months of the date beneficiaries are provided the forms.

~~[(4)-N]~~ (b) (i) A payment may not be made to [persons] a person included in any of [these] the groups referred to in Subsection (3)(a) if at the date of payment there [are] is a living [persons] person in any of the groups preceding it.

(ii) Payment to ~~[the persons]~~ a person in any group based upon receipt from ~~[those persons]~~ the person of an affidavit in a form satisfactory to the ~~[administrator]~~ office that:

~~[(a)]~~ (A) there are no living individuals in the group preceding it;

~~[(b) that]~~ (B) the probate of the estate of the deceased has not been commenced; and

~~[(c) that]~~ (C) more than three months have elapsed since the date of death of the decedent~~[-]~~.

(5) Benefits paid under this section shall be ~~[in]~~:

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

(b) 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 33. Section **49-11-610**, which is renumbered from Section 49-1-607 is renumbered and amended to read:

~~[49-1-607].~~ **49-11-610. Benefits payable in name of beneficiary -- Delivery.**

(1) (a) Any benefits payable to a beneficiary ~~[or dependent beneficiary]~~ shall be made in the name of ~~[the beneficiary or beneficiaries]~~ and delivered to the beneficiary or the lawfully appointed guardian or conservator of the beneficiary, or delivered as otherwise ordered by a court of competent jurisdiction ~~[pursuant to]~~ under Title 75, Utah Uniform Probate Code. ~~[In those cases where]~~

(b) If the benefit involves a payment not to exceed an amount authorized by the Utah Uniform Probate Code to any one beneficiary, the ~~[administrator]~~ office may, without the appointment of a guardian or conservator or the giving of a bond, pay the amount due to the ~~[beneficiaries themselves]~~ beneficiary or to the ~~[person,]~~ persons~~[-or institutions]~~ assuming their support.

(c) The payment shall be in either a lump sum or in monthly amounts~~[-and the]~~.

(d) The total of the payments ~~[so]~~ made under this section shall ~~[be a full]~~ fully discharge

and release ~~[to]~~ the ~~[system]~~ office from any further claims.

(2) All continuing monthly benefits payable to beneficiaries upon the death of ~~[an active]~~ a member or participant shall be ~~[paid]~~ effective on the first day of the month following the date of death of the member or participant.

Section 34. Section **49-11-611**, which is renumbered from Section 49-1-608 is renumbered and amended to read:

~~[49-1-608].~~ **49-11-611. Benefits and money in the fund exempt from taxation -- Exceptions.**

~~[The]~~ (1) Except as provided under Subsection (2), the benefits accrued or paid to any beneficiary of any system or plan administered by the ~~[retirement office]~~ board and the ~~[accumulated]~~ contributions, money, ~~[and]~~ securities, and other assets in the ~~[fund]~~ funds created by this title are exempt from any state, county, or municipal tax~~[, except that the retirement].~~

(2) An allowance, a refund of member contributions, or other benefits that are subject to ~~[the]~~ federal income tax, which ~~[are]~~ is received by a member, retiree, alternate payee, participant, or beneficiary of any system or plan administered by the board and which ~~[have]~~ has not been taxed is subject to Title 59, Chapter 10, Individual Income Tax Act.

Section 35. Section **49-11-612**, which is renumbered from Section 49-1-609 is renumbered and amended to read:

~~[49-1-609].~~ **49-11-612. Nonassignability of benefits or payments -- Exemption from legal process.**

(1) Except as provided in ~~[Subsection]~~ Subsections (2), (3), and (4), the right of any member, retiree, participant, 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]~~ funds created by this title are not subject to alienation or assignment by the member, retiree, participant, or ~~[beneficiary]~~ their beneficiaries 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.]~~

(2) The office may, upon the request of the retiree, deduct from the retiree's allowance insurance premiums or other dues payable on behalf of the retiree, but only to those entities that have received the deductions prior to February 1, 2002.

(3) (a) [~~Notwithstanding Subsection (1), the retirement board~~] The office shall provide for the division of [~~a member's service retirement~~] an allowance, defined contribution account, continuing monthly death benefit, or refund of member contributions upon termination to former spouses and family members [~~pursuant to~~] under 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, defined contribution account, continuing monthly death benefit, or refund of member 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) The board shall make rules to implement this section.]~~

(c) Allowances, continuing monthly death benefits, and refunds of member contributions split under a domestic relations order are subject to the following:

(i) the period for which payments shall be made under the original domestic relations order may not be altered;

(ii) payments to an alternate payee shall begin at the time the member or beneficiary begins receiving payments; and

(iii) the alternate payee shall receive payments in the same form as payments received by the member or beneficiary.

(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.

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

Section 36. Section **49-11-613**, which is renumbered from Section 49-1-610 is renumbered and amended to read:

**~~[49-1-610].~~ 49-11-613. Appeals procedure -- Right of appeal to hearing officer -- Board reconsideration -- Judicial review.**

(1) (a) All members, retirees, participants, alternative payees, or covered individuals of a system, plan, or program under this title shall acquaint themselves with their rights and obligations ~~[as members]~~ under this title.

(b) A ~~[member shall]~~ person who claims a benefit, legal right, or employment right under this title shall request a ruling by the ~~[administrator on any benefit claim or legal right under this title]~~ executive director.

(c) ~~[Any]~~ A person who is dissatisfied by a ruling of the ~~[administrator]~~ executive director 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)]~~ (2) The hearing officer shall:

~~[(i)]~~ (a) be hired by the executive director after consultation ~~[and review]~~ with the ~~[membership council]~~ board; ~~[and]~~

~~[(ii)]~~ (b) follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act ~~[(2)(a)(i) The hearing officer shall],~~ except as specifically modified under this title;

(c) 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.]~~ office; and

~~[(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:]~~

(d) make conclusions of law in determining the person's rights under any system, plan, or program under this title and matters pertaining to the administration of the office.

~~[(ii)]~~ (3) The board shall review and approve or deny all decisions of the hearing officer in accordance with rules adopted by the board.

~~[(3)]~~ (4) The moving party in any proceeding brought under this section shall bear the burden of proof.

~~[(4) Any applicant]~~ (5) A party may file an application for reconsideration [according to the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act,] by the board 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]~~ hearing officer; or
- (d) that the ~~[applicant]~~ party has discovered new material evidence that could not, with reasonable diligence, have been discovered or procured ~~[at]~~ prior to the hearing.

(6) The board shall affirm, reverse, or modify the decision of the hearing officer, or remand the application to the hearing officer for further consideration.

~~[(5)]~~ (7) A [member] party 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.

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

Section 37. Section **49-11-614**, which is renumbered from Section 49-1-613 is renumbered and amended to read:

**~~[49-1-613].~~ 49-11-614. Vesting on termination of system or plan.**

If any ~~[retirement plan established under this title]~~ system or the Utah Governors' and

Legislators' Retirement Plan is terminated, the accrued benefits of each member in the terminated system or plan shall immediately become [~~100%~~] vested and nonforfeitable.

Section 38. Section **49-11-615**, which is renumbered from Section 49-1-614 is renumbered and amended to read:

~~[49-1-614].~~ **49-11-615. Election to grandfather -- Applicability of provisions.**

(1) Notwithstanding any other provision of this title, the [~~retirement plan or program~~] allowance payable to any person who becomes a member of any system, administered by the board on or after January 1, 1990, may not exceed the limitation imposed by Section 415 of the Internal Revenue Code of 1986, as amended, which is incorporated by reference.

(2) This constitutes an election of the grandfather provision under Section 415(b)(10)(C) of the Internal Revenue Code.

Section 39. Section **49-11-616**, which is renumbered from Section 49-1-615 is renumbered and amended to read:

~~[49-1-615].~~ **49-11-616. Benefits information.**

(1) The [~~retirement board~~] office shall provide [~~the following~~] written general information[; ~~by means of a form to be adopted by the board;~~] to each [~~employing unit~~] participating [~~in a plan, program, or system administered by the board;~~] employer concerning benefits available under this title.

~~[(a) all retirement benefits available to participants in a retirement system administered by the board, including the right to participate in deferred compensation programs and rights upon termination;]~~

~~[(b) all group health and dental insurance benefits available to participants, including conversion and coverage rights upon termination;]~~

~~[(c) all group life insurance benefits and other death benefits, including conversion and coverage rights upon termination;]~~

~~[(d) all long-term disability programs available to participants;]~~

~~[(e) any other benefits that the board may make available to eligible employers and their employees; and]~~

~~[(f) the address and telephone number of the division of the retirement office responsible for each of these plans, programs, and systems.]~~

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

- (i) termination of service[;];
- (ii) leave of absence[; or];
- (iii) commencement of long-term disability benefits; or
- (iv) retirement.

(b) (i) Each participating employer shall maintain the records necessary to demonstrate that each employee has received the information outlined in Subsection (1).

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

~~[(3) Each eligible employee shall sign the form provided under Subsection (1), a]~~

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

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

(4) The dissemination of information to the employer by the [board pursuant to] office under this section constitutes presentment by the policyholder [pursuant to] under Title 31A, Chapter 22, Contracts in Specific Lines, and other law.

Section 40. Section **49-11-617**, which is renumbered from Section 49-1-616 is renumbered and amended to read:

**~~[49-1-616].~~ 49-11-617. Original documents.**

~~[(1) The retirement office may treat any document received by facsimile as an original if it pertains to member accounts and is forwarded by a member or employer.]~~

~~[(2) All records at the retirement office, filmed from facsimile or other sources, or produced from optical imaging or other technology, have the same legal effect as the original record.]~~

At the reasonable discretion of the office, any document relating to this title may be treated as an original, whether created by photocopy, facsimile, e-mail, electronic transmission, imaging,

or other technology.

Section 41. Section **49-11-618**, which is renumbered from Section 49-1-403 is renumbered and amended to read:

**[49-1-403]. 49-11-618. Members and beneficiaries subject to chapter -- Furnishing of information -- Confidentiality of information.**

(1) (a) Every member, retiree, participant, covered individual, alternate payee, and beneficiary is subject to this chapter [and to all], rules [adopted] made by the board [under this chapter] or office, board actions, resolutions, policies, and procedures adopted under this title.

(b) Each member, retiree, participant, covered individual, alternate payee, and beneficiary shall furnish to the [retirement] office any information required [by the executive director affecting the member's status as a member or beneficiary] to carry out the purposes of this title.

(2) (a) All data [filed with the retirement] in the possession of the office is confidential, and [no information contained in any record pertaining to individual data] may not be divulged by [any official or employee of] the office except as permitted by board action. [The information]

(b) All data in the possession of the office or divulged pursuant to board action shall be used for the sole purpose of carrying into effect the provisions of this [chapter. The record may not be open to inspection to any person except the board, the employees of the retirement office, and the employing unit] title.

Section 42. Section **49-11-619**, which is renumbered from Section 49-1-405 is renumbered and amended to read:

**[49-1-405]. 49-11-619. Permanent relinquishment of benefit -- Procedure.**

[Any retired member or beneficiary receiving a continuing benefit who for any reason desires to permanently relinquish that retirement benefit may do so at any time after the effective date of retirement. The relinquishment of the benefit is irrevocable 30 days after the witnessed signing of the waiver agreement by the member and the beneficiary.]

(1) (a) Except for defined contribution plans authorized by this title, a retiree or beneficiary may permanently relinquish a benefit under this title by signing an irrevocable written relinquishment.

(b) If the retiree has designated a beneficiary which is still living, the written relinquishment must be signed by both the retiree and the beneficiary.

(2) The value of the benefit permanently relinquished under Subsection (1) shall remain in the fund from which the benefit was relinquished and shall be used in the calculation of future contribution rates.

(3) A designated beneficiary may disclaim beneficiary status and the benefit shall then be payable first to any alternate designated beneficiary, then dispersed under Title 75, Chapter 2, Intestate Succession and Wills, as applicable.

(4) The office is not required to recognize or accept any written relinquishment that jeopardizes the tax qualified status of the systems, plans, or programs or otherwise violates federal law.

Section 43. Section **49-11-620** is enacted to read:

**49-11-620. Closing the retirement account -- Status of retirants and beneficiaries.**

(1) The monthly benefit payable for the month a retiree, beneficiary, or alternate payee dies shall be a full monthly benefit and shall be payable to the estate of the deceased.

(2) If more than one year has elapsed since the death of a retiree whose designated beneficiary is deceased and whose account payable to the beneficiary amounts to \$100 or less, the account shall be closed and further payment may not be made.

Section 44. Section **49-11-701**, which is renumbered from Section 49-1-701 is renumbered and amended to read:

**Part 7. Allowance Increase**

**[49-1-701]. 49-11-701. Allowance increase to offset tax liability -- Administration.**

(1) This section applies to members of any system administered by the board under this title, whose retirement allowance remained exempt from the tax imposed under Title 59, Chapter 10, Individual Income Tax Act, pursuant to Section 2, Chapter 195, Laws of Utah 1988, but whose allowance has subsequently become subject to that tax.

(2) Any member who meets the conditions established under Subsection (1) shall receive the following:

(a) the administrator shall calculate the member's retirement allowance pursuant to the formula governing the system from which the member retired;

(b) the administrator shall then increase the allowance calculated under Subsection (2)(a) by 3%; and

(c) the adjusted retirement allowance under Subsection (2) (b) is the new basis upon which any future adjustments to benefits are made.

(3) (a) For all members who retire or are receiving retirement allowances in calendar year 1989, the administrator shall apply the 3% adjustment under Subsection (2) to all retirement allowances received in 1989, so that the period for which the allowance becomes subject to the tax under Title 59, Chapter 10, Individual Income Tax Act, and the period for which the 3% adjustment is given are the same.

(b) For all members who retire after December 31, 1989, and who meet the requirements of Subsection (1), the administrator shall apply the 3% adjustment under Subsection (2) beginning on the effective date of retirement.

(4) Any penalty or interest for underpayment of taxes under Title 59, Chapter 1, General Taxation Policies, or 10, Individual Income Tax Act, shall be waived for members whose noncompliance is attributable to Section [~~49-1-608~~] 49-11-611 and this section. This only applies to tax year 1989.

(5) The administrator shall comply with Title 59, Chapter 10, Part 4, Withholding of Tax, with respect to withholding of taxes.

(6) (a) The retirement board shall annually certify the contribution rate necessary for each system to comply with this section and may adopt rules to administer this section.

(b) This contribution rate shall be reported separately from the total contribution rate necessary to fund the systems on an actuarially sound basis and may not be used in comparative studies of public employee benefits.

Section 45. Section **49-11-801**, which is renumbered from Section 49-1-611 is renumbered and amended to read:

### **Part 8. Defined Contribution Plans**

~~[49-1-611].~~ **49-11-801. Defined contribution plans authorized -- Subject to federal and state laws -- Rules to implement this provision -- Costs of administration -- Limitations on eligibility -- Protection of tax status.**

(1) ~~(a)~~ The board may establish and administer ~~[additional benefit]~~ defined contribution plans established under [Sections 401(k) and 457 of] the Internal Revenue Code. [Employee and employer]

~~(b)~~ Voluntary deferrals and nonelective contributions shall be permitted according to the provisions of these plans as established by the board. [The amount of these accumulated contributions, together with dividend or interest credits, are vested in the member, and are nonforfeitable.]

~~(c)~~ The defined contribution account balance is vested in the participant.

~~[(2) Earnings credited to accounts established as a result of this action shall be at a rate fixed by the board. (3) Contributions]~~

~~(2)~~ (a) Voluntary deferrals and nonelective contributions shall be [invested as provided by contract in accordance with federal and state law] posted to the participant's account.

~~(b)~~ Participants may direct the investment of their account in the investment options established by the board and in accordance with federal and state law.

~~[(4) The]~~ (3) (a) The board may [establish] make rules and create plan documents to implement and administer this section.

~~(b)~~ The board may adopt rules under which a participant may put money into a defined contribution plan as permitted by federal law.

~~(c)~~ The office may reject any payments if the office determines the tax status of the systems, plans, or programs would be jeopardized by allowing the payment.

~~(d)~~ Costs of administration [may] shall be paid [from the interest earnings of the funds accrued as a result of deposits or as an assessment against each account, to be decided] as established by the board. [All funds and deposits]

~~(4)~~ Voluntary deferrals and nonelective contributions may be invested [as a separate account or accounts in] separately or in conjunction with the Utah State Retirement Investment Fund.

~~[(5) This supplemental program shall be limited to members who contract to participate in the program a minimum of one year.]~~

~~[(6) (5) The board or office may take [the] actions necessary to protect the tax qualified status of the [plans,] systems, plans, and programs under its control, including the movement of [members] individuals from defined contribution plans to defined benefit [plans] systems or the creation of excess benefit plans authorized by federal law[, and shall report its actions to the Legislature at the subsequent legislative session].~~

(6) The office may, at its sole discretion, correct errors made in the administration of its defined contribution plans.

Section 46. Section **49-11-802** is enacted to read:

**49-11-802. Permanent relinquishment of defined contribution benefit -- Procedure.**

A participant or designated beneficiary under a defined contribution plan may permanently relinquish the benefit by signing an irrevocable written relinquishment.

Section 47. Section **49-12-101**, which is renumbered from Section 49-2-101 is renumbered and amended to read:

**CHAPTER 12. PUBLIC EMPLOYEES' CONTRIBUTORY RETIREMENT ACT**

**Part 1. General Provisions**

~~[49-2-101].~~ **49-12-101. Title.**

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

Section 48. Section **49-12-102**, which is renumbered from Section 49-2-103 is renumbered and amended to read:

~~[49-2-103].~~ **49-12-102. 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.]~~

(1) (a) Except as provided in Subsection (1)(c), "compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

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

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

(v) member contributions.

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

(c) "Compensation" does not include:

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

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

(iii) compensation paid to a temporary employee, an exempt employee, or an employee

otherwise ineligible for service credit:

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

(v) any costs incurred by the member and reimbursed by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, and dependent care costs.

(d) The executive director may determine if a payment not listed under this Subsection (1) falls within the definition of compensation.

~~[(6)]~~ (2) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections ~~[(6)]~~ (2)(a), (b), (c), and (d).

(a) Except as provided in Subsection ~~[(6)]~~ (2)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's ~~[salary]~~ compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by ~~[the Consumer Price Index prepared by the]~~ a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the ~~[employing unit]~~ participating employer provides acceptable documentation to the ~~[board]~~ office, the limitation in Subsection ~~[(6)]~~ (2)(a) may be exceeded if:

- (i) the member has transferred from another ~~[employing unit]~~ agency; or
- (ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment ~~[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 of pay from the date of the termination of employment to the effective date of retirement ~~[becomes effective if the member so requests]~~ for purposes of computing the member's final average salary only.

(d) If ~~[participating service is]~~ the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of ~~[participating]~~ service credit.

~~[(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.]~~

(3) "Participating employer" means an employer which meets the participation requirements of Section 49-12-201.

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

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

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more or a classified school employee who works an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(ii) an officer, elective or appointive, who earns during the first full month of the term of office \$500 or more, indexed as of January 1, 1989, as provided in Section 49-12-407;

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

(iv) an individual who otherwise meets the definition of this Subsection (4) who performs services for a participating employer through an employee leasing or similar arrangement.

(5) "System" means the Public Employees' Contributory Retirement System created under this chapter.

(6) "Years of service credit" means:

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

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

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

Section 49. Section **49-12-103**, which is renumbered from Section 49-2-201 is renumbered and amended to read:

**[49-2-201]. 49-12-103. Creation of system.**

There is created for ~~[the employees of the state, its educational institutions, and political subdivisions]~~ members employed by a participating employer the "Public Employees' Contributory Retirement System."

Section 50. Section **49-12-104**, which is renumbered from Section 49-2-202 is renumbered and amended to read:

**[49-2-202]. 49-12-104. Creation of trust fund.**

(1) There is created the "Public Employees' Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by ~~[Title 49,]~~ Chapter ~~[+]~~ 11, Utah State Retirement Systems Administration.

Section 51. Section **49-12-201**, which is renumbered from Section 49-2-203 is renumbered and amended to read:

**Part 2. Membership Eligibility**

**[49-2-203]. 49-12-201. System membership -- Eligibility.**

~~[All employees, as defined under Section 49-2-103, who perform covered services for any employing unit, except as excluded by Section 49-2-205, are members of the retirement system as follows:]~~

~~[(1) Every employee who is employed to perform covered services for a department or educational institution prior to July 1, 1986, shall become a member of the system effective on the date of employment:]~~

~~[(2) Each employee engaged in performing covered services for a political subdivision on the date the political subdivision becomes a participant in the system under Section 49-2-204 shall become a member of the system as of the date of coverage. Each new employee of the covered unit shall thereafter become a member of the system effective on the date of employment.]~~

(1) A regular full-time employee of a participating employer is eligible for service credit in this system upon the later of:

- (a) the date on which the participating employer began participating in this system; or
- (b) the effective date of employment of the regular full-time employee with the participating employer.

(2) Beginning July 1, 1986, a person entering employment with the state and its educational institutions may not participate in this system.

Section 52. Section **49-12-202**, which is renumbered from Section 49-2-204 is renumbered and amended to read:

**[49-2-204]. 49-12-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Exceptions -- Nondiscrimination requirements.**

(1) ~~(a) [All political subdivisions of the state, unless] Unless excluded under Subsection (2), [are] an employer is a participating [employers in the system] employer and may not withdraw from participation in [the] this system. [All departments and educational institutions are also participating employers in the system and may not withdraw from participation in the system. As participating employers, political subdivisions, departments, and educational institutions shall meet all requirements for full participation in the system.]~~

(b) In addition to their participation in this system, participating employers may provide or participate in public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

(2) ~~[(a) Any political subdivision] An employer not initially admitted or included as a participating employer in [the] this system prior to January 1, 1982, may be excluded from participation in [the] this system if:~~

~~[(i) (a) the [political subdivision] employer elects not to provide or participate in any type of private or public retirement, supplemental or [deferred income program] defined contribution plan, either directly or indirectly, for its employees, except for social security; or~~

~~[(ii) (b) the [political subdivision participated in] employer offers another collectively bargained retirement [program] benefit and has continued to do so on an uninterrupted basis since~~

that date.

~~[(b) Any excluded political subdivision may by resolution of its governing body apply for and receive admission to the system. Once admitted, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system. If an excluded political subdivision elects at any time to provide or participate in any type of public or private retirement, supplemental or deferred income program, either directly or indirectly, except for social security, the political subdivision shall be required to be a participating employer in the system. As a participating employer, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system.]~~

~~[(3) (a) Any organization or agency supported in whole or in part by state public funds, which prior to application is not covered by this chapter, may by resolution of its governing body apply for admission to the system. The board may refuse admission to any organization or agency applying for admission upon a finding that it is not in the best interest of the participating employers and employees.]~~

~~[(b) Upon approval of the board, the organization or agency shall become a participant in the system if the board and the organization or agency agree upon:]~~

~~[(i) the terms by which its employees shall become members of the system, such as the effective date of coverage;]~~

~~[(ii) the amount of prior service credit with which they may be credited, if any;]~~

~~[(iii) the amount of any contributions in addition to regular contributions that will be required to provide any prior service credits or retroactive current service credits from either the employing unit or its employees; and]~~

~~[(iv) the manner in which retroactive current or prior service credits may be established, if any;]~~

~~[(c) Once admitted to the system, an organization or agency may not withdraw from participation, except as provided in Subsection (4), and shall meet all requirements for full participation in the system.]~~

~~[(d) An organization or agency supported in whole or in part by public funds may not apply~~

for or receive admission to the system after the effective date of this Subsection (3)(d).]

~~[(4) (a) An organization or agency admitted to the system pursuant to Subsection (3) which no longer receives public funds may withdraw from the system if:]~~

~~[(i) the organization or agency's governing body, by resolution, petitions the board for withdrawal from the system; and]~~

~~[(ii) the board approves the withdrawal:]~~

~~[(b) Once approval to withdraw is granted, the organization or agency and its employees shall be governed by Sections 49-1-502 and 49-1-503.]~~

~~[(5) Except as provided in Sections 49-2-205 and 49-2-206, no participating employer may maintain full participation in the system by covering only part of its employees. The full participation requirement is satisfied if a participating employer covers those of its employees eligible for coverage under:]~~

~~[(a) Title 49, Chapter 4, Public Safety Retirement Act; or]~~

~~[(b) Title 49, Chapter 5, Firefighters' Retirement Act and its remaining employees under either Title 49, Chapter 2, Public Employees' Retirement Act or Title 49, Chapter 3, Public Employees' Noncontributory Retirement Act, whichever is applicable.]~~

~~[(6) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or deferred income program, either directly or indirectly, for their employees:]~~

~~[(7) (a) Credit unions or private hospitals which are participating units in any system administered by the board may withdraw from participation upon applying to the board. This application shall be made between July 1, 2000, and December 31, 2000. The withdrawal is effective the day after the last day the withdrawing unit pays retirement contributions on its employees' salaries:]~~

~~[(b) Once the withdrawal of the credit union or private hospital is complete, the employees of the withdrawing unit may apply to withdraw their vested contributions. Refunds shall then be paid in accordance with Subsection 49-1-502(3).]~~

~~[(c) Under no circumstance may a withdrawing unit receive the employer contributions~~

~~which have been made to the system.]~~

(3) An employer who did not become a participating employer in this system prior to July 1, 1986, may not participate in this system.

(4) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

Section 53. Section **49-12-203**, which is renumbered from Section 49-2-205 is renumbered and amended to read:

**[49-2-205]. 49-12-203. Exclusions from membership in system.**

(1) The following employees are ~~[excluded from membership in the retirement]~~ not eligible for service credit in this system:

~~[(1)] (a) [Every] An~~ employee whose employment status is temporary in nature due to the nature or the type of work to be performed~~[-], provided that:~~

(i) 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] and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment[-]; or

(ii) if ~~[the same]~~ an employee, previously terminated prior to ~~[enrollment as a member, is again employed]~~ being eligible for service credit in this system is reemployed within three months of termination by the same participating employer, ~~[the employee shall be immediately enrolled as a member if the work constitutes full-time as defined in this chapter]~~ the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credit in this system.

~~[(2)] (b) [Full-time students or]~~ A full-time student, the spouse of a full-time student [and persons], or a person employed in a trainee relationship [may be excluded from coverage by rules adopted by the board] who files a formal request for exemption.

~~[(3)]~~ (c) (i) ~~[Every]~~ A current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, ~~[pursuant to]~~ under Section ~~[49-2-206]~~ 49-12-204, 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]~~ required contributions ~~[toward the premiums required]~~ based on compensation ~~[from the employing unit]~~ have been paid on behalf of the employee by the employer.

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

~~[(4)]~~ (d) ~~[Every]~~ An employee serving as an exchange employee from outside the state.

~~[(5)]~~ (e) ~~[Elected officials]~~ An elected official who ~~[file]~~ files a formal request for exemption.

~~[(6) Executive]~~ (f) An executive department ~~[heads]~~ head of the state, ~~[members]~~ a member of the State Tax Commission, the Public Service Commission, and ~~[other members]~~ a member of a full-time or part-time ~~[boards]~~ board or ~~[commissions]~~ commission who ~~[file]~~ files a formal request ~~[to be excluded from coverage]~~ for exemption.

~~[(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]~~

(g) An employee of the Department of Workforce Services ~~[who were covered under Subsection (a) and]~~ who ~~[are]~~ is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

~~[(8)]~~ (h) (i) ~~[Persons]~~ A person appointed as a city ~~[managers]~~ manager or chief city ~~[administrators or other persons]~~ administrator or another person employed by a ~~[city, town]~~ municipality, county, or other political subdivision who ~~[are]~~ is not entitled to merit or civil service protection. ~~[Persons]~~

(ii) A person eligible for exclusion under ~~[this]~~ Subsection ~~(1)~~(h)(i) shall file a formal request for ~~[exclusion from coverage]~~ exemption and be employed in a position designated as exempt under an employee exemption plan developed by the ~~[city, town]~~ municipality, county, or

political subdivision. ~~[Employee exemption plans shall be subject to the following limitations:(a) The total number of positions a city, town]~~

(2) (a) A municipality, county, or political subdivision may not exempt ~~[may not exceed the lesser of]~~ more than 30 positions or a number equal to 10% of the employees of the ~~[city, town]~~ municipality, county, or political subdivision~~[- However, every city, town]~~ whichever is lesser.

(b) A municipality, county, or political subdivision ~~[is entitled to a minimum exemption of one eligible]~~ may exempt at least one regular full-time employee.

~~[(b) Employee exemption plans shall be filed]~~

(3) Each participating employer shall:

(a) file employee exemptions annually with the ~~[retirement]~~ office~~[-]; and [the city, town, county, or political subdivision shall]~~

(b) update the ~~[exemption plan]~~ employee exemptions in the event of any change.

~~[(c) The retirement]~~

(4) The office may ~~[promulgate]~~ make rules to implement this ~~[subsection]~~ section.

Section 54. Section **49-12-204**, which is renumbered from Section 49-2-206 is renumbered and amended to read:

~~[49-2-206].~~ **49-12-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- Supplemental plans authorized.**

(1) (a) ~~[The faculty members and]~~ Regular full-time employees of institutions of higher education who are eligible to participate in either this system or in a retirement annuity contract with the ~~[Teacher's]~~ Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1).

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

(2) (a) A ~~[faculty member or]~~ regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the

person's employment classification~~[- and each].~~

(b) Each institution of higher education ~~[is directed to]~~ shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:

(i) this system ~~[or with];~~

(ii) the ~~[Teacher's]~~ Teachers' Insurance and Annuity Association of America; or ~~[with any other]~~

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

(3) A ~~[faculty member or]~~ regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in ~~[the state retirement]~~ this system may~~[-]~~ elect to continue participation in this system upon change to an employment classification which requires participation in:

(a) an annuity plan with the ~~[Teacher's]~~ Teachers' Insurance and Annuity Association of America; or ~~[with some other]~~

(b) another public or private system, organization, or company designated by the Board of Regents~~[- finally elect to continue participation in the state retirement system].~~

(4) A ~~[faculty member or]~~ regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in ~~[such an annuity plan, upon change to an employment classification which requires participation in this system;]~~ this system shall participate in this system.

~~[(5) Nothing contained in this section prohibits a faculty member or employee of an institution of higher education from participating in a supplemental annuity plan, and the Board of Regents shall promulgate rules governing permissible participation, but in no event may the contribution by an institution for the purchase of an old age annuity or other approved investment exceed 14.2% of the employee's or member's salary.]~~

~~[(6) The State Board of Education may assist its faculties and employees to purchase any old age annuity plan or other approved investment by promulgating rules governing permissible~~

~~participation in a supplemental old age annuity plan or other approved investment, but such assistance is limited to contracting with the employee to receive a reduced salary, and investing the employee contribution towards the purchase of the annuity or other approved investment.]~~

Section 55. Section **49-12-301**, which is renumbered from Section 49-2-301 is renumbered and amended to read:

### **Part 3. Contributions**

~~[49-2-301].~~ **49-12-301. Contributions -- Two levels -- Election by a participating employer to pay employee contributions -- Accounting for and vesting of member contributions -- Deductions.**

(1) ~~[The system shall be maintained on a financially and actuarially sound basis by means of contributions made jointly by the participating employer and by the active members of the system.]~~ Participating employers and members shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates, ~~[the]~~ this system is divided into two levels according to participating employers~~[- The levels are]~~ as follows:

(a) Level A includes the state ~~[of Utah, the Utah State Retirement Office]~~, its independent agencies, independent entities, public corporations, and other instrumentalities, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.

(b) Level B includes all other participating employers in ~~[the]~~ this system.

~~[(2) Any]~~ (3) (a) A participating employer may elect to pay all or part of ~~[its members']~~ the required member contributions, in addition to the required participating employer contributions.

(b) Any amount contributed by ~~[an]~~ a participating employer under this ~~[subsection]~~ section shall vest to the member's benefit as though the member had made the contribution.

(c) The ~~[member's]~~ required ~~[contribution]~~ member contributions shall be reduced by the amount that is paid by the participating employer.

~~[(3)]~~ (4) (a) All member contributions are credited by the ~~[retirement]~~ office to the account of the individual member.

(b) This amount, together with ~~[regular]~~ refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) All member contributions are ~~[100%]~~ vested and nonforfeitable.

~~[(4)]~~ (5) (a) Each member is ~~[deemed]~~ considered to consent to ~~[monthly]~~ payroll deductions of member contributions.

(b) The payment of compensation less ~~[retirement]~~ these payroll deductions is considered full payment ~~[of the employee's salary]~~ for services rendered by the member.

~~[(5) The board shall report at least biennially to the governor, the Legislature, and each employing unit under Division A or B the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer and employee shall pay the certified contribution rates.]~~

Section 56. Section **49-12-302** is enacted to read:

**49-12-302. Purchase of service credit.**

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

Section 57. Section **49-12-401**, which is renumbered from Section 49-2-401 is renumbered and amended to read:

**Part 4. Defined Benefit**

~~[49-2-401].~~ **49-12-401. Eligibility for an allowance -- Date of retirement --**

**Qualifications.**

~~[(1) (a) Any member who qualifies for service retirement may retire by submitting to the retirement office an application form notarized by a notary public. The application shall state the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.]~~

~~[(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must be after the last day of actual work.]~~

~~[(c) The member shall actually terminate employment and provide evidence of termination.]~~

~~[(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:]~~

(1) A member is qualified to receive an allowance from this system when:

(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

~~[(a)]~~ (i) the member has ~~[been credited with]~~ accrued at least four years of service credit and has attained an age of 65 years ~~[or more]~~;

~~[(b)]~~ (ii) the member has ~~[been credited with]~~ accrued at least ten years of service credit and has attained an age of 62 years ~~[or more]~~;

~~[(c)]~~ (iii) the member has ~~[been credited with]~~ accrued at least 20 years of service credit and has attained an age of 60 years ~~[or more]~~; or

~~[(d)]~~ (iv) the member has ~~[been credited with]~~ accrued at least 30 years of service credit.

(2) (a) The member's retirement date shall be the 1st or the 16th day of the month, as selected

by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days before or after the date the application is received by the office.

Section 58. Section **49-12-402**, which is renumbered from Section 49-2-402 is renumbered and amended to read:

~~[49-2-402].~~ **49-12-402. Service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) ~~[There are six service retirement plans available to members of the system. Plan One is as follows, with Plans Two, Three, Four, Five, and Six established under Section 49-2-403.]~~ Except as provided under Section 49-12-701, retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) ~~[Except for members of this system who meet the requirements of Section 49-2-802, upon the service retirement of a member under Section 49-2-401, the member shall receive a retirement allowance consisting of an annuity, a pension based on prior service and a pension based on current service, the total of which is determined]~~ The Option One benefit is an annual allowance calculated as follows:

(a) If the ~~[member has attained the age of]~~ retiree is at least 65 years of age or has accrued at least 30 years of service credit, the ~~[retirement]~~ allowance is:

~~[(i) (A) an amount equal to 1.10% of the member's final average monthly salary, multiplied by the number of years of service credited for service rendered prior to July 1, 1967, plus]~~

~~[(B) (i) an amount equal to 1.25% of the [member's] retiree's final average monthly salary multiplied by the number of years of service [credited for service rendered on and after July 1, 1967, through June 30, 1975] credit accrued prior to July 1, 1975; plus]~~

~~[(C) (ii) an amount equal to 2% of the [member's] retiree's final average monthly salary multiplied by the number of years of service [credited for service rendered] credit accrued on and after July 1, 1975.]~~

~~[(ii) In no case may that part of a retiring member's allowance, based upon prior service, as provided in Subsection (2)(a)(i)(A) be less than 1.15% of that member's final average monthly salary if the final average monthly salary is \$500 or less, multiplied by the number of prior service years standing to the member's credit at retirement.]~~

(b) If the ~~[member]~~ retiree is less than 65 years ~~[old]~~ of age, the ~~[retirement]~~ allowance shall be reduced 3% for each year of retirement from age 60 to age 65, unless the member has 30 or more years of accrued credit in which event no reduction is made to the allowance.

~~[(3) (c) (i) Years of service includes any fractions of years of service to which the [member] retiree may be entitled. [Service amounting to 9/10 of one year constitutes a year of service credit in the computation of a retirement benefit.]~~

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(4) (a) (i) The final average salary is limited in the computation of that part of [~~a member's prior service retirement~~] an allowance based on service rendered prior to July 1, 1967, during a period when the [~~member~~] retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company to \$4,800.

(ii) This limitation is not applicable to [~~members~~] retirees who elected to continue in the [~~state retirement~~] this system by July 1, 1967.

(b) Periods of ~~[service]~~ employment which are exempt from this system under Subsection ~~[49-2-205(3), not to exceed four years]~~ 49-12-203(1)(c), may be purchased by the member for the purpose of retirement~~[-]~~ only if all benefits from the Teachers' Insurance and Annuity Association of America or any other public or private system or organization based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to a Option One benefit at the time of divorce, if there is no court order filed in the matter.

Section 59. Section **49-12-403**, which is renumbered from Section 49-2-404 is renumbered and amended to read:

~~[49-2-404].~~ **49-12-403. Allowance payable by lump sum payment.**

(1) If a ~~[retiring member's monthly]~~ retiree's allowance, as computed under ~~[Section 49-2-402]~~ this chapter, amounts to \$25 or less, the ~~[benefit claim]~~ allowance may be settled by the ~~[administrator]~~ office by making a lump-sum payment of an amount actuarially equivalent to the ~~[monthly]~~ allowance. ~~[Payment thus]~~

(2) A payment made under this section constitutes a full and complete settlement of the ~~[retiring member's]~~ retiree's claim against ~~[the]~~ this system.

Section 60. Section **49-12-404**, which is renumbered from Section 49-2-405 is renumbered and amended to read:

~~[49-2-405].~~ **49-12-404. Lump-sum death benefit for retiree and spouse.**

(1) (a) ~~[A member, upon service]~~ Upon retirement, a retiree may elect to have the ~~[administrator set aside in reserve from the member's retirement allowance a sufficient sum of money, based upon age, sex, interest rate in effect, and the mortality rates for the member's group,]~~ office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum

benefit payable to a beneficiary upon the death of the ~~[member after retirement, under an agreement that will provide a reduced retirement allowance payable to the retirant throughout the retirant's lifetime, plus the lump-sum amount at death]~~ retiree.

(b) A retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

~~[(b) This]~~ (c) The board may make rules for the administration of this lump-sum death  
~~[benefit may be purchased in accordance with rules adopted by the board]~~ benefit.

~~[(c) The spouse of a retiring member may also be covered with a death benefit upon the request of the member.]~~

~~[(2) The lump-sum death benefit provided by this section may be chosen as a modification of or deduction from the retirement allowance provided under Sections 49-2-402 and 49-2-403, and is payable to the designated beneficiary chosen at the time of the member's retirement, to a beneficiary subsequently designated, or to the retirant's estate under applicable conditions established under Section 49-1-606 or 49-1-607.]~~

~~[(3) If a retirant cancels retirement as permitted by this title, the lump-sum death benefit under this section shall also be canceled, with the appropriate reserve, as determined by the administrator, credited back to the member's contribution account.]~~

~~[(4) Payment of the lump-sum death benefit consists only of a refund of the retirant's reserve or the amount determined by the board and set aside as provided in this section if death occurs within three years from the date of retirement and is due to a health condition existing and being treated at the time of retirement.]~~

~~[(5) The board may establish rules and adopt suitable mortality rates to protect the fund against adverse selection of benefits by a retiring member under this section.]~~

(2) (a) For retirees who pay for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is

payable after the death of the retiree or the lawful spouse, the allowance shall be restored to its original amount.

Section 61. Section **49-12-405**, which is renumbered from Section 49-2-406 is renumbered and amended to read:

~~[49-2-406].~~ **49-12-405. Death of married member -- Service retirement benefits to surviving spouse.**

(1) ~~[(a) A member who has]~~ Upon the request of the member's lawful spouse at the time of death, a member is considered to be eligible to retire under Option Three on the first day of the month following the month in which the member died if the following requirements are met:

(a) the member has:

(i) 25 or more years of [credited] service[;] credit;

(ii) attained age 60 with 20 or more years of [credited] service[;] credit;

(iii) attained age 62 with ten or more years of [credited] service[;] credit; or

(iv) attained age 65 with four or more years of [credited] service[, respectively, and who] credit; and

(b) the member dies leaving a spouse to whom the member has been married at least six months prior to the death date[; may, upon the request of the spouse, be considered to have retired on the first day of the month following the month in which death occurred under Plan Number Three].

~~[(b)]~~ (2) The spouse who requests a benefit ~~[pursuant to Subsection (1)(a)]~~ under this section shall apply in writing to the ~~[retirement]~~ office stating the proposed effective date to begin receiving ~~[a monthly retirement]~~ an allowance, which may not be more than 90 days ~~[before or]~~ after the date of application~~[; and which shall be effective on the 1st or 16th day of the month, as selected by the spouse].~~

~~[(2)]~~ (3) The ~~[benefit]~~ Option Three benefit calculation, when there are 25 or more years of service credit, shall be calculated without ~~[an actuarial]~~ a reduction in allowance under Section 49-12-402.

~~[(3) Benefits]~~ (4) Except for a return of member contributions, benefits payable under this

section are ~~[service]~~ retirement benefits and shall be paid in addition to any payments made under Section ~~[49-2-701, except for a return of accumulated contributions,]~~ 49-12-501 and constitute a full and final settlement of the claim of the spouse or any other beneficiary filing claim for benefits under Section ~~[49-2-701]~~ 49-12-501.

Section 62. Section **49-12-406**, which is renumbered from Section 49-2-409 is renumbered and amended to read:

~~[49-2-409].~~ **49-12-406. Part-time elective or appointive service -- Computation of allowance.**

~~[Elective]~~ Notwithstanding any other provision of this title, elective or appointive service rendered on a basis not considered full time by the ~~[board,]~~ office, unless otherwise provided by this chapter, shall have a ~~[retirement]~~ separate allowance computed on the basis of compensation actually received by the ~~[official]~~ member during the period of elective or appointive service.

Section 63. Section **49-12-407**, which is renumbered from Section 49-2-601 is renumbered and amended to read:

~~[49-2-601].~~ **49-12-407. Annual cost-of-living adjustment.**

(1) ~~[There shall be computed and paid by the retirement]~~ The office~~[, upon the approval of the board,]~~ shall make an annual cost-of-living ~~[allowance]~~ adjustment to: ~~[all retired members of this system after the members have been retired one year. The adjustment shall be equal to the decrease in the purchasing power of the dollar during the preceding year, as measured by the Consumer Price Index, prepared by the United States Bureau of Labor Statistics, limited to a maximum of 4% of the retirant's or beneficiary's original retirement allowance. Decreases in the purchasing power of the dollar in excess of 4% annually shall be accumulated and used in subsequent allowances when the cost-of-living adjustment is less than 4% annually.]~~

~~[(2) If the cost-of-living shows a decline of 4% or more during any period of time extending longer than one year a reduction not to exceed the rate of 2% per year shall be made based upon the original retirement allowance. Payments made under this section shall be a part of the retired member's allowance. These payments and subsequent adjustments as prescribed for the retirant shall also apply to the beneficiary who is paid an allowance under optional retirement plans.]~~

Cost-of-living benefits granted prior to July 1, 1975, are not subject to adjustment.]

(a) an original allowance paid under Section 49-12-402 or 49-12-404, if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.

(b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 64. Section **49-12-408**, which is renumbered from Section 49-2-602 is renumbered and amended to read:

~~[49-2-602].~~ **49-12-408. Minimum monthly allowance.**

(1) [No member who retired] A retiree under this system may not receive less than \$9 per month for each year of service credit at the time of retirement.

(2) The increased allowance provided by this section may not exceed the allowance payable under [Plan F] Option One under Section 49-12-402, by more than 75%.

(3) The cost of providing this benefit shall be assumed within the contribution rate established under Section [49-2-301] 49-12-301.

Section 65. Section **49-12-501**, which is renumbered from Section 49-2-701 is renumbered and amended to read:

#### **Part 5. Death Benefit**

~~[49-2-701].~~ **49-12-501. Death benefit by means of group insurance policy -- Eligibility for death benefit -- Benefit calculation -- Payment of claim -- Exclusion.**

(1) The ~~[board]~~ office shall provide a death benefit through the purchase of a group

insurance policy for members of this system.

~~(2)~~ The board shall make rules to ~~[implement and]~~ administer the death benefit provided by this section and may, in accordance with federal law, establish:

- ~~(a)~~ benefit levels ~~[or]~~;
- ~~(b)~~ classes of ~~[employees]~~ members; and
- ~~[(b)]~~ (c) a living benefit option.

~~[(2) Upon receipt of acceptable proof of death of a member of the system, either prior to the effective date of the member's retirement, except as provided in Section 49-2-406, or after the date of retirement but under circumstances that Section 49-2-403 requires to be treated as the death of member before retirement, the following death benefits, except those benefits already provided to the member under a living benefit option, shall be paid to the beneficiary:]~~

~~[(a) the return of any accumulated contributions under this chapter; plus]~~  
~~[(b) a percentage of the final average salary of the deceased member to be determined by the board. This percentage shall be the highest percentage of final average salary obtainable by the board through the purchase of a group insurance policy using the money contributed by the employer under Subsection (3).]~~

(3) This death benefit is payable when:

(a) the member dies prior to the member's retirement date or dies under circumstances which Section 49-12-402 requires to be treated as the death of a member before retirement;

(b) the office receives acceptable proof of death; and

(c) benefits are not payable under Section 49-12-404.

(4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:

(a) the return of any member contributions under this chapter; plus

(b) a percentage of the final average salary of the member to be determined by the board.

(5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.

~~[(3)]~~ (6) The cost of the death benefit shall be paid by the participating employer as a portion

of the contribution rate established under Section 49-12-301.

~~[(4)] (7)~~ The portion of the death benefit provided under Subsection ~~[(2)] (4)(b)~~~~[, based upon the member's past compensation;]~~ may not be paid to the beneficiary of an inactive member unless:

(a) that member has ~~[credit for]~~ ten or more years of accrued service credit prior to July 1, 1987; or

(b) the death of the member occurs either:

(i) within a period of 120 days after the last day of ~~[service]~~ work for which the person received compensation; or

(ii) while the ~~[person]~~ member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of ~~[service]~~ work for which compensation ~~[is] was~~ received~~[; or]~~.

~~[(iii) while that person is on military leave and has elected to remain in active contributing membership status as provided in Section 49-1-402.]~~

(8) The death benefit [may not be paid to any person except a beneficiary] provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.

~~[(5)] (9)~~ The death benefit ~~[for]~~ paid to the beneficiary of an inactive member, except as otherwise provided under Subsection ~~[(4)] (7)~~, is a lump-sum return of the ~~[deceased]~~ member's ~~[accumulated]~~ member contributions.

~~[(6)] (10)~~ Payment of the death benefit by the ~~[retirement]~~ office constitutes a full settlement of any beneficiary's claim against the ~~[system]~~ office, and the ~~[system]~~ office is not liable for any further or additional claims or assessments on behalf of the ~~[deceased]~~ member.

~~[(7)] (11)~~ Unless otherwise specified in a written document filed ~~[in]~~ with the ~~[retirement]~~ office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, ~~[Uniform Probate Code]~~ Intestate Succession and Wills.

~~[(8) In the implementation of this section and for administrative purposes only, the State Tax Commission shall provide pertinent information to the retirement administrator, upon request, concerning dependents claimed by a deceased member on the income tax return covering the year prior to the member's death.]~~

~~[(9)]~~ (12) A death benefit under this section may not be paid to a ~~[member who has retired]~~ beneficiary of a retiree under this system.

Section 66. Section **49-12-601**, which is renumbered from Section 49-2-503 is renumbered and amended to read:

### **Part 6. Disability**

~~[49-2-503].~~ **49-12-601. Disability retirement -- Medical examinations -- Reemployment of disabled retirant -- Cancellation of benefit -- Service credit -- Disabled retirant engaging in gainful employment -- Reduction of allowance -- Refusal to submit to medical examination.**

(1) Only members of this system who became eligible for a disability retirement allowance before January 1, 1983, are covered under this section.

~~[(1)]~~ (2) (a) The board may, upon the recommendation of the administrator, require any retirant who has been retired for disability and who has not attained the age of 60 years, to undergo a medical examination by a physician or surgeon, appointed by the board, at the place of residence of the retirant or other place mutually agreed upon.

(b) Upon the basis of the examination, the board shall determine whether the disabled retirant is still incapacitated, physically or mentally, for service under this chapter.

(c) If the board determines that the retirant is not incapacitated, the retirement allowance shall be cancelled and the retirant shall be reinstated immediately to a position of the same class as that held by the retirant when retired for disability.

(d) If any employing unit is unable to reinstate the retirant, the board shall continue the disability retirement allowance of the retirant until ~~[such time as]~~ employment is available.

~~[(2)]~~ (3) (a) If a disabled retirant under this system reenters covered service and is eligible for membership in the retirement system, the retirement allowance shall be cancelled and the retirant shall immediately become a member of the retirement system.

(b) (i) The member's individual account shall be credited with an amount which is the actuarial equivalent, at the time of reentry, based on a disabled life, of that portion of the member's retirement allowance which was derived from the member's accumulated contributions~~[-but that]~~.

(ii) The amount credited may not exceed the amount of accumulated contributions standing at the time of retirement.

(c) Each member shall receive credit for the service [~~standing to~~] in the member's account at the time of retirement.

[~~(3)~~] (4) If the retirement allowance of any disabled retirant is cancelled for any cause other than reentry into service, the retirant shall be paid the accumulated contributions less the amounts prescribed by Subsection [~~(5)~~] (6).

[~~(4)~~] (5) (a) If any member retired for disability engages in a gainful occupation prior to attaining age 60, the administrator shall reduce the amount of the retirement [~~benefit~~] allowance to an amount which, when added to the compensation earned monthly by the retirant in that occupation, may not exceed the amount of the final average monthly salary on the basis of which the current service retirement [~~benefit~~] allowance was determined.

(b) If the earning capacity of the retirant is further altered, the administrator may further alter the retirement [~~benefit~~] allowance as provided in this Subsection (5).

(c) In no event, however, may the retirement benefit be reduced below that portion of the retirant's allowance derived from the retirant's own accumulated contributions.

(d) When the retirant reaches age 60, the retirement allowance shall be made equal to the amount upon which the retirant was originally retired and may not again be modified for any cause.

[~~(5)~~] (6) (a) If any member who retired for disability under age 60, refuses to submit to a medical examination, the retirement allowance may be discontinued until the retirant withdraws that refusal[~~, and if~~].

(b) If the refusal continues for one year the disability status may be cancelled and membership terminated.

(c) (i) The retirant's accumulated contribution account shall be the actuarial equivalent on the date of the retirant's change of status, based on a disabled life, of that portion of the disability retirement allowance which was derived from the retirant's accumulated contributions[~~, but that~~].

(ii) The amount credited may not exceed the amount of the retirant's accumulated contributions at the time of disability retirement.

Section 67. Section **49-12-701**, which is renumbered from Section 49-2-802 is renumbered and amended to read:

**Part 7. Early Retirement Incentive**

**[49-2-802]. 49-12-701. Early retirement incentive -- Eligibility -- Calculation of benefit -- Payment of costs -- Savings to be appropriated by Legislature -- Restrictions on reemployment.**

(1) Any member of this system may retire and receive the ~~[benefit]~~ allowance allowed under Subsection (2) if the member meets the following requirements as of the ~~[effective date of]~~ member's retirement date:

(a) the member is eligible for retirement under Section ~~[49-2-401]~~ 49-12-401, or ~~[otherwise]~~ has 25 years of service credit;

(b) the member elects to forfeit any stipend for retirement offered by the ~~[employing unit]~~ participating employer; and

(c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).

(2) (a) A member who retires ~~[pursuant to]~~ under Subsection (1) shall receive 2% of that member's final average salary for all years of service credit.

(b) An actuarial reduction may not be applied to the ~~[benefit]~~ allowance granted under this section.

(3) In order to receive the ~~[benefit]~~ allowance allowed by this section, a member shall submit an application to the ~~[retirement]~~ office as follows:

(a) (i) For state and school employees under Level A, the application shall be filed by May 31, 1987. The ~~[effective date of]~~ member's retirement date shall then be set by the ~~[employee]~~ member on the ~~[first]~~ 1st or ~~[sixteenth]~~ 16th day of July, August, or September, 1987.

(ii) If a Level A ~~[employee]~~ member elects to retire, the ~~[administrator]~~ executive director or participating employer may request the ~~[employee]~~ member to delay the ~~[effective date of]~~ retirement date until a later date, but no later than June 30, 1988.

(iii) If the ~~[employee]~~ member agrees to delay the ~~[effective]~~ retirement date, the ~~[effective]~~

retirement date shall be delayed, but ~~[no]~~ service credit may not be accrued after the member's original ~~[effective date of]~~ retirement date elected by the ~~[employee]~~ member, and ~~[no]~~ [salary] compensation earned after ~~[that effective]~~ the member's original retirement date may not be used in the calculation of the final average salary for determining the retirement ~~[benefit]~~ allowance.

(b) (i) For political ~~[subdivisions]~~ subdivision employees under Level B, the application shall be filed by September 30, 1987.

(ii) The ~~[effective date of]~~ retirement date shall then be set by the ~~[employee]~~ member on the ~~[first]~~ 1st or ~~[sixteenth]~~ 16th day of July, August, September, October, November, or December, 1987.

(4) (a) The cost of providing the ~~[benefit]~~ allowance under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.

(b) The cost of providing the ~~[benefit]~~ allowance under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.

(c) The rate increase under Subsections ~~(4)~~(a) and (b) shall be funded:

(i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection ~~(4)~~(d), which is funded by savings derived from this early retirement incentive and a work force reduction;

(ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53A, Chapter 17a, Minimum School Program Act; and

(iii) for political subdivisions under Level B, by direct contributions by the ~~[employing unit]~~ participating employer.

(d) (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections ~~(4)~~(c)(i) and (c)(ii) shall be reported to the Legislature

and shall be appropriated as provided by law.

(ii) In the case of Subsection (4)(c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.

(iii) In the case of Subsection (4)(c)(ii), the State Office of Education shall certify the amount of savings derived from this early retirement incentive.

(iv) The State Office of Education and the ~~[employing unit]~~ participating employer may not spend the savings until appropriated by the Legislature as provided by law.

(5) A member who retires under this section is subject to Section ~~[49-1-505]~~ 49-11-504.

(6) The ~~[retirement]~~ board may adopt rules to ~~[implement and]~~ administer this section.

(7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Section 68. Section **49-13-101**, which is renumbered from Section 49-3-101 is renumbered and amended to read:

## **CHAPTER 13. PUBLIC EMPLOYEES' NONCONTRIBUTORY RETIREMENT ACT**

### **Part 1. General Provisions**

~~[49-3-101].~~ **49-13-101. Title.**

This chapter is known as the "Public Employees' Noncontributory Retirement Act."

Section 69. Section **49-13-102**, which is renumbered from Section 49-3-103 is renumbered and amended to read:

~~[49-3-103].~~ **49-13-102. 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.]~~

(1) (a) Except as provided in Subsection (1)(c), "compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

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

(iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits 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" does not include:

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

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

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

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

(v) any costs incurred by the member and reimbursed by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, and dependent care costs.

(d) The executive director may determine if a payment not listed under this Subsection (1) falls within the definition of compensation.

~~[(7)]~~ (2) "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):] the following:

(a) Except as provided in Subsection ~~[(7)]~~ (2)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's ~~[salary]~~ compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by ~~[the Consumer Price Index prepared by the]~~ a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the ~~[employing unit]~~ participating employer provides acceptable documentation to the ~~[board]~~ office, the limitation in Subsection (2)(a) may be exceeded if:

(i) the member has transferred from another ~~[employing unit]~~ agency; or

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

(c) If the member retires more than six months from the date of termination of employment 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 of pay from the date of the termination of employment to the effective date of 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.]~~

~~(3) "Participating employer" means an employer which meets the participation requirements of Section 49-13-201.~~

~~(4) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.~~

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

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more or a classified school employee who works an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(ii) an officer, elective or appointive, who earns during the first full month of the term of office \$500 or more, indexed as of January 1, 1989, as provided in Section 49-13-407;

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

(iv) an individual who otherwise meets the definition of this Subsection (4) who performs services for a participating employer through an employee leasing or similar arrangement.

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

(6) "Years of service credit" means:

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

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

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

Section 70. Section **49-13-103**, which is renumbered from Section 49-3-201 is renumbered and amended to read:

**[49-3-201]. 49-13-103. Creation of system.**

There is created for ~~[the employees of the state, its educational institutions, and its political subdivisions]~~ members employed by a participating employer the "Public Employees' Noncontributory Retirement System."

Section 71. Section **49-13-104**, which is renumbered from Section 49-3-202 is renumbered and amended to read:

**[49-3-202]. 49-13-104. Creation of trust fund.**

(1) There is created the "Public Employees' Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by [Title 49,] Chapter [†] 11, Utah State Retirement Systems Administration.

Section 72. Section **49-13-201**, which is renumbered from Section 49-3-203 is renumbered and amended to read:

**Part 2. Membership Eligibility**

**[49-3-203]. 49-13-201. System membership -- Eligibility.**

(1) Beginning July 1, 1986, the state and its educational institutions shall participate in this system.

~~[(1) Any]~~ (a) A person entering regular full-time employment with the state or its educational institutions after ~~[the effective date of this chapter shall automatically become a member of the noncontributory retirement]~~ July 1, 1986, is eligible for service credit in this system.

~~[(2) Any person in]~~ (b) A regular full-time ~~[employment with]~~ employee of the state or its educational institutions prior to ~~[the effective date of this system]~~ July 1, 1986, may either become ~~[a member of this noncontributory]~~ eligible for service credit in this system or remain ~~[a member of the Public Employees' Retirement System]~~ eligible for service in the system established under ~~[Title 49,] Chapter [2,] 12, Public Employees' Contributory Retirement Act,~~ by following the procedures established by the board ~~[pursuant to]~~ in accordance with this chapter.

~~[(3) Membership in the noncontributory system is optional for political subdivisions,]~~

(2) An employer, other than the state and its educational institutions, may participate in this system except that once ~~[a political subdivision]~~ an employer elects to participate in ~~[the noncontributory]~~ this system, that election is ~~[final and binding upon the political subdivision]~~ irrevocable. ~~[Persons]~~

(a) A person entering regular full-time employment with [political subdivisions] a participating employer which [elect] elects to participate in [the noncontributory] this system [after the effective date of this chapter shall automatically become members of the noncontributory retirement] is eligible for service credit in this system. [Any]

(b) A person in regular full-time employment with [the political subdivision] a participating employer prior to [that] the participating employer's election to participate in this system may either become [a member of the noncontributory retirement] eligible for service credit in this system or remain [a member of the Public Employees' Retirement System] eligible for service in the system established under [Title 49,] Chapter [2,] 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board [pursuant to] in accordance with this chapter.

Section 73. Section **49-13-202**, which is renumbered from Section 49-3-204 is renumbered and amended to read:

**[49-3-204]. 49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements.**

(1) (a) [All political subdivisions of the state, unless] Unless excluded under Subsection (2), [are] an employer is a participating [employers in the system] employer and may not withdraw from participation in [the] this system. [All departments and educational institutions are also participating employers in the system and may not withdraw from participation in the system. As participating employers, political subdivisions, departments, and educational institutions shall meet all requirements for full participation in the system.]

(b) In addition to their participation in this system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

(2) [Any political subdivision] An employer not initially admitted or included as a participating employer in [the] this system prior to January 1, 1982, may be excluded from participation in [the] this system if the [political subdivision] employer elects not to provide or participate in any type of private or public retirement, supplemental or [deferred income program] defined contribution plan, either directly or indirectly, for its employees, except for Social Security.

~~[Any excluded political subdivision]~~

(3) If an employer elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for social security, the employer shall be a participating employer in this system.

~~(4) (a) Any employer may by resolution of its governing body apply for [and receive] admission to [the] this system. [Once admitted, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system. If an excluded political subdivision elects at any time to provide or participate in any type of public or private retirement, supplemental or deferred income program, either directly or indirectly, except for social security, the political subdivision shall be required to be a participating employer in the system. As a participating employer, the political subdivision may not withdraw from participation and shall meet all requirements for full participation in the system.]~~

~~[(3) (a) Any organization or agency supported in whole or in part by state public funds, which prior to application is not covered by this chapter, may by resolution of its governing body apply for admission to the system. The board may refuse admission to any organization or agency applying for admission upon a finding that it is not in the best interest of the participating employers and employees.]~~

~~(b) Upon approval of the board, the [organization or agency shall become a participant in the system if the board and the organization or agency agree upon:] employer is a participating employer in this system and is subject to this title.~~

~~[(i) the terms by which its employees shall become members of the system, such as the effective date of coverage;]~~

~~[(ii) the amount of prior service credit with which they may be credited, if any;]~~

~~[(iii) the amount of any contributions in addition to regular contributions that will be required to provide any prior service credits or retroactive current service credits from either the employing unit or its employees; and]~~

~~[(iv) the manner in which retroactive current or prior service credits may be established, if any;]~~

~~[(c) Once admitted to the system, an organization or agency may not withdraw from participation, except as provided in Subsection (4), and shall meet all requirements for full participation in the system.]~~

~~[(d) An organization or agency supported in whole or in part by public funds may not apply for or receive admission to the system after July 1, 1991.]~~

~~[(4) (a) An organization or agency admitted to the system pursuant to Subsection (3) which no longer receives public funds may withdraw from the system if:]~~

~~[(i) the organization or agency's governing body by resolution petitions the board for withdrawal from the system; and]~~

~~[(ii) the board approves the withdrawal.]~~

~~[(b) Once approval to withdraw is granted, the organization or agency and its employees shall be governed by Sections 49-1-502 and 49-1-503.]~~

~~[(5) Except as provided in Sections 49-3-206 and 49-3-207, no participating employer may maintain full participation in the system by covering only part of its employees. The full participation requirement is satisfied if a participating employer covers those of its employees eligible for coverage under:]~~

~~[(a) Title 49, Chapter 4, Public Safety Retirement Act; or]~~

~~[(b) Title 49, Chapter 5, Firefighters' Retirement Act and its remaining employees under either Title 49, Chapter 2, Public Employees' Retirement Act or Title 49, Chapter 3, Public Employees' Noncontributory Retirement Act, whichever is applicable.]~~

~~[(6) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or deferred income program, either directly or indirectly, for their employees.]~~

~~[(7) (a) Credit unions or private hospitals which are participating units in any system administered by the board may withdraw from participation upon applying to the board. This application shall be made between July 1, 2000, and December 31, 2000. The withdrawal is effective the day after the last day the withdrawing unit pays retirement contributions on its employees' salaries.]~~

~~[(b) Once the withdrawal of the credit union or private hospital is complete, the employees of the withdrawing unit may apply to withdraw their vested contributions. Refunds shall then be paid in accordance with Subsection 49-1-502(3).]~~

~~[(c) Under no circumstance may a withdrawing unit receive the employer contributions which have been made to the system.]~~

(5) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

Section 74. Section **49-13-203**, which is renumbered from Section 49-3-206 is renumbered and amended to read:

~~[49-3-206].~~ **49-13-203. Exclusions from membership in system.**

(1) The following employees are [excluded from membership in the retirement] not eligible for service credit in this system:

~~[(1)] (a) [Every] An~~ employee whose employment status is temporary in nature due to the nature or the type of work to be performed~~[-], provided that:~~

~~(i) 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] and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment[-]; and~~

~~(ii) if [the same] an~~ employee, previously terminated prior to ~~[enrollment as a member, is again employed]~~ becoming eligible for service credit in this system, is reemployed within three months of termination by the same participating employer, the [employee shall be immediately enrolled as a member if the work constitutes full-time as defined in this chapter] participating employer shall report and certify to the office and the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credit in this system.

~~[(2)]~~ (b) ~~[Full-time students]~~ A full-time student or the spouse of a full-time student and ~~[persons]~~ another person employed in a trainee relationship ~~[may be excluded from coverage by rules adopted by the board]~~ who file a formal request for exemption.

~~[(3)]~~ (c) (i) ~~[Every]~~ A current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, ~~[pursuant to]~~ under Section ~~[49-2-206]~~ 49-13-204, 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]~~ required contributions ~~[toward the premiums required]~~ based on compensation ~~[from the employing unit]~~ have been paid on behalf of the employee by the employer.

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

~~[(4) Every]~~ (d) An employee serving as an exchange employee from outside the state.

~~[(5) Elected officials]~~ (e) An elected official who ~~[file]~~ files a formal request for exemption.

~~[(6) Executive]~~ (f) An executive department ~~[heads]~~ head of the state or a legislative ~~[directors]~~ director, senior ~~[executives]~~ executive employed by the governor's office, ~~[members]~~ a member of the State Tax Commission, a member of the Public Service Commission, the State Olympic Officer, and ~~[other members]~~ a member of a full-time or part-time ~~[boards or commissions]~~ board or commission who ~~[file]~~ files a formal request ~~[to be excluded from coverage]~~ for exemption.

~~[(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]~~

(g) An employee of the Department of Workforce Services ~~[who were covered under Subsection (7)(a) and]~~ who ~~[are]~~ is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

~~[(8)]~~ (h) (i) ~~[Persons]~~ A person appointed as a city ~~[managers]~~ manager or chief city ~~[administrators]~~ administrator or ~~[other persons]~~ another person employed by a ~~[city, town],~~ municipality, county, or other political subdivision, who ~~[are]~~ is not entitled to merit or civil service protection. ~~[Persons]~~

(ii) A person eligible for exclusion under [this] Subsection (1)(h)(i) shall file a formal request for [exclusion from coverage] exemption and be employed in a position designated as exempt under an employee exemption plan developed by the [city, town] municipality, county, or political subdivision. [Employee exemption plans shall be subject to the following limitations: (a) The total number of positions a city, town]

(2) (a) A municipality, county, or political subdivision may not exempt [may not exceed the lesser of] more than 30 positions or a number equal to 10% of the employees of the [city, town] municipality, county, or political subdivision, whichever is lesser. [However, every city, town]

(b) A municipality, county, or political subdivision [is entitled to a minimum exemption of one eligible] may exempt at least one regular full-time employee.

[ (b) Employee exemption plans shall be filed ]

(3) Each participating employer shall:

(a) file employee exemptions annually with the [retirement] office[;]; and [the city, town, county, or political subdivision shall]

(b) update the [exemption plan] employee exemptions in the event of any change.

[ (c) The retirement ]

(4) The office may [promulgate] make rules to implement this section.

Section 75. Section **49-13-204**, which is renumbered from Section 49-3-207 is renumbered and amended to read:

**[49-3-207]. 49-13-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- Supplemental plans authorized.**

(1) (a) [The faculty members and] Regular full-time employees of institutions of higher education who are eligible to participate in either this system or in a retirement annuity contract with the [Teacher's] Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).

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

(2) (a) A ~~[faculty member or]~~ regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification~~[-, and each]~~.

(b) Each institution of higher education ~~[is directed to]~~ shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:

(i) this system ~~[or with the Teacher's]~~;

(ii) the Teachers' Insurance and Annuity Association of America; or ~~[with any other]~~

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

(3) A ~~[faculty member or]~~ regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in ~~[the state retirement]~~ this system may~~[-]~~ elect to continue participation in this system upon change to an employment classification which requires participation in:

(a) an annuity plan with the ~~[Teacher's]~~ Teachers' Insurance and Annuity Association of America; or ~~[with some other]~~

(b) another public or private system, organization, or company designated by the Board of Regents~~[-, finally elect to continue participation in the state retirement system]~~.

(4) A ~~[faculty member or]~~ regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in ~~[such an annuity plan, upon change to an employment classification which requires participation in this system,]~~ this system shall participate in this system.

~~[(5) Nothing contained in this section prohibits a faculty member or employee of an institution of higher education from participating in a supplemental annuity plan, and the Board of Regents shall promulgate rules governing permissible participation, but in no event may the contribution by an institution for the purchase of an old age annuity or other approved investment exceed 14.2% of the employee's or member's salary.]~~

~~[(6) The State Board of Education may assist its faculties and employees to purchase any old age annuity plan or other approved investment by promulgating rules governing permissible participation in a supplemental old age annuity plan or other approved investment, but such assistance is limited to contracting with the employee to receive a reduced salary, and investing the employee contribution towards the purchase of the annuity or other approved investment.]~~

Section 76. Section **49-13-205**, which is renumbered from Section 49-3-205 is renumbered and amended to read:

~~[49-3-205].~~ **49-13-205. Conversion to system -- Time schedule -- Conversion windows.**

~~[The following laws govern conversion to the Public Employees' Noncontributory Retirement System:]~~

(1) ~~[For persons governed by Subsection 49-3-203 (2);]~~ An employee governed under Section 49-13-201 shall make the election to participate in [the noncontributory] this system [shall be made] within six months of ~~[the effective date of this chapter]~~ July 1, 1986.

(2) (a) (i) ~~[For political subdivisions governed by Subsection 49-3-203(3);]~~ An employer governed under Sections 49-13-201 and 49-13-202 shall make the election to participate [as a local government unit shall be made] in this system within six months of ~~[the effective date of this chapter]~~ July 1, 1986.

(ii) The ~~[political subdivision]~~ employer shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect.

(iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the ~~[political subdivision]~~ employer, at which all employees of the political subdivision shall be given an opportunity to be heard on the question of participating in this ~~[noncontributory retirement]~~ system.

(iv) Notice of the hearing shall be mailed to all employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.

(b) A ~~[person in]~~ regular full-time ~~[employment with a political subdivision prior to its election to participate]~~ employee has six months from the date the ~~[political subdivision]~~ employer

elects to participate in this system in which to ~~[elect to]~~ make the election to participate in this system and become ~~[a member of the noncontributory]~~ eligible for service credit in this system.

(3) Subsections (1) and (2) shall be used to provide a second time period of conversion to this system beginning July 1, 1990.

(4) Subsections (1) and (2) shall be used to provide a third time period of conversion to this system beginning July 1, 1995.

Section 77. Section **49-13-301**, which is renumbered from Section 49-3-301 is renumbered and amended to read:

### **Part 3. Contributions**

#### ~~[49-3-301].~~ **49-13-301. Contributions -- Two levels -- Report.**

(1) ~~[The system shall be maintained on a financially and actuarially sound basis by means of contributions by the participating employer]~~ Participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates, ~~[the]~~ this system is divided into two levels according to participating employers~~[-The levels are]~~ as follows:

(a) Level A includes the state ~~[of Utah, the Utah State Retirement Office,]~~, its independent agencies, independent entities, public corporations, and other instrumentalities, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.

(b) Level B includes all other participating employers in ~~[the]~~ this system.

~~[(2) The board shall report at least biennially to the governor, the Legislature, and each employing unit under Division A or B the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer shall pay the certified contribution rates.]~~

Section 78. Section **49-13-302** is enacted to read:

#### **49-13-302. Purchase of service credit.**

A member who works 20 or more hours per week for a participating employer participating in this system, but does not meet other eligibility requirements for service credit, may purchase such

service credit in accordance with Section 49-11-403.

Section 79. Section **49-13-303**, which is renumbered from Section 49-3-302 is renumbered and amended to read:

**~~[49-3-302].~~ 49-13-303. Supplemental benefit established -- Defined contribution plan options -- Contribution by employer and employee -- Immediate vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.**

~~[(1) There is established a supplemental deferred compensation benefit for members of this system:]~~

~~[(a) (i) For members of]~~

(1) (a) Participating employers in Level A under Section [49-3-301] 49-13-301, which are participating educational institutions or participating employers whose activities are associated with participating educational institutions, [the employer] shall [contribute] make a nonelective contribution on behalf of each of its regular full-time employees who are members of this system an amount equal to at least 1.5% of the [employee's salary to a deferred compensation] member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the regular full-time employee and which is sponsored by the board, by that Level A employer, or by a group of similar Level A employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

~~[(ii) For all]~~ (b) All other [members of] Level A participating employers under Section [49-3-301, the employer] 49-13-301 shall [contribute] make a nonelective contribution on behalf of each of its regular full-time employees who are members of this system an amount equal to at least 1.5% of the [employee's salary] member's compensation to the [deferred compensation] defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.

~~[(iii) (c) The [employee] member or participating employer may [also] make [elective contributions] additional payments to either the qualified 401(k) plan which receives the 1.5% employer contribution described in this Subsection [(i)] (1), or to any other [deferred compensation] defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is~~

selected by the ~~[employee]~~ member and sponsored by the board, that Level A employer, or a group of similar Level A employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986~~[- but only up to an amount permitted by federal law].~~

~~[(b) (i) For members of]~~

~~(2) (a) Participating employers in Level B under Section [49-3-301, the participating employer] 49-13-301 may [contribute] make nonelective contributions on behalf of each of its regular full-time employees [any amount to the deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which is] who are members of this system to the 401(k) defined contribution plan sponsored by the board or to a qualified plan sponsored by the participating employer which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.~~

~~[(ii) (b) The [employee] member may also [contribute] make voluntary deferrals to the same [qualified] 401(k) plan which the [employee] member selected to receive the employer contribution described in Subsection [(i), but only up to an amount permitted by federal law] (2)(a).~~

~~(3) Each qualified defined contribution 401(k) plan is separate and distinct from any other qualified defined contribution 401(k) plan for all purposes, including purposes of fiduciary liability and plan administration.~~

~~[(c) The employee] (4) A member may not make [elective contributions] voluntary deferrals to any other qualified 401(k) plan sponsored by a state or local government.~~

~~[(2)] (5) The total amount contributed by the participating employer and the member under Subsection (1)[(a)] or [(b)] (2) vests to the [employee's] member's benefit immediately and is nonforfeitable.~~

~~[(3) Each qualified deferred compensation 401(k) plan is separate and distinct from any other qualified deferred compensation 401(k) plan for all purposes including, but not limited to, purposes of fiduciary liability and plan administration.]~~

~~(6) The board may request from any other qualified 401(k) plan under Subsection (1)[(a)(iii)] or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code [and may request indemnification from such other plan to the extent it~~

performs testing functions for that plan].

~~[(4) Prior to January 1 of each calendar year, each employee of an employing unit specified in Subsection (1)(a)(i) shall notify the employing unit which qualified deferred compensation 401(k) plan the employee has selected to receive the employer and employee contributions described in Subsections (1)(a) and (b) for that calendar year. This election may be changed only in accordance with procedures established by the employing unit. Notwithstanding this section, the]~~

(7) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) [deferred compensation] defined contribution plan [pursuant to] under federal law. [The board shall submit findings of fact and its conclusions prior to taking any such action.]

Section 80. Section **49-13-401**, which is renumbered from Section 49-3-401 is renumbered and amended to read:

#### **Part 4. Defined Benefit**

~~[49-3-401].~~ **49-13-401. Eligibility for an allowance -- Date of retirement --**

##### **Qualifications.**

~~[(1) (a) Any member who qualifies for service retirement may retire by submitting to the retirement office an application form notarized by a notary public. The application shall state the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.]~~

~~[(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must be after the last day of actual work.]~~

~~[(c) The member shall actually terminate employment and provide evidence of termination.]~~

~~[(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:]~~

(1) A member is qualified to receive an allowance from this system when:

(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that

states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

~~[(a)]~~ (i) the member has ~~[been credited with]~~ accrued at least four years of service credit and has attained an age of 65 years ~~[or more];~~

~~[(b)]~~ (ii) the member has ~~[been credited with]~~ accrued at least ten years of service credit and has attained an age of 62 years ~~[or more];~~

~~[(c)]~~ (iii) the member has ~~[been credited with]~~ accrued at least 20 years of service credit and has attained an age of 60 years ~~[or more];~~

~~[(d)]~~ (iv) the member has ~~[been credited with]~~ accrued at least 30 years of service credit; or

~~[(e)]~~ (v) the member ~~[is credited with]~~ has accrued at least 25 years of service credit, in which case the member shall be subject to the reduction ~~[set out]~~ under Subsection ~~[49-3-402]~~ 49-13-402(2)(b).

(2) (a) The member's retirement date shall be the 1st or the 16th day of the month, as selected

by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days before or after the date the application is received by the office.

Section 81. Section **49-13-402**, which is renumbered from Section 49-3-402 is renumbered and amended to read:

~~[49-3-402].~~ **49-13-402. Service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) ~~[There are six service retirement plans available to members of the system. Plan One is as follows, with Plans Two, Three, Four, Five, and Six established under Section 49-3-403]~~ Except as provided under Section 49-13-701, retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) ~~[Except for members of this system who meet the requirements of Section 49-3-802, upon the service retirement of a member under Section 49-3-401, the member shall receive a retirement allowance consisting of a pension based on service determined]~~ The Option One benefit

is an allowance calculated as follows:

(a) If the ~~[member has attained the age of]~~ retiree is at least 65 years of age or has accrued at least 30 years of service credit, the [retirement] allowance is an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service ~~[credited to the member]~~ credit accrued.

(b) If the [member] retiree is less than 65 years ~~[old;]~~ of age, the [retirement] allowance shall be reduced 3% for each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which event no reduction is made to the allowance.

~~[(3)]~~ (c) (i) Years of service include any fractions of years of service to which the [member] retiree may be entitled. ~~[Service amounting to 9/10 of one year constitutes a year of service credit in the computation of a retirement benefit.]~~

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of

retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(4) (a) (i) The final average salary is limited in the computation of that part of [~~a member's prior service retirement~~] an allowance based on service rendered prior to July 1, 1967, during a period when the [member] retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company to \$4,800.

(ii) This limitation is not applicable to [members] retirees who elected to continue in the [state retirement system] Public Employees' Contributory Retirement System by July 1, 1967.

(b) Periods of [~~service~~] employment which are exempt from this system as permitted under Subsection [49-3-206(3), not to exceed four years;] 49-13-203(1)(c) may be purchased by the member for the purpose of retirement only if all benefits from the Teachers' Insurance and Annuity Association of America or any other public or private system or organization based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

Section 82. Section **49-13-403**, which is renumbered from Section 49-3-404 is renumbered

and amended to read:

~~[49-3-404].~~ **49-13-403. Allowance payable by lump-sum payment.**

(1) If a ~~[retiring member's monthly]~~ retiree's allowance, as computed under ~~[Section 49-3-402]~~ this section, amounts to \$25 or less, the ~~[benefit claim]~~ allowance may be settled by the ~~[administrator]~~ office by making a lump-sum payment of an amount actuarially equivalent to the ~~[monthly]~~ allowance. ~~[Payment thus]~~

(2) A payment made under this section constitutes a full and complete settlement of the ~~[retiring member's]~~ retiree's claim against ~~[the]~~ this system.

Section 83. Section **49-13-404**, which is renumbered from Section 49-3-405 is renumbered and amended to read:

~~[49-3-405].~~ **49-13-404. Lump-sum death benefit for retiree and spouse.**

(1) (a) ~~[A member, upon]~~ Upon retirement, a retiree may elect to have the ~~[administrator set aside in reserve from the member's retirement]~~ office deduct an actuarially determined amount from the retiree's allowance ~~[a sufficient sum of money, based upon age, sex, interest rate in effect, and the mortality rates for the member's group,]~~ to provide a lump-sum benefit payable to a beneficiary upon the death of the ~~[member after retirement, under an agreement that will provide a reduced retirement allowance payable to the retirant throughout the retirant's lifetime, plus the lump-sum amount at death]~~ retiree.

(b) A retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

~~[(b)]~~ (c) The board shall make rules for the administration of this lump-sum death benefit ~~[may be purchased in accordance with rules adopted by the board].~~

~~[(c)]~~ The spouse of a retiring member may also be covered with a death benefit upon the request of the member.

~~[(2)]~~ The lump-sum death benefit provided by this section may be chosen as a modification of or deduction from the retirement allowance provided under Section 49-3-402 or 49-3-403, and is payable to the designated beneficiary chosen at the time of the member's retirement, to a

beneficiary subsequently designated, or to the retirant's estate under applicable conditions established under Section 49-1-606 or 49-1-607.]

~~[(3) If a retirant cancels retirement as permitted by this title, the lump-sum death benefit under this section shall also be canceled, with the appropriate reserve, as determined by the administrator, credited back to the member's contribution account.]~~

~~[(4) Payment of the lump-sum death benefit consists only of a refund of the retirant's reserve or the amount determined by the board and set aside as provided in this section if death occurs within three years from the date of retirement and is due to a health condition existing and being treated at the time of retirement.]~~

~~[(5) The board may establish rules and adopt suitable mortality rates to protect the fund against adverse selection of benefits by a retiring member under this section.]~~

(2) (a) For retirees who pay for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree or the lawful spouse, the allowance shall be restored to its original amount.

Section 84. Section **49-13-405**, which is renumbered from Section 49-3-406 is renumbered and amended to read:

~~[49-3-406].~~ **49-13-405. Death of married members -- Service retirement benefits to surviving spouse.**

(1) As used in this section, "member's full allowance" means ~~[the benefit calculated using the formula]~~ an Option Three allowance calculated under Subsection ~~[49-3-402]~~ 49-13-402(2)(a) without an actuarial reduction.

(2) ~~[(a) Beginning January 1, 1997, a]~~ Upon the request of the member's lawful spouse at the time of death, a member is considered to be eligible to retire under Option Three on the first day of the month following the month in which the member died if the following requirements are met:

(a) the member [who] has:

(i) 15 or more years of [~~credited~~] service[~~, age 60 with 20 or more years of credited service,~~]  
credit;

(ii) attained age 62 with ten or more years of [~~credited~~] service[~~;~~] credit; or

(iii) attained age 65 with four or more years of [~~credited~~] service[~~, respectively, and who~~]  
credit; and

(b) the member dies leaving a spouse to whom the member has been married at least six months prior to the death date[~~, may, upon the request of the spouse, be considered to have retired on the first day of the month following the month in which death occurred and retired under Plan Three~~].

[~~(b)~~] (3) The spouse who requests a benefit [~~pursuant to Subsection (2)(a)~~] under this section shall apply in writing to the [~~retirement~~] office stating the proposed effective date to begin receiving [~~a monthly retirement~~] an allowance, which may not be more than 90 days [~~before or~~] after the date of application[~~, and which shall be effective on the 1st or 16th day of the month, as selected by the spouse~~].

[~~(3)~~] (4) The [~~retirement benefit~~] allowance payable to a surviving spouse under Subsection (2) is:

(a) if the member has 25 or more years of [~~credited~~] service credit at the time of death, the surviving spouse shall receive the member's full allowance;

(b) if the member has between 20-24 years of [~~credited~~] service credit and is not age 60 or older at the time of death, the surviving spouse shall receive two-thirds of the member's full allowance;

(c) if the member has between 15-19 years of [~~credited~~] service credit and is not age 62 or older at the time of death, the surviving spouse shall receive one-third of the member's full allowance; or

(d) if the member is age 60 or older with 20 or more years of [~~credited~~] service credit, age 62 or older with 10 or more years of [~~credited~~] service credit, or age 65 or older with four or more years of [~~credited~~] service credit at the time of death, the surviving spouse shall receive [~~the benefit calculated using the formula and the actuarial reduction under Subsections 49-3-402(2)(a) and (2)(b)~~]

an Option Three benefit with actuarial reductions.

~~[(4) Benefits]~~ (5) Except for a return of member contributions, benefits payable under this section are [service] retirement benefits and shall be paid in addition to any other payments made under Section [49-3-701, except for a return of accumulated contributions,] 49-13-501 and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section [49-3-701] 49-13-501.

Section 85. Section **49-13-406**, which is renumbered from Section 49-3-409 is renumbered and amended to read:

~~[49-3-409].~~ **49-13-406. Part-time elective or appointive service -- Computation of allowance.**

~~[Elective]~~ Notwithstanding any other provisions of this title, elective or appointive service rendered on a basis not considered full time by the [board,] office, unless otherwise provided by this chapter, shall have a [retirement] separate allowance computed on the basis of compensation actually received by the [official] member during the period of elective or appointive service.

Section 86. Section **49-13-407**, which is renumbered from Section 49-3-601 is renumbered and amended to read:

~~[49-3-601].~~ **49-13-407. Annual cost-of-living adjustment.**

(1) ~~[There shall be computed and paid by the retirement]~~ The office~~[, upon the approval of the board,]~~ shall make an annual cost-of-living [allowance] adjustment to: ~~[all retired members of this system after the members have been retired one year. The adjustment shall be equal to the decrease in the purchasing power of the dollar during the preceding year, as measured by the Consumer Price Index, prepared by the United States Bureau of Labor Statistics, limited to a maximum of 4% of the retirants' or beneficiaries' original retirement allowance. Decreases in the purchasing power of the dollar in excess of 4% annually shall be accumulated and used in subsequent allowances when the cost-of-living adjustment is less than 4% annually.]~~

~~[(2) If the cost-of-living shows a decline of 4% or more during any period of time extending longer than one year, a reduction not to exceed the rate of 2% per year shall be made based upon the original retirement allowance. Payments made under this section shall be a part of the retired~~

member's allowance. ~~The payments and subsequent adjustments as prescribed for the retirant shall likewise apply to the beneficiary who is paid an allowance under optional retirement plans.]~~

(a) an original allowance paid under Section 49-13-402 or 49-13-405, if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.

(b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.

(3) The Consumer Price Index used in calculating adjustments may be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 87. Section **49-13-408**, which is renumbered from Section 49-3-410 is renumbered and amended to read:

**~~[49-3-410].~~ 49-13-408. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.**

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

~~[(2)]~~ (1) (a) A member may purchase or a member and [an employing unit] a participating employer may jointly purchase a [combined] maximum [total] of five years of [retirement] service credit which [is not] cannot otherwise [purchasable] be purchased 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]~~

(b) At a minimum, the years of service credit [must] purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.

~~[(d)] (c)~~ The ~~[member must retire effective]~~ member's retirement date shall be immediately after the purchase of ~~[retirement]~~ years of service credit ~~[is made]~~.

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

~~[(3)] (2)~~ The purchase price for the ~~[retirement]~~ years of service credit shall be calculated and paid for as provided in Section ~~[49-1-407]~~ 49-11-403.

~~[(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 member who retires after the employer purchases retirement service credit under this section shall be subject to the provisions of Section ~~49-1-505~~.]

~~[(6)] (3)~~ Prior to making any purchase of years of service credit under this section, ~~[an employing unit]~~ a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.

Section 88. Section **49-13-501**, which is renumbered from Section 49-3-701 is renumbered and amended to read:

**Part 5. Death Benefit**

~~[49-3-701]~~. **49-13-501. Death benefit by means of group insurance policy -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.**

(1) The ~~[board]~~ office shall provide a death benefit through the purchase of a group insurance policy for members of this system.

(2) The board shall make rules to ~~[implement and]~~ administer the death benefit provided by this section and may, in accordance with federal law, establish:

(a) benefit levels ~~[or]~~;

(b) classes of ~~[employees]~~ members; and

~~[(b)] (c)~~ a living benefit option.

~~[(2)]~~ Upon receipt of acceptable proof of death of a member of the system, either prior to the

~~effective date of the member's retirement, except as provided in Section 49-3-406, or after the date of retirement but under circumstances that Section 49-3-403 requires to be treated as the death of the member before retirement, the following death benefits, except those benefits already provided to the member under a living benefit option, shall be paid to the beneficiary:]~~

~~[(a) the return of any accumulated contributions under this chapter; plus]~~

~~[(b) a percentage of the final average salary of the deceased member to be determined by the board. This percentage shall be the highest percentage of final average salary obtainable by the board through the purchase of a group insurance policy using the money contributed by the employer under Subsection (3).]~~

(3) This death benefit is payable when:

(a) the member dies prior to the member's retirement date or dies under circumstances which Section 49-13-402 requires to be treated as the death of a member before retirement;

(b) the office receives acceptable proof of death; and

(c) benefits are not payable under Section 49-13-404.

(4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:

(a) the return of any member contributions under this chapter; plus

(b) a percentage of the final average salary of the member to be determined by the board.

(5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.

~~[(3)]~~ (6) The cost of the death benefit shall be paid by the participating employer as a portion of the contribution rate established under Section 49-13-301.

~~[(4)]~~ (7) The portion of the death benefit provided under Subsection ~~[(2)]~~ (4)(b), ~~[based upon the member's past compensation,]~~ may not be paid to the beneficiary of an inactive member unless:

(a) that member has ~~[credit for]~~ ten or more years of service credit prior to July 1, 1987; or

(b) the death of the member occurs either:

(i) within a period of 120 days after the last day of ~~[service]~~ work for which the person received compensation; or

(ii) while the ~~[person]~~ member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of ~~[service]~~ work for which compensation ~~[is]~~ was received~~[; or]~~.

~~[(iii) that person is on military leave and has elected to remain in active contributing membership status as provided in Section 49-1-402.]~~

~~[(5)]~~ (8) The death benefit ~~[may not be paid to any person except a beneficiary]~~ provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.

~~[(6)]~~ (9) The death benefit ~~[for]~~ paid to the beneficiary of an inactive member, except as otherwise provided under Subsection ~~[(4)]~~ (7), is a lump-sum return of the ~~[deceased]~~ member's ~~[accumulated]~~ member contributions.

~~[(7)]~~ (10) Payment of the death benefit by the ~~[retirement]~~ office constitutes a full settlement of any beneficiary's claim against the ~~[system,]~~ office and the ~~[system]~~ office is not liable for any further or additional claims or assessments on behalf of the ~~[deceased]~~ member.

~~[(8)]~~ (11) Unless otherwise specified in a written document filed ~~[in the retirement]~~ with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, ~~[Uniform Probate Code]~~ Intestate Succession and Wills.

~~[(9) In the implementation of this section and for administrative purposes only, the State Tax Commission shall provide pertinent information to the retirement administrator, upon request, concerning dependents claimed by a deceased member on the income tax return covering the year prior to the member's death.]~~

~~[(10)]~~ (12) A death benefit under this section may not be paid ~~[to]~~ on behalf of a ~~[member who has retired]~~ retiree under this system.

Section 89. Section **49-13-701**, which is renumbered from Section 49-3-802 is renumbered and amended to read:

**Part 6. Reserved**

**Part 7. Early Retirement Incentive**

~~[49-3-802].~~ **49-13-701. Early retirement incentive -- Eligibility -- Calculation of benefit -- Payment of costs -- Savings to be appropriated by Legislature -- Restrictions on**

**reemployment.**

(1) Any member of this system may retire and receive the [benefit] allowance allowed under Subsection (2) if the member meets the following requirements as of the [effective date of] member's retirement:

(a) the member is eligible for retirement under Section ~~[49-3-401]~~ 49-13-401, or ~~[otherwise]~~ has 25 years of service credit;

(b) the member elects to forfeit any stipend for retirement offered by the [employing unit] participating employer; and

(c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3) (b).

(2) (a) A member who retires ~~[pursuant to]~~ under Subsection (1) shall receive 2% of that member's final average salary for all years of service credit.

(b) No actuarial reduction may be applied to the [benefit] allowance granted under this section.

(3) In order to receive the [benefit] allowance allowed by this section, a member shall submit an application to the [retirement] office as follows:

(a) (i) For state and school employees under Level A, the application shall be filed by May 31, 1987. The [effective date of] member's retirement date shall then be set by the [employee] member on the 1st or 16th day of July, August, or September, 1987.

(ii) If a Level A [employee] member elects to retire, the [administrator] executive director or participating employer may request the [employee] member to delay the [effective date of] retirement date until a later date, but no later than June 30, 1988.

(iii) If the [employee] member agrees to delay the [effective] retirement date, the [effective] retirement date shall be delayed, but ~~[no]~~ service credit may not be accrued after the member's original [effective date of] retirement date elected by the [employee] member, and ~~[no salary]~~ compensation earned after ~~[that effective]~~ the member's original retirement date may not be used in the calculation of the final average salary for determining the retirement [benefit] allowance.

(b) (i) For political [subdivisions] subdivision employees under Level B, the application

shall be filed by September 30, 1987.

(ii) The ~~[effective date of]~~ member's retirement date shall then be set by the ~~[employee]~~ member on the 1st or 16th day of July, August, September, October, November, or December, 1987.

(4) (a) The cost of providing the ~~[benefit]~~ allowance under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.

(b) The cost of providing the ~~[benefit]~~ allowance under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.

(c) The rate increase under Subsections (4)(a) and (b) shall be funded:

(i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection (4)(d), which is funded by savings derived from this early retirement incentive and a work force reduction;

(ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53A, Chapter 17a, Minimum School Program Act; and

(iii) for political subdivisions under Level B, by direct contributions by the ~~[employing unit]~~ participating employer.

(d) (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections (4)(c)(i) and (c)(ii) shall be reported to the Legislature and shall be appropriated as provided by law.

(ii) In the case of Subsection (4)(c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.

(iii) In the case of Subsection (4)(c)(ii), the State Office of Education shall certify the amount of savings derived from this early retirement incentive.

(iv) The State Office of Education and the ~~[employing unit]~~ participating employer may not spend the savings until appropriated by the Legislature as provided by law.

(5) A member who retires under this section is subject to Section ~~[49-1-505]~~ 49-11-504.

(6) The ~~[retirement]~~ board may ~~[adopt]~~ make rules to ~~[implement and]~~ administer this section.

(7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Section 90. Section **49-14-101**, which is renumbered from Section 49-4-101 is renumbered and amended to read:

## **CHAPTER 14. PUBLIC SAFETY CONTRIBUTORY RETIREMENT ACT**

### **Part 1. General Provisions**

~~[49-4-101].~~ **49-14-101. Title.**

This chapter is known as the "Public Safety Contributory Retirement Act."

Section 91. Section **49-14-102**, which is renumbered from Section 49-4-103 is renumbered and amended to read:

~~[49-4-103].~~ **49-14-102. Definitions.**

As used in this chapter:

(1) ~~[(a)]~~ "Compensation~~[-];~~" ~~["salary," or "wages" means the total amount of payments which are currently includable in gross income made by an employer to an employee covered under the retirement system for services rendered to the employer as base income]~~ means the total amount of payments that are includable in gross income which are received by a public safety service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to ~~[any salary deductions or reductions for any]~~ the deduction of member contributions or any amounts the public safety service employee authorizes to be deducted for salary deferral or [pretax benefit programs] other benefits authorized by federal law.

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

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) the monetary value of remuneration paid in kind, ~~[such as]~~ including a residence, use of equipment or uniform ~~[or]~~, travel ~~[allowances]~~, or similar payments;

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

(vi) all contributions made by ~~[an]~~ a participating employer under this ~~[plan]~~ system or under any other employee benefit system or plan maintained by ~~[an]~~ a participating employer for the benefit of a member or participant.

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

(2) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement, subject to Subsections (2)(a) and (b).

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

(b) In cases where the ~~[employing unit]~~ participating employer provides acceptable documentation to the ~~[board]~~ office, the limitation in Subsection (2)(a) may be exceeded if:

(i) the ~~[member]~~ public safety service employee has transferred from another ~~[employing unit]~~ agency; or

(ii) the ~~[member]~~ public safety service employee has been promoted to a new position.

~~[(3) "Full-time service" means 2,080 hours a year.]~~

~~[(4)]~~ (3) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a ~~[peace officer or other]~~ public safety ~~[member]~~ service employee.

~~[(5) (a) "Participating service" means public safety service rendered during which a person~~

~~was a member of this system as well as any of the terminated systems during which the person was paid compensation upon which member contributions were taken.]~~

~~[(b) Participating service also means public safety service rendered for an employer covered by the retirement system and standing to the credit of a member as of June 30, 1969, who transferred to coverage under the public safety retirement system on July 1, 1969.]~~

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

~~[(6)]~~ (5) (a) "Public safety service" means [full-time paid service] at least 2,080 hours of regularly scheduled compensated employment per year rendered by a member who is a:

- (i) law enforcement [officers] officer in accordance with Section 53-13-103;
- (ii) correctional [officers] officer in accordance with Section 53-13-104; and
- (iii) special function [officers] officer approved in accordance with [Section 49-4-203]

Sections 49-14-201 and [Section] 53-13-105.

~~[(b) Subsection (6)(a) does not]~~

(b) "Public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.

(c) Except for the minimum hour requirement, Subsections (5)(a) and (b) do not apply to any person who [became a member of the] was eligible for service credit in this system prior to January 1, 1984.

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

(7) "System" means the Public Safety Contributory Retirement System created under this chapter.

~~[(7)]~~ (8) "Years of service credit" [or "service years"] means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which [an] a public safety service employee [performed services for an] was employed by a participating employer [or employers], including time the public safety service employee was absent in the service of the United States government on military duty.

Section 92. Section **49-14-103**, which is renumbered from Section 49-4-201 is renumbered and amended to read:

~~[49-4-201].~~ **49-14-103. Creation of system.**

There is created for ~~[public safety personnel of the state and its political subdivisions]~~ members performing public safety service and who are employed by a participating employer the "Public Safety Contributory Retirement System."

Section 93. Section **49-14-104**, which is renumbered from Section 49-4-202 is renumbered and amended to read:

~~[49-4-202].~~ **49-14-104. Creation of trust fund.**

(1) There is created the "Public Safety Contributory Retirement Trust Fund" for the purpose of paying the benefits and the costs of administering this system.

(2) The fund shall consist of a number of individual trust accounts created as needed to receive the money and assets transferred into them from the respective terminated systems, all money paid into them, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by ~~[Title 49;]~~ Chapter ~~[†]~~ 11, Utah State Retirement Systems Administration.

Section 94. Section **49-14-201**, which is renumbered from Section 49-4-203 is renumbered and amended to read:

**Part 2. Membership Eligibility**

~~[49-4-203].~~ **49-14-201. System membership -- Eligibility.**

~~[All employees who perform covered public safety services for any employing unit, except those withdrawing from coverage as provided by this chapter, shall become members of the retirement system as follows:]~~

~~[(1) Any employee who is employed to perform public safety services for an employer covered by this chapter on or after July 1, 1969, shall become a member of the system effective on the date of employment.]~~

~~[(2) (a) Any employee engaged in performing public safety services for a department or~~

~~political subdivision on the date it becomes a participant in the system under this chapter shall become a member of the system as of the date of coverage. Each new public safety employee of the covered unit shall thereafter become a member of the system effective on the date of employment.~~

~~(b) In cities, counties, or other employing units of government]~~

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

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

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

(c) the date the public safety service employee is employed by the participating employer and is eligible to perform public safety service.

(2) (a) (i) A participating employer that [have] has public safety service and [fire fighter personnel where] firefighter service employees that require cross-training and duty [is required, the employing unit may] shall enroll those dual purpose [personnel] employees in the [retirement] system in which the greatest amount of [duty] time is [contemplated and] actually worked.

(ii) The [personnel] employees shall either be full-time public safety service or [fire fighter] full-time firefighter service employees of the [employing unit] participating employer.

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

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

~~[(3) (a) The board may by rule establish other peace officer groups for purposes of:]~~

~~[(i) recommending eligibility for coverage under this system; and]~~

~~[(ii) recommending contribution rates.]~~

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

~~[(b)(i)]~~ (4) (a) (i) Each ~~[employing unit covered by]~~ participating employer participating in this system shall annually submit to the ~~[retirement]~~ office a schedule indicating the positions to be covered under this system in accordance with ~~[Section 49-4-103]~~ this chapter.

(ii) The ~~[retirement]~~ office may require documentation to justify the inclusion of any position under this system.

~~[(ii)]~~ (b) If there is a dispute between the ~~[retirement]~~ office and ~~[an employing unit]~~ a participating employer or employee over any position to be covered, the disputed position shall be submitted to the Peace Officer Standards and Training Council established under Section 53-6-106 for determination.

~~[(iii)(A)]~~ (c) (i) The Peace Officer Standards and Training Council's authority to decide eligibility ~~[questions]~~ for ~~[peace officers]~~ public safety service credit is limited to claims for coverage under ~~[the Public Safety Retirement System]~~ this system for time periods ~~[subsequent to]~~ after July 1, 1989.

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

~~[(C)]~~ (iii) Except as provided under Subsection ~~[(3)(b)(iii)(D)]~~ (4)(c)(iv), a decision of the Peace Officer Standards and Training Council granting ~~[an individual or]~~ a position coverage under ~~[the Public Safety Retirement System]~~ this system may only be applied prospectively from the date of that decision.

~~[(D)]~~ (iv) A decision of the Peace Officer Standards and Training Council granting ~~[an individual or]~~ a position coverage under ~~[the Public Safety Retirement System]~~ this system may be applied retroactively only if:

~~[(F)]~~ (A) the ~~[employing unit]~~ participating employer covered other similarly situated ~~[employees]~~ positions under ~~[the Public Safety Retirement System]~~ this system during the time period in question; and

~~[(H)]~~ (B) the ~~[employee]~~ position otherwise meets all eligibility requirements for ~~[membership in the Public Safety Retirement System]~~ receiving service credit in this system during the period for which service credit is to be granted.

~~[(e)-(i)]~~ (5) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the ~~[retirement]~~ office and ~~[an employing unit]~~ a participating employer or employee over a position to be covered under this system.

~~[(ii)]~~ (6) The Peace Officer Standards and Training Council shall comply with Title 63, Chapter 46b, Administrative Procedures Act, in ~~[conducting adjudicative proceedings]~~ resolving coverage disputes in this system.

~~[(4) Employees who have performed public safety service and who then transfer or are]~~

~~(7)~~ A public safety employee who is transferred or promoted to an administration [positions] position not covered by this system shall continue to earn public safety service credit ~~[under this chapter]~~ in this system as long as ~~[they remain]~~ the employee remains employed in the same department.

~~[(5) Unless the Legislature fails to provide funding in the appropriations act for the inclusion of special function officers in the contributory system, special function officers shall be eligible for membership in the contributory system if approved by the Peace Officer Standards and Training Council.]~~

(8) Any employee who is transferred to the Division of Information Technology Services from the Department of Public Safety prior to January 1, 1992, and who was a member of this system, shall be entitled to remain a member of this system regardless of whether or not the employee's current position is covered by this system.

~~[(6)]~~ (9) (a) ~~[The]~~ To determine that a position is covered under this system, the office and, if a coverage dispute arises, the Peace Officer Standards and Training Council~~[, in determining disputes between the retirement office and an employing unit or employee over a position to be covered under this system, shall determine that to be eligible for membership in this system]~~ shall find that the position requires the employee to:

(i) ~~[is required as a duty of employment to serve in a position that may]~~ place the ~~[employee at risk to]~~ employee's life [and] or personal safety at risk; and

(ii) ~~[is required to]~~ complete training as provided in Section 53-13-103, 53-13-104, or

53-13-105.

(b) If [~~an employee~~] a position satisfies the requirements of Subsection [~~(6)~~] (9)(a), the office and the Peace Officer Standards and Training Council shall consider [~~in determining eligibility for membership in the system,~~] whether or not the [~~employee~~] position requires the employee to:

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

(ii) [~~performs~~] perform duties that consist primarily of providing community protection; and

(iii) [~~is required to~~] respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

[~~(7)~~] (10) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection [~~(6)~~] (9) in making its recommendation.

[~~(8)~~] (11) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63, Chapter 46b, Administrative Procedures Act.

[~~(9)~~] (12) If a [~~local law enforcement agency's law enforcement officers are not included in the Public Safety Retirement System under Title 49, Chapter 4, Public Safety Retirement Act, or Title 49,~~] participating employer's public safety service employees are not covered by this system or under Chapter [4a] 15, Public Safety Noncontributory Retirement Act, as of January 1, 1998, those [~~officers~~] public safety service employees who may otherwise qualify for membership in [~~the~~] this system shall, at the discretion of the [~~respective municipality~~] participating employer, remain in their current retirement system.

Section 95. Section **49-14-202**, which is renumbered from Section 49-4-204 is renumbered and amended to read:

~~[49-4-204].~~ **49-14-202. Participation of employers -- Requirements -- Supplemental programs -- Full participation in system.**

(1) [~~Any political subdivision, department, or educational institution which~~] An employer that employs public safety service employees [~~to perform public safety services~~] and is required by Section [~~49-2-204~~] 49-12-202 or [~~49-3-204~~] 49-13-202 to be a participating [~~employee~~] employer

in the Public Employees' Contributory Retirement System or the Public Employees' Noncontributory Retirement System shall cover all its public safety service employees under [~~either (a) the Public Employees' Retirement System; or (b) the Public Safety Retirement System. As a participating employer, the political subdivision shall meet all requirements for full participation in the system.~~] one of the following systems:

(a) Chapter 12, Public Employees' Contributory Retirement Act;

(b) Chapter 13, Public Employees' Noncontributory Retirement Act;

(c) Chapter 14, Public Safety Contributory Retirement Act; or

(d) Chapter 15, Public Safety Noncontributory Retirement Act.

~~[(2) Any organization or agency supported in whole or in part by Utah public funds which is not or may not prior to application have been covered by this act may by resolution of its governing body apply for coverage of its public safety officers and employees by the system. Upon approval of the board, the organization or agency shall become a participant in the system provided that the board and the political subdivision, or the organization or agency shall agree upon (a) the terms pursuant to which its public safety employees shall become members of the system, such as the effective date of coverage, (b) the amount of prior service credit with which they may be credited, if any, (c) the amount of any contributions in addition to regular contributions that will be required to provide any prior service credits or retroactive current service credits from either the employing unit or its employees, and (d) the manner in which retroactive current or prior service credits may be established, if any. Once admitted to the system, an organization or agency may not withdraw from participation, except as provided in Subsection (3), and shall meet all requirements for full participation in the system.]~~

~~[(3) An organization or agency admitted to the system pursuant to Subsection (2), which no longer receives public funds, may withdraw from the system if:]~~

~~[(a) the organization or agency's governing body by resolution petitions the board for withdrawal from the system; and]~~

~~[(b) the board approves the withdrawal. Once approval to withdraw is granted, the organization or agency and its employees shall be governed by Sections 49-1-502 and 49-1-503.]~~

~~[(4) No participating employer may maintain full participation in the system by covering only part of its public safety employees.]~~

(2) An employer that covers its public safety service employees under Subsection (1)(c) is a participating employer in this system.

(3) If a participating employer under Subsection (1) covers any of its public safety service employees under the Public Safety Contributory Retirement System or the Public Safety Noncontributory Retirement System, that participating employer shall cover all of its public safety service employees under one of those systems.

(4) A participating employer may not withdraw from this system.

(5) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

(6) An employer may not elect to participate in this system after July 1, 1989.

Section 96. Section **49-14-203**, which is renumbered from Section 49-4-205 is renumbered and amended to read:

~~[49-4-205].~~ **49-14-203. Exemption of certain employees from coverage.**

(1) ~~[(a)]~~ A public safety service employee serving as the Commissioner of Public Safety, or as the elected or appointed sheriff or chief of police of a public safety organization, is excluded from coverage under this system if that public safety service employee files a formal written request seeking ~~[exclusion from coverage]~~ exemption.

~~[(b)]~~ (2) Except as provided in Subsection ~~[(1)(c)]~~ (3), the public safety service employee may not continue employment ~~[in the same covered employer unit]~~ with the same participating employer and receive ~~[payment from the retirement office]~~ an allowance from the office based on public safety service at the same time.

~~[(c)]~~ (3) An elected sheriff who is eligible to retire under Section ~~[49-4-401]~~ 49-14-401 may:

~~[(i)]~~ (a) retire from ~~[the]~~ this system and receive ~~[a retirement payment]~~ an allowance;

~~[(ii)]~~ (b) continue in the elected ~~[office]~~ position; and

~~[(iii)]~~ (c) file for the ~~[exclusion]~~ exemption under Subsection (1)~~[(a)]~~.

~~[(2) Any member of the system or any newly hired employee who is eligible for coverage and who is drawing a military pension may, by application to the retirement administrator, be exempted from participating in the system.]~~

Section 97. Section **49-14-301**, which is renumbered from Section 49-4-301 is renumbered and amended to read:

### **Part 3. Contributions**

~~[49-4-301].~~ **49-14-301. Contributions -- Two divisions -- Election by employer to pay employee contributions -- Accounting for and vesting of member contributions -- Deductions.**

(1) ~~[The system shall be maintained on a financially and actuarially sound basis by means of joint contributions by the employing units and the active members of the system.]~~ Participating employers and members shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates, ~~[the]~~ this system is divided into two divisions according to Social Security coverage~~[-Public safety employees]~~ as follows:

(a) members of this system with on-the-job Social Security coverage are in Division A ~~[and public safety employees]; and~~

(b) members of this system without on-the-job Social Security coverage are in Division B.

~~[(2) Any employing unit]~~

(3) (a) A participating employer may elect to pay all or part of ~~[its members']~~ the required member contributions, in addition to the required participating employer contributions.

(b) Any amount contributed by ~~[an]~~ a participating employer under this ~~[subsection]~~ section shall vest to the member's benefit as though the member had made the contribution.

(c) The ~~[member's]~~ required ~~[contribution]~~ member contributions shall be reduced by the amount that is paid by the participating employer.

~~[(3)]~~ (4) (a) All member contributions are credited by the ~~[retirement]~~ office to the account of the individual member. ~~[The]~~

(b) This amount, plus ~~[regular]~~ refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.

~~(c) All member contributions are [100%] vested and nonforfeitable. [If a member seeks a refund of contributions upon termination of services, interest at a rate determined by the board shall be added to the member's vested contributions.]~~

~~[(4)] (5) (a) Each member is [deemed] considered to consent to [monthly] payroll deductions of member contributions.~~

~~(b) The payment of compensation less [retirement] these payroll deductions is considered full payment [of the employee's salary] for services rendered by the member.~~

~~[(5) The board shall report to the governor, the Legislature, and each employing unit under Division A or B the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer and employee shall pay the certified contribution rates.]~~

Section 98. Section **49-14-401**, which is renumbered from Section 49-4-401 is renumbered and amended to read:

**Part 4. Defined Benefit**

~~[49-4-401].~~ **49-14-401. Eligibility for service retirement -- Date of retirement -- Qualifications.**

~~[(1) (a) Any member who qualifies for service retirement may retire by submitting to the retirement office an application form notarized by a notary public. The application shall state the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.]~~

~~[(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must be after the last day of actual work.]~~

~~[(c) The member shall actually terminate employment and provide evidence of termination.]~~

~~[(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:]~~

~~(1) A member is qualified to receive an allowance from this system when:~~

~~(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;~~

(b) the member has submitted to the office a notarized retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

~~[(a)]~~ (i) the member has ~~[been credited with]~~ accrued at least 20 years of service credit;

~~[(b)]~~ (ii) the member has ~~[been credited with]~~ accrued at least ten years of service credit and has attained an age of 60 years ~~[or more];~~ or

~~[(c)]~~ (iii) the member has ~~[been credited with]~~ accrued at least four years of service credit and has attained an age of 65 years ~~[or more].~~

(2) (a) The member's retirement date shall be the 1st or the 16th day of the month, as selected

by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days after the date the application is received by the office.

Section 99. Section ~~49-14-402~~, which is renumbered from Section 49-4-402 is renumbered and amended to read:

~~[49-4-402].~~ **49-14-402. Calculation of retirement allowance.**

~~[Upon the service retirement of a member under Section 49-4-401, the members shall receive a retirement allowance determined as follows:]~~

~~[(1) If the member has 20 or more years of public safety service credit, the retirement allowance is a monthly amount equal to:]~~

~~[(a) 2-1/2% of final average monthly salary multiplied by the number of years of public safety service credited, limited to 20 years, plus]~~

~~[(b) 2% of final average monthly salary multiplied by the number of years of public safety service credited in excess of 20 years, up to a maximum of 70%.]~~

~~[(2) If the member has attained age 60 years but less than age 65 years, and has ten years but less than 20 years of public safety service credit, the retirement allowance is computed the same as under Subsection (1):]~~

~~[(3) If the member has attained age 65 or older and has four or more years of public safety service credit the retirement allowance shall be a monthly amount equal to 2-1/2% of final average~~

monthly salary multiplied by the number of years of public safety service credited, limited to 20 years, plus 2% of final average monthly salary multiplied by the number of years of public safety service credit in excess of 20 years.]

~~[(4) Years of service include any fractions of years of service to which the member may be entitled. Notwithstanding the formula for computing the service retirement allowance for members participating in the program, the board shall, in as far as practical, adjust the percentage factor used in the service retirement allowance formula, in its application to the years of service of a retiring member to a percentage amount not less than 1-1/2% nor more than 2-1/2% per year of service, limited to the first 20 years. The foregoing adjustment when made shall maintain the retirement trust account on an actuarially sound basis if the employer contributions, member contributions, and earnings of the fund are insufficient to fund the benefits provided for members participating in the program.]~~

(1) A retiree under this system shall receive an allowance equal to:

(a) 2.5% of final average monthly salary multiplied by the number of years of service credit, limited to 20 years; plus

(b) 2% of final average monthly salary, multiplied by the number of years of service credit in excess of 20 years.

(2) Except as modified by cost-of-living adjustments, an allowance under this system may not exceed 70% of a retiree's final average monthly salary.

Section 100. Section **49-14-403**, which is renumbered from Section 49-4-601 is renumbered and amended to read:

~~[49-4-601].~~ **49-14-403. Annual cost-of-living adjustment.**

(1) The [retirement] office shall [compute and pay, upon approval by the board,] make an annual cost-of-living adjustment to: ~~[all retired members after the members have been retired one year. The adjustment shall be equal to the decrease in the purchasing power of the dollar during the preceding year, as measured by the Consumer Price Index, U.S. City Average, prepared by the United States Bureau of Labor Statistics, and shall be limited to a maximum of 2.5% of the retirant's or beneficiary's retirement allowance at the time of retirement. Decreases in the purchasing power~~

~~of the dollar exceeding 2.5% annually shall be accumulated and used in subsequent allowances when the cost-of-living adjustment is less than 2.5%.]~~

~~[(2) The cost-of-living adjustment shall be reduced if the index shows a decline of 4% or more during any period of more than one year. These reductions may not exceed 2% per year based upon the original retirement allowance. Payments made under this section shall be a part of the retired member's allowance. Payments and adjustments for the retirant shall also apply to the beneficiary.]~~

(a) an original allowance paid under Section 49-14-402 and Part 5, Death Benefit, of this chapter if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 101. Section **49-14-501**, which is renumbered from Section 49-4-701 is renumbered and amended to read:

#### **Part 5. Death Benefit**

~~[49-4-701].~~ **49-14-501. Death of active member in Division A -- Payment of benefits.**

(1) If an active member of [the] this system enrolled in Division A under Section [49-4-301] 49-14-301 dies, [the following] benefits are payable [according to the conditions stipulated] as follows:

[(+)] (a) If the death is classified by the office as a line-of-duty death, the [dependent] spouse at the time of death shall receive a lump sum of \$1,000 and [a monthly] an allowance equal to 30%

of the deceased member's final average monthly salary.

~~[(2)]~~ (b) If the death is not classified by the office as a line-of-duty death, ~~[the following]~~ benefits are payable as follows:

~~[(a)]~~ (i) If the member has accrued less than ten years of public safety service credit ~~[at the time of death]~~, the beneficiary shall receive the sum of \$1,000 or a refund of the member's member contributions, whichever ~~[amount]~~ is greater.

~~[(b)]~~ (ii) If the member has accrued ten or more years of public safety service credit at the time of death, the ~~[dependent]~~ spouse at the time of death shall receive the sum of \$500, plus ~~[a monthly]~~ an allowance equal to 2% of the ~~[deceased]~~ member's final average monthly salary~~;~~ for each year of service credit ~~[standing to the member's account, with a]~~ accrued by the member up to a maximum of 30% [allowed] of the member's final average monthly salary.

~~[(3) No benefits]~~ (2) Benefits are not payable to minor children of members covered under Division A.

~~[(4)]~~ (3) If ~~[the]~~ a benefit is not distributed under this section, and ~~[there is]~~ the member has designated a beneficiary, the ~~[vested contribution]~~ member's member contributions shall be paid to the beneficiary.

Section 102. Section **49-14-502**, which is renumbered from Section 49-4-702 is renumbered and amended to read:

~~[49-4-702].~~ **49-14-502. Death of active member in Division B -- Payment of benefits.**

(1) If an active member of ~~[the]~~ this system enrolled in Division B under Section ~~[49-4-301]~~ 49-14-301 dies, ~~[the following]~~ benefits are payable ~~[according to the conditions stipulated]~~ as follows:

~~[(1)]~~ (a) If the member has accrued less than 20 years of public safety service credit and if the death is classified by the office as a line-of-duty death, the ~~[dependent]~~ spouse at the time of death shall receive a lump sum of \$1,500 and ~~[a monthly]~~ an allowance equal to ~~[37-1/2%]~~ 37.5% of the ~~[deceased]~~ member's final average monthly salary.

~~[(2)]~~ (b) If the death is not classified by the office as a line-of-duty death, ~~[and]~~ benefits are payable as follows:

(i) If the ~~[deceased]~~ member has accrued two or more years of public safety service credit at the time of death, the death is considered a line-of-duty death and the benefit ~~[payable is the same]~~ shall be paid as provided under Subsection (1)(a).

~~[(3)]~~ (ii) If ~~[the death is not classified as line-of-duty death and the deceased]~~ the member has accrued less than two years of public safety service credit at the time of death, the ~~[benefit payable is]~~ spouse at the time of death shall receive a refund of the ~~[deceased]~~ member's member contributions, plus 50% of the member's most recent 12 months' ~~[regular salary]~~ compensation.

~~[(4)]~~ (c) (i) If the ~~[deceased]~~ member has accrued two or more years of public safety service credit at the time of death, ~~[the benefit payable to]~~ each of the member's unmarried children to age 18 ~~[is]~~ or dependent unmarried mentally or physically disabled children shall receive a monthly allowance of \$50.

(ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or as otherwise provided under ~~[Title 49, Chapter 1]~~ Sections 49-11-609 and 49-11-610.

~~[(5)]~~ (2) In the event of the death of both parents, the spouse's benefit shall be prorated and paid to each of the member's unmarried children to age 18.

~~[(6)]~~ (3) If ~~[the]~~ a benefit is not distributed under ~~[this section]~~ the previous subsections, and ~~[there is]~~ the member has designated a beneficiary, the ~~[vested contribution-]~~ member's member contributions shall be paid to the beneficiary.

~~[(7)]~~ (4) The ~~[total monthly]~~ combined annual payments ~~[to be]~~ made ~~[on behalf of any one deceased member's account]~~ to the beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.

Section 103. Section **49-14-503**, which is renumbered from Section 49-4-703 is renumbered and amended to read:

~~[49-4-703].~~ **49-14-503. Benefits payable upon death of inactive member.**

~~[(1)]~~ The death benefit payable on behalf of an active or an inactive member who dies and has no spouse or minor children as a beneficiary is 100% of the deceased member's contributions or \$500, whichever amount is larger.]

~~[(2)]~~ (a) The death benefit payable on behalf of an inactive member who dies and is survived

by a spouse to whom that member was married at the time of death is a monthly pension if that member had 20 or more years of public safety service at the time of death.]

~~[(b) The pension payable to the spouse is]~~

(1) If an inactive member who has less than 20 years of public safety service credit dies, the designated beneficiary shall receive a refund of the member's member contributions or \$500, whichever is greater.

(2) (a) If an inactive member with 20 or more years of public safety service credit dies, the spouse at the time of death shall receive an allowance in an amount of 50% of the amount the member would have received had retirement occurred on the first of the month in which the death occurred[, the benefit being].

(b) This allowance shall be based [upon] on years of service credit and final average monthly salary under Section [49-4-402] 49-14-402, reduced actuarially from age 50 to the age [at] of the member at the time of death if the member is under age 50 at the time of death.

~~[(3) The death benefit payable upon the death of an inactive member who has less than 20 years of public safety service and who leaves a spouse or minor children as the beneficiary is a 100% refund of the deceased member's contributions or \$500, whichever is larger.]~~

Section 104. Section **49-14-504**, which is renumbered from Section 49-4-704 is renumbered and amended to read:

~~[49-4-704].~~ **49-14-504. Benefits payable upon death of retired member.**

(1) If ~~[the member]~~ a retiree who retired under either 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]~~ dies, the retiree's spouse at the time of death shall receive an allowance equal to 65% of the allowance that was being paid to the ~~[retired member]~~ retiree at the time of death.

(2) ~~[(a)]~~ If the ~~[member]~~ retiree retired solely under Division B ~~[or]~~ and dies leaving ~~[dependent]~~ unmarried children under the age of 18 or dependent unmarried mentally or physically disabled 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]~~ Subsection 49-14-502(1)(c) which is payable on the first day of the month following the

month in which the ~~[retirant]~~ retiree died.

~~[(c) Payment of the full pension for this latter month shall be made to the dependent beneficiary in lieu of the deceased member.]~~

Section 105. Section **49-14-505** is enacted to read:

**49-14-505. Benefits for surviving spouse under Division A or Division B.**

The spouse at the time of death, if eligible, shall receive a benefit computed under either Division A or Division B, whichever provides the larger benefit, but may not receive a benefit under both divisions if it would result in a duplicate benefit.

Section 106. Section **49-15-101**, which is renumbered from Section 49-4a-101 is renumbered and amended to read:

**CHAPTER 15. PUBLIC SAFETY NONCONTRIBUTORY RETIREMENT ACT**

**Part 1. General Provisions**

**[49-4a-101]. 49-15-101. Title.**

This chapter is known as the "Public Safety Noncontributory Retirement Act."

Section 107. Section **49-15-102**, which is renumbered from Section 49-4a-103 is renumbered and amended to read:

**[49-4a-103]. 49-15-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation[;]" ~~["salary," or "wages"]~~ means the total amount of payments ~~[which]~~ that are [currently] includable in gross income [made by an employer to an employee for services rendered to the employer as base income for the position covered under the retirement system] received by a public safety service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to ~~[any salary deductions or reductions for any]~~ the deduction of any amounts the public safety service employee authorizes to be deducted for salary deferral or [pretax benefit programs] other benefits authorized by federal law.

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

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform ~~[or]~~, travel ~~[allowances]~~, or similar payments;

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

(vi) all contributions made by ~~[an]~~ a participating employer under this ~~[plan]~~ system or under any other employee benefit system or plan maintained by ~~[an]~~ a participating employer for the benefit of a member or participant.

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

(2) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (2)(a) and (b).

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

(b) In cases where the ~~[employing unit]~~ participating employer provides acceptable documentation to the ~~[board]~~ office, the limitation in Subsection ~~[(2)]~~ (3)(a) may be exceeded if:

(i) the ~~[member]~~ public safety service employee has transferred from another ~~[employing unit]~~ agency; or

(ii) the ~~[member]~~ public safety service employee has been promoted to a new position.

~~[(3) "Full-time service" means 2,080 hours a year.]~~

~~[(4)]~~ (3) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a ~~[peace officer or other]~~ public safety ~~[member]~~ service employee.

(4) "Participating employer" means an employer which meets the participation requirements

of Section 49-15-201.

(5) (a) "Public safety service" means ~~[full-time paid service]~~ at least 2,080 hours of regularly scheduled compensated employment per year rendered by a member who is a:

~~[(a)]~~ (i) law enforcement ~~[officers]~~ officer in accordance with Section 53-13-103;

~~[(b)]~~ (ii) correctional ~~[officers]~~ officer in accordance with Section 53-13-104; and

~~[(c)]~~ (iii) special function ~~[officers]~~ officer approved in accordance with Section 49-4a-203 and Section 53-13-105.

(b) "Public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.

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

(7) "System" means the Public Safety Noncontributory Retirement System created under this chapter.

~~[(6)]~~ (8) "Years of service credit" ~~[or "service years"]~~ means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which ~~[an]~~ a public safety service employee ~~[performed services for an]~~ was employed by a participating employer ~~[or employers]~~, including time the public safety service employee was absent in the service of the United States government on military duty.

Section 108. Section **49-15-103**, which is renumbered from Section 49-4a-201 is renumbered and amended to read:

~~[49-4a-201].~~                    **49-15-103. Creation of system.**

There is created for ~~[public safety personnel of the state and its political subdivisions]~~ members performing public safety service and who are employed by a participating employer the "Public Safety Noncontributory Retirement System."

Section 109. Section **49-15-104**, which is renumbered from Section 49-4a-202 is renumbered and amended to read:

~~[49-4a-202].~~                    **49-15-104. Creation of trust fund.**

(1) There is created the "Public Safety Noncontributory Retirement Trust Fund" for the

purpose of paying the benefits and the costs of administering this system.

(2) The fund shall consist of a number of individual trust accounts created as needed to receive the money and assets transferred into them from the respective terminated systems, all money paid into them, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by [~~Title 49,~~] Chapter [~~7~~] 11, Utah State Retirement Systems Administration.

Section 110. Section **49-15-201**, which is renumbered from Section 49-4a-203 is renumbered and amended to read:

### **Part 2. Membership Eligibility**

#### ~~[49-4a-203].~~ **49-15-201. System membership -- Eligibility.**

~~[(1) Any person entering full-time employment in a state public safety position after the effective date of this chapter shall automatically become a member of the noncontributory retirement system.]~~

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

~~[(2) Any person in full-time employment in a state public safety position prior to the effective date of this system may either become a member of this noncontributory system or remain a member of the Public Safety Retirement System]~~

(b) A public safety service employee employed by the state prior to July 1, 1989, may either elect to receive service credit in this system or continue to receive service credit under the system established under [~~Title 49,~~] Chapter [~~4~~] 14, Public Safety Contributory Retirement Act, by following the procedures established by the board [~~pursuant to~~] under this chapter.

~~[(3) (a) Membership in the noncontributory system is optional for political subdivisions, except that once a political subdivision elects to participate in the noncontributory system that election is final and binding upon the political subdivision.]~~

~~[(b) Persons entering public safety employment with political subdivisions that elect to participate in the noncontributory system after the effective date of this chapter shall automatically~~

~~become members of the noncontributory retirement system.]~~

~~[(c) Any person in full-time employment with the political subdivision prior to that election to participate in this system may either become a member of the noncontributory retirement system or remain a member of the Public Safety Retirement System established under Title 49, Chapter 4, by following the procedures established by the board pursuant to this chapter.]~~

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

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

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

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

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

~~[(4) In cities, counties, or other employing units of government]~~

(3) (a) (i) A participating employer that [have] has public safety service and [fire fighter personnel where] firefighter service employees that require cross-training and duty [is required, the employing unit may] shall enroll those dual purpose [personnel] employees in the [retirement] system in which the greatest amount of [duty] time is [contemplated and] actually worked [in accordance with Subsection (3)].

(ii) The [personnel] employees shall either be full-time public safety service or [fire fighter] full-time firefighter service employees of the [employing unit. New public safety employing units after July 1, 1989, are covered under this chapter] participating employer.

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

participating employer shall receive written permission from the office.

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

~~[(5) (a) The board may by rule establish other peace officer groups for purposes of:]~~

~~[(i) recommending eligibility for coverage under this system; and]~~

~~[(ii) recommending contribution rates.]~~

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

~~[(b)(i)]~~ (5) (a) (i) Each [employing unit covered by] participating employer participating in this system shall annually submit to the [retirement] office a schedule indicating the positions to be covered under this system in accordance with [Section 49-4a-103] this chapter.

(ii) The [retirement] office may require documentation to justify the inclusion of any position under this system.

~~[(ii)]~~ (b) If there is a dispute between the [retirement] office and [an employing unit] a participating employer or employee over any position to be covered, the disputed position shall be submitted to the Peace Officer Standards and Training Council established under Section 53-6-106 for determination.

~~[(iii)(A)]~~ (c) (i) The Peace Officer Standards and Training Council's authority to decide eligibility [questions for peace officers] for public safety service credit is limited to claims for coverage under [the Public Safety Retirement System] this system for time periods [subsequent to] after July 1, 1989.

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

~~[(C)]~~ (iii) Except as provided under Subsection ~~[(5)(b)(iii)(D)]~~ (5)(c)(iv), a decision of the Peace Officer Standards and Training Council granting [an individual or] a position coverage under [the Public Safety Retirement System] this system may only be applied prospectively from the date of that decision.

~~[(D)]~~ (iv) A decision of the Peace Officer Standards and Training Council granting [an individual or] a position coverage under [the Public Safety Retirement System] this system may be

applied retroactively only if:

~~[(F)] (A)~~ the ~~[employing unit]~~ participating employer covered other similarly situated ~~[employees under the Public Safety Retirement System]~~ positions under this system during the time period in question; and

~~[(H)] (B)~~ the ~~[employee]~~ position otherwise meets all eligibility requirements for ~~[membership in the Public Safety Retirement System]~~ receiving service credit in this system during the period for which service credit is to be granted.

~~[(c)-(i)] (6)~~ The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the ~~[retirement]~~ office and ~~[an employing unit]~~ a participating employer or employee over a position to be covered under this system.

~~[(ii)] (7)~~ The Peace Officer Standards and Training Council shall comply with Title 63, Chapter 46b, Administrative Procedures Act, in ~~[conducting adjudicative proceedings]~~ resolving coverage disputes in this system.

~~[(6) Employees who have performed public safety service and who then transfer or are]~~

~~(8)~~ A public safety service employee who is transferred or promoted to an administration ~~[positions]~~ position not covered by this system shall continue to earn public safety service credit ~~[under this chapter]~~ in this system as long as ~~[they remain]~~ the employee remains employed in the same department.

~~[(7) Unless the Legislature fails to provide funding in the appropriations act for the inclusion of special function officers in the noncontributory system, special function officers shall be eligible for membership in the noncontributory system if approved by the Peace Officers Standards and Training Council.]~~

~~(9)~~ Any employee who is transferred to the Division of Information Technology Services from the Department of Public Safety prior to January 1, 1992, and who was a member in this system, shall be entitled to remain a member in this system regardless of whether or not the employee's current position is covered by this system.

~~[(8)] (10) (a) [The]~~ To determine that a position is covered under this system, the office and,

if a coverage dispute arises, the Peace Officer Standards and Training Council [~~in determining disputes between the retirement office and an employing unit or employee over a position to be covered under this system, shall determine that to be eligible for membership in this system]~~ shall find that the position requires the employee to:

(i) [~~is required as a duty of employment to serve in a position that may]~~ place the [~~employee at risk to]~~ employee's life [and] or personal safety at risk; and

(ii) [~~is required to]~~ complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

(b) If [~~an employee]~~ a position satisfies the requirements of Subsection [~~(8)~~] (10)(a), the office and Peace Officer Standards and Training Council shall consider [~~in determining eligibility for membership in the system,]~~ whether the position requires the employee to:

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

(ii) [~~performs]~~ perform duties that consist primarily of providing community protection; and

(iii) [~~is required to]~~ respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

[~~(9)~~] (11) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection [~~(8)~~] (10) in making its recommendation.

[~~(10)~~] (12) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63, Chapter 46b, Administrative Procedures Act.

(13) If a participating employer's public safety service employees are not covered by this system under Chapter 14, Public Safety Contributory Retirement Act, as of January 1, 1998, those public safety service employees who may otherwise qualify for membership in this system shall, at the discretion of the participating employer, remain in their current retirement system.

Section 111. Section **49-15-202**, which is renumbered from Section 49-4a-204 is renumbered and amended to read:

~~[49-4a-204].~~                    **49-15-202. Participation of employers -- Requirements --**

**Admission -- Full participation in system -- Supplemental programs authorized.**

(1) ~~[Any political subdivision, department, or educational institution which]~~ An employer that employs public safety service employees [to perform public safety services] and is required by Section [49-2-204] 49-12-202 or [49-3-204] 49-13-202 to be a participating [employee] employer in the Public Employees' Contributory Retirement System or the Public Employees' Noncontributory Retirement System shall cover all its public safety service employees under [either] one of the following systems:

(a) ~~[the] Chapter 12, Public Employees' Contributory Retirement [System] Act; [or] [the] Public Safety Retirement System. As a participating employer, the political subdivision shall meet all requirements for full participation in the system.]~~

(b) Chapter 13, Public Employees' Noncontributory Retirement Act;

(c) Chapter 14, Public Safety Contributory Retirement Act; or

(d) Chapter 15, Public Safety Noncontributory Retirement Act.

~~[(2) (a) Any organization or agency supported in whole or in part by Utah public funds which is not or may not prior to application have been covered by this act]~~

(2) An employer that covers its public safety employees under Subsection (1)(d) is a participating employer in this system.

(3) If a participating employer under Subsection (1) covers any of its public safety service employees under the Public Safety Contributory Retirement System or the Public Safety Noncontributory Retirement System, that participating employer shall cover all of its public safety service employees under one of those systems.

(4) (a) An employer that is not participating in this system may by resolution of its governing body apply for coverage of its public safety [officers and] service employees by [the] this system. [Upon approval of the board, the organization or agency shall become a participant in the system provided that the board and the political subdivision, or the organization or agency shall agree upon:]

~~[(i) the terms pursuant to which its public safety employees shall become members of the system, such as the effective date of coverage;]~~

~~[(ii) the amount of prior service credit with which they may be credited, if any;]~~

~~[(iii) the amount of any contributions in addition to regular contributions that will be required to provide any prior service credits or retroactive current service credits from either the employing unit or its employees; and]~~

~~[(iv) the manner in which retroactive current or prior service credits may be established, if any.]~~

~~[(b) Once admitted to the system, an organization or agency may not withdraw from participation, except as provided in Subsection (3), and shall meet all requirements for full participation in the system.]~~

~~[(3) An organization or agency admitted to the system pursuant to Subsection (2), which no longer receives public funds, may withdraw from the system if:]~~

~~[(a) the organization or agency's governing body by resolution petitions the board for withdrawal from the system; and]~~

~~[(b) the board approves the withdrawal.]~~

~~[(4) Once approval to withdraw is granted, the organization or agency and its employees shall be governed by Sections 49-1-502 and 49-1-503.]~~

~~[(5) No participating employer may maintain full participation in the system by covering only part of its public safety employees.]~~

(b) Upon approval of the board, the employer shall become a participating employer in this system subject to this title.

(5) If a participating employer purchases service credit on behalf of employees for service rendered prior to the participating employer's admission to this system, the service credit must be purchased in a nondiscriminatory manner on behalf of all current and former employees who were eligible for service credit at the time service was rendered.

(6) A participating employer may not withdraw from this system.

(7) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

Section 112. Section **49-15-203**, which is renumbered from Section 49-4a-206 is renumbered

and amended to read:

~~[49-4a-206].~~                    **49-15-203. Exemption of certain employees from coverage.**

(1) ~~[(a)]~~ A public safety service employee serving as the Commissioner of Public Safety, or as the elected or appointed sheriff or chief of police of a public safety organization, is excluded from coverage under this system if that public safety service employee files a formal written request seeking ~~[exclusion from coverage]~~ exemption.

~~[(b)]~~ (2) Except as provided in Subsection ~~[(1)(c)]~~ (3), the public safety service employee may not continue employment ~~[in]~~ with the same ~~[covered]~~ participating employer ~~[unit]~~ and receive ~~[payment from the retirement office]~~ an allowance from the office based on public safety service at the same time.

~~[(c)]~~ (3) An elected sheriff who is eligible to retire under Section ~~[49-4a-401]~~ 49-15-401 may:

~~[(i)]~~ (a) retire from ~~[the]~~ this system and receive ~~[a retirement payment]~~ an allowance;

~~[(ii)]~~ (b) continue in the elected ~~[office]~~ position; and

~~[(iii)]~~ (c) file for the ~~[exclusion]~~ exemption under Subsection (1)~~[(a)]~~.

~~[(2) Any member of the system or any newly hired employee who is eligible for coverage and who is drawing a military pension may, by application to the retirement administrator, be exempted from participating in the system.]~~

Section 113. Section **49-15-204**, which is renumbered from Section 49-4a-205 is renumbered and amended to read:

~~[49-4a-205].~~                    **49-15-204. Conversion to system -- Time schedule.**

The following laws govern conversion to the Public Safety Noncontributory Retirement System:

(1) For ~~[persons]~~ an employee governed by Subsection ~~[49-4a-203(2)]~~ 49-15-201(1)(a), the election to participate in ~~[the noncontributory]~~ this system shall be made within six months of ~~[the effective date of this chapter]~~ July 1, 1989.

(2) (a) (i) For ~~[political subdivisions]~~ an employer governed by Subsection ~~[49-4a-203(3)]~~ 49-15-201(2)(a), the election to participate ~~[as a local government unit]~~ in this system shall be made

within six months of [~~the effective date of this chapter~~] July 1, 1989.

(ii) The [~~political subdivision~~] employer shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect.

(iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the [~~political subdivision~~] employer, at which all public safety service employees of the [~~political subdivision~~] employer shall be given an opportunity to be heard on the question of participating in this [~~noncontributory retirement~~] system.

(iv) Notice of the hearing shall be mailed to all public safety service employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.

(b) A [~~person in full-time employment with a political subdivision~~] public safety service employee of an employer, prior to its election to participate, has six months from the date the [~~political subdivision~~] employer elects to participate in which to elect to become [~~a member of the noncontributory~~] eligible for service credit in this system.

(3) (a) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public Safety Noncontributory Retirement System beginning July 1, 1998, and ending December 31, 1998.

(b) A person converting to the system during this time period [~~shall be~~] is subject to all the rights, limitations, terms, and conditions of [~~Title 49,~~] Chapter [~~4a~~] 15, Public Safety Noncontributory Retirement Act.

Section 114. Section **49-15-301**, which is renumbered from Section 49-4a-301 is renumbered and amended to read:

### **Part 3. Contributions**

~~[49-4a-301].~~      **49-15-301. Contributions -- Two divisions -- Report.**

[~~(1) The system shall be maintained on a financially and actuarially sound basis by means of contributions by the participating employer.~~]

(1) Participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates, [~~the~~] this system is divided into two

divisions according to Social Security coverage.

(a) [~~Public safety employees~~] Members of this system with on-the-job Social Security coverage are Division A. [~~These are the state, Bountiful, and Division A other peace officer units.~~]

(b) [~~Public safety employees~~] Members of this system without on-the-job Social Security coverage are in Division B. [~~These are Logan, Ogden, Provo, Salt Lake City, and Division B other peace officer units.~~]

~~[(2) The board shall report to the governor, the Legislature, and each employing unit under Division A or B the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer shall pay the certified contribution rates.]~~

Section 115. Section **49-15-401**, which is renumbered from Section 49-4a-401 is renumbered and amended to read:

#### **Part 4. Defined Benefit**

~~[49-4a-401].~~            **49-15-401. Eligibility for service retirement -- Date of retirement -- Qualifications.**

~~[(1) (a) Any member who qualifies for service retirement may retire by submitting to the retirement office an application form notarized by a notary public. The application shall state the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.]~~

~~[(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must be after the last day of actual work.]~~

~~[(c) The member shall actually terminate employment and provide evidence of termination.]~~

~~[(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:]~~

(1) A member is qualified to receive an allowance from this system when:

(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

~~[(a)]~~ (i) the member has ~~[been credited with]~~ accrued at least 20 years of service credit;

~~[(b)]~~ (ii) the member has ~~[been credited with]~~ accrued at least ten years of service credit and has attained an age of 60 years ~~[or more]~~; or

~~[(c)]~~ (iii) the member has ~~[been credited with]~~ accrued at least four years of service and has attained an age of 65 years ~~[or more]~~.

(2) (a) The member's retirement date shall be the 1st or the 16th day of the month, as selected

by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days before or after the date the application is received by the office.

Section 116. Section **49-15-402**, which is renumbered from Section 49-4a-402 is renumbered and amended to read:

~~[49-4a-402].~~            **49-15-402. Calculation of retirement benefit.**

~~[Upon the service retirement of a member under Section 49-4a-401, the member shall receive a retirement allowance determined as follows:]~~

~~[(1) If the member has 20 or more years of public safety service credit, the retirement allowance is a monthly amount equal to:]~~

~~[(a) 2-1/2% of final average monthly salary multiplied by the number of years of public safety service credited, limited to 20 years, plus]~~

~~[(b) 2% of final average monthly salary multiplied by the number of years of public safety service credited in excess of 20 years, up to a maximum of 70%.]~~

~~[(2) If the member has attained age 60 years but less than age 65 years, and has ten years but less than 20 years of public safety service credit, the retirement allowance is computed the same as under Subsection (1).]~~

~~[(3) If the member has attained age 65 or older and has four or more years of public safety service credit the retirement allowance shall be a monthly amount equal to 2-1/2% of final average monthly salary multiplied by the number of years of public safety service credited, limited to 20 years, plus 2% of final average monthly salary multiplied by the number of years of public safety~~

service credit in excess of 20 years.]

~~[(4) Years of service include any fractions of years of service to which the member may be entitled.]~~

(1) A retiree under this system shall receive an allowance equal to:

(a) 2.5% of final average monthly salary multiplied by the number of years of service credit, limited to 20 years; plus

(b) 2% of final average monthly salary, multiplied by the number of years of service credit in excess of 20 years.

(2) Except as modified by cost-of-living adjustments, an allowance under this system may not exceed 70% of a retiree's final average monthly salary.

Section 117. Section **49-15-403**, which is renumbered from Section 49-4a-601 is renumbered and amended to read:

~~[49-4a-601].~~                    **49-15-403. Annual cost-of-living adjustment.**

~~[(1) The retirement office shall compute and pay, upon approval by the board, an annual cost-of-living adjustment to all retired members after the members have been retired one year. The adjustment shall be equal to the decrease in the purchasing power of the dollar during the preceding year, as measured by the Consumer Price Index, U.S. City Average, prepared by the United States Bureau of Labor Statistics, and shall be limited to a maximum of 2.5% of the retirant's or beneficiary's retirement allowance at the time of retirement. Decreases in the purchasing power of the dollar exceeding 2.5% annually shall be accumulated and used in subsequent allowances when the cost-of-living adjustment is less than 2.5%.]~~

~~[(2) The cost-of-living adjustment shall be reduced if the index shows a decline of 4% or more during any period of more than one year. These reductions may not exceed 2% per year based upon the original retirement allowance. Payments made under this section shall be a part of the retired member's allowance. Payments and adjustments for the retirant shall also apply to the beneficiary.]~~

(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-15-402 and Part 5, Death Benefit, of this

chapter if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 118. Section **49-15-501**, which is renumbered from Section 49-4a-701 is renumbered and amended to read:

#### **Part 5. Death Benefit**

~~[49-4a-701].~~      **49-15-501. Death of active member in Division A -- Payment of benefits.**

(1) If an active member of ~~[the]~~ this system enrolled in Division A under Section ~~[49-4a-301]~~ 49-15-301 dies, ~~[the following]~~ benefits are payable ~~[according to the conditions stipulated]~~ as follows:

~~[(1)](a)~~ ~~[Except as provided in Subsection (1)(b), if]~~ If the death is classified by the office as a line-of-duty death, ~~[the dependent]~~ benefits are payable as follows:

(i) If the member has accrued less than 20 years of public safety service credit, the spouse at the time of death shall receive a lump sum of \$1,000 and [a monthly] an allowance equal to 30% of the [deceased] member's final average monthly salary.

~~[(b)]~~ (ii) If the member has accrued 20 or more years of public safety service credit, the member shall be considered to have retired with [a monthly] an allowance calculated under [Subsection 49-4a-402(1)] Section 49-15-402 and the [dependent] spouse at the time of death shall receive the death benefit payable to a [dependent] spouse at the time of death under [Subsection

~~49-4a-704(1)~~ Section 49-15-504.

~~(2)~~ (b) If the death is not classified as a line-of-duty death by the office, ~~[the following]~~ benefits are payable as follows:

~~(a)~~ (i) If the member has accrued less than ten years of public safety service credit ~~[at the time of death]~~, the beneficiary shall receive the sum of \$1,000 or a refund of the member's member contributions, whichever ~~[amount]~~ is greater.

~~(b)~~ (ii) If the member has accrued ten or more years, but less than 20 years of public safety service credit at the time of death, the ~~[dependent]~~ spouse at the time of death shall receive the sum of \$500, plus ~~[a monthly]~~ an allowance equal to 2% of the ~~[deceased]~~ member's final average monthly salary~~;~~ for each year of service credit ~~[standing to the member's account, with]~~ accrued by the member up to a maximum of 30% [allowed] of the member's final average monthly salary.

~~(c)~~ (iii) If the member has accrued 20 or more years of public safety service credit, the benefit shall be calculated as provided in Subsection (1)~~(b)~~(a)(ii).

~~(3) No benefits]~~ (2) Benefits are not payable to minor children under Division A.

~~(4)~~ (3) If ~~[the]~~ a benefit is not distributed under this section, and ~~[there is]~~ the member has designated a beneficiary, the ~~[vested]~~ member's member contribution shall be paid to the beneficiary.

Section 119. Section **49-15-502**, which is renumbered from Section 49-4a-702 is renumbered and amended to read:

~~[49-4a-702].~~                    **49-15-502. Death of active member in Division B -- Payment of benefits.**

(1) If an active member of ~~[the]~~ this system enrolled in Division B under Section ~~[49-4a-301]~~ 49-15-301 dies, ~~[the following]~~ benefits are payable ~~[according to the conditions stipulated]~~ as follows:

~~(1)~~ (a) If the member has accrued less than 20 years of public safety service credit and if the death is classified by the office as a line-of-duty death, the ~~[dependent]~~ spouse at the time of death shall receive a lump sum of \$1,500 and ~~[a monthly]~~ an allowance equal to ~~[37-1/2%]~~ 37.5% of the ~~[deceased]~~ member's final average monthly salary.

~~(2)~~ (b) If the death is not classified by the office as a line-of-duty death, and the ~~[deceased]~~

member has accrued two or more years of public safety service credit at the time of death, the death is considered line-of-duty and the benefit ~~[payable is the same]~~ shall be paid as provided under Subsection (1)(a).

~~[(3)]~~ (c) If the death is not classified by the office as a line-of-duty death, and the ~~[deceased]~~ member has accrued less than two years of public safety service credit at the time of death, the ~~[benefit payable is]~~ spouse at the time of death shall receive a refund of the ~~[deceased]~~ member's member contributions, plus 50% of the member's most recent 12 months' ~~[regular salary]~~ compensation.

~~[(4)]~~ (d) (i) If the ~~[deceased]~~ member has accrued two or more years of public safety service credit at the time of death, ~~[the benefit payable to]~~ each of the member's unmarried children to age 18 ~~[is a monthly]~~ or dependent unmarried mentally or physically disabled children shall receive an allowance of \$50.

(ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or as otherwise provided under ~~[Title 49, Chapter 1]~~ Section 49-11-609 or 49-11-610.

~~[(5)]~~ (2) In the event of the death of both parents, the spouse's benefit shall be prorated and paid to each of the member's unmarried children to age 18.

~~[(6)]~~ (3) If ~~[the]~~ a benefit is not distributed under [this section, and there is] the previous subsections, and the member has designated a beneficiary, the ~~[vested contribution]~~ member's member contributions shall be paid to the beneficiary.

~~[(7)]~~ (4) The ~~[total monthly]~~ combined payments ~~[to be made on behalf of any one deceased member's account]~~ to beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.

Section 120. Section **49-15-503**, which is renumbered from Section 49-4a-703 is renumbered and amended to read:

~~[49-4a-703]~~.                    **49-15-503. Benefits payable upon death of inactive member.**

~~[(1) The death benefit payable on behalf of an active or an inactive member who dies and has no spouse or minor children as a beneficiary is 100% of the deceased member's contributions or \$500, whichever amount is greater.]~~

~~[(2) (a) The death benefit payable on behalf of an inactive member who dies and is survived by a spouse to whom that member was married at the time of death is a monthly pension if that member had 20 or more years of public safety service at the time of death.]~~

~~[(b) The pension payable to the spouse is]~~

~~(1) If an inactive member who has less than 20 years of public safety service credit dies, the designated beneficiary shall receive a refund of the member's member contributions or \$500, whichever is greater.~~

~~(2) (a) If an inactive member with 20 or more years of public safety service credit dies, the spouse at the time of death shall receive an allowance in an amount of 50% of the amount the member would have received had retirement occurred on the first of the month in which the death occurred[, the benefit being].~~

~~(b) This allowance shall be based [upon] on years of service credit and final average monthly salary under Section [49-4a-402] 49-15-402, reduced actuarially from age 50 to the age of the member at the time of death [if the member is under age 50 at the time of death].~~

~~[(3) The death benefit payable upon the death of an inactive member who has less than 20 years of public safety service and who leaves a spouse or minor children as the beneficiary is a 100% refund of the deceased member's contributions or \$500, whichever is greater.]~~

Section 121. Section **49-15-504**, which is renumbered from Section 49-4a-704 is renumbered and amended to read:

~~[49-4a-704].~~                    **49-15-504. Benefits payable upon death of retired member.**

(1) If ~~[the member]~~ a retiree who retired under either 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]~~ dies, the retiree's spouse at the time of death shall receive an allowance equal to 65% of the allowance that was being paid to the ~~[retired member]~~ retiree at the time of death.

(2) ~~[(a)]~~ If the ~~[member]~~ retiree retired solely under Division B ~~[or]~~ and dies leaving ~~[dependent]~~ unmarried children under the age of 18 or dependent unmarried mentally or physically disabled 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]~~ Subsection 49-15-502(1)(c) which is payable on the first day of the month following the month in which the ~~[retirant]~~ retiree died.

~~[(c) Payment of the full pension for this latter month shall be made to the dependent beneficiary in lieu of the deceased member.]~~

Section 122. Section **49-15-505** is enacted to read:

**49-15-505. Benefits for surviving spouse under Division A or Division B.**

The spouse at the time of death, if eligible, shall receive a benefit computed under either Division A or Division B, whichever provides the larger benefit, but may not receive a benefit under both divisions if it would result in a duplicate benefit.

Section 123. Section **49-16-101**, which is renumbered from Section 49-5-101 is renumbered and amended to read:

**CHAPTER 16. FIREFIGHTERS' RETIREMENT ACT**

**Part 1. General Provisions**

~~[49-5-101].~~ **49-16-101. Title.**

This chapter is known as the "Firefighters' Retirement Act."

Section 124. Section **49-16-102**, which is renumbered from Section 49-5-103 is renumbered and amended to read:

~~[49-5-103].~~ **49-16-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation[;]" ~~["salary," or "wages"]~~ means the total amount of payments that are ~~[currently]~~ includable ~~[in]~~ as gross income [made by an employer to an employee for services rendered to the employer as base income] which are received by a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to ~~[any salary deductions or reductions]~~ the deduction of member contributions or any amounts the firefighter service employee authorizes to be deducted for [any] salary deferral or [pretax benefit programs] other benefits authorized by federal law[; for the position covered under the retirement system].

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

- (c) "Compensation" does not include:
- (i) overtime;
  - (ii) sick pay incentives;
  - (iii) retirement pay incentives;
  - (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, ~~[or]~~ travel ~~[allowances], or similar payments;~~
  - (v) a lump-sum payment or special payments covering accumulated leave; and
  - (vi) all contributions made by ~~[an]~~ a participating employer under this ~~[plan]~~ system or under any other employee benefit system or plan maintained by ~~[an]~~ a participating employer for the benefit of a member or participant.

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

(2) (a) "Disability" means a physical or mental condition that, in the judgment of the ~~[board]~~ office, is total and presumably permanent, prevents a member from fulfilling the responsibilities of the member's ~~[assignment]~~ position, and prevents the member from performing satisfactorily in some other ~~[assignment]~~ position of the same general class.

(b) The determination of disability is based upon medical and other evidence satisfactory to the ~~[board]~~ office.

~~[(3) "Employer" or "employing unit" means any regularly constituted fire department of a political subdivision for which any employee or member performs services subject to this chapter.]~~

~~[(4) (3) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement[, but not including overtime or lump-sum or special salary adjustments received instead of uniform or other allowances or expenses or other payments made covering accumulated leave] subject to Subsections (3)(a) and (b).~~

(a) Except as provided in Subsection ~~[(4)]~~ (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's ~~[salary]~~ compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by ~~[the Consumer Price Index prepared by the]~~ a

United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the [~~employing unit~~] participating employer provides acceptable documentation to the [~~board~~] office the limitation in Subsection [~~(4)~~] (3)(a) may be exceeded if:

(i) the member has transferred from another [~~employing unit~~] agency; or

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

[~~(5)~~] (4) "Firefighter service" means [~~full-time paid service rendered as an individual or as a member of a group of firefighters regularly assigned to~~] at least 2,080 hours of regularly scheduled compensated employment per year rendered by a member who is a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department, but does not include secretarial staff or other similar employees.

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

[~~(6) "Full-time service" means 2,080 hours per year.~~]

[~~(7) "Inactive member" means a member who has received no compensation for a period of longer than four months.~~]

[~~(8)~~] (6) "Line-of-duty death or disability" means a death or any physical or mental disability resulting from external force, violence, or disease [~~occasioned by an act of duty as a firefighter and includes for a paid firefighter, after five years of credited service, any death or disability resulting from heart disease, lung disease, or respiratory tract, but if a firefighter ceases to be a contributing member because of personal illness or service-connected disability, neither of which is related to~~] directly resulting from firefighter service.

(a) A paid firefighter who has five years of firefighter service credit is eligible for a line-of-duty death or disability resulting from heart [~~or~~] disease, lung disease [~~nor the~~], or respiratory tract condition.

(b) A paid firefighter who receives a service connected disability benefit for [a period of] more than six months [~~or more and then again becomes a contributing member, the provision relating to death or disability resulting from~~] due to violence or illness other than heart disease, lung

disease, or respiratory [disease does not apply until the member again becomes a contributing member for a period of not less than two years or] tract condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty death or disability benefit due to heart disease, lung disease, or respiratory tract condition for two years after the firefighter returned to work unless clear and [precise] convincing evidence is presented that the heart disease, lung disease, or respiratory [disease] tract condition was[, in fact, occasioned in the line-of-duty] directly a result of firefighter service.

~~[(9) (a) "Member" means any person included in the membership of the retirement system.]~~

~~[(b) A person is a member if the person has contributions on deposit with the retirement system.]~~

~~[(c) A person hired on or after July 1, 1971, in a fire department, who is assigned directly to a clerical position, and because of lack of training in fire fighting techniques, is not subject to reassignment into positions of hazardous duty, is not eligible for membership in this system.]~~

~~[(i) The person in a clerical position shall become a contributing member of the appropriate retirement system.]~~

~~[(ii) The required employer contributions shall be paid by the fire department.]~~

~~[(iii) This membership exclusion may not be interpreted to prohibit the assignment of a disabled or partially disabled firefighter to that position.]~~

~~[(iv) If Subsection (9)(c)(iii) applies, the firefighter retains status as a contributing member of this system and continues to accrue service credits while so employed.]~~

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

~~[(10)]~~ (8) "Regularly constituted fire department" means a fire department that employs a [full-time] fire chief [and promulgates rules] who performs firefighter service for at least 2,080 hours of regularly scheduled paid employment per year.

~~[(11) (a) "Service" or "covered service" means firefighter service rendered an employer for compensation included in computations relating to membership status or benefit rights under this chapter.]~~

~~[(b) A retirement allowance or other benefit may not be granted under this system that is based upon the same service for retirement benefits under some other retirement system administered by the board.]~~

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

~~[(12)]~~ (10) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who is on the rolls of a regularly constituted fire department.

(b) An individual that volunteers assistance but is not a regularly enrolled firefighter is not a volunteer firefighter.

~~[(c) Service as a volunteer firefighter is not creditable towards qualifying for a service retirement allowance.]~~

~~[(13)]~~ (11) "Years of service credit" [or "service years"] means the number of periods [~~consisting~~], each to consist of 12 full months as determined by the board, whether consecutive or not, during which [~~an~~] a firefighter service employee [~~performed services for an~~] was employed by a participating employer or received full-time pay while on sick leave, including any time the firefighter service employee was absent in the service of the United States on military duty.

Section 125. Section **49-16-103**, which is renumbered from Section 49-5-201 is renumbered and amended to read:

~~[49-5-201].~~ **49-16-103. Creation of system.**

There is created for [~~firefighters in this state~~] members performing firefighter service and who are employed by a participating employer the "Firefighters' Retirement System."

Section 126. Section **49-16-104**, which is renumbered from Section 49-5-202 is renumbered and amended to read:

~~[49-5-202].~~ **49-16-104. Creation of trust fund.**

(1) There is created the "Firefighters' Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

(2) The fund shall consist of all money and assets transferred to it from any terminated system, all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) The custody, management, and investment of the fund shall be governed by ~~[Title 49,]~~ Chapter ~~[†]~~ 11, Utah State Retirement Systems Administration.

Section 127. Section **49-16-201**, which is renumbered from Section 49-5-203 is renumbered and amended to read:

### **Part 2. Membership Eligibility**

#### **~~[49-5-203].~~ 49-16-201. System membership -- Eligibility.**

~~[(1) Any employee who performs covered services for any political subdivision after the effective date of this system shall become a member of this retirement system.]~~

~~[(2) (a) Any new employee engaged to perform covered services for an agency or political subdivision after the effective date of this chapter shall undergo a physical examination to determine the employee's fitness for employment, and file a membership form with the retirement office. The employer shall notify the administrator of the employee's employment within 30 days of employment.]~~

~~[(b) In political subdivisions with]~~

~~(1) A firefighter service employee who performs firefighter service for an employer participating in this system is eligible for service credit in this system upon the earliest of:~~

~~(a) July 1, 1971, if the firefighter service employee was employed by the participating employer on July 1, 1971, and the participating employer was participating in this system on that date;~~

~~(b) the date the participating employer begins participating in this system if the firefighter service employee was employed by the participating employer on that date; or~~

~~(c) the date the firefighter service employee is hired to perform firefighter services for a participating employer.~~

~~(2) (a) (i) A participating employer that has public safety service and firefighter ~~[personnel where]~~ service employees that require cross-training and duty ~~[is required, the employing unit may]~~ shall enroll the dual purpose ~~[personnel]~~ employees in the ~~[retirement]~~ system in which the greatest amount of ~~[duty]~~ time is ~~[contemplated and]~~ actually worked.~~

~~(ii) The ~~[personnel]~~ employees shall either be full-time public safety service or full-time~~

firefighter service employees of the [employing unit] participating employer.

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

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

(3) (a) A person hired by a regularly constituted fire department on or after July 1, 1971, who does not perform firefighter service is not eligible for service credit in this system.

(b) The nonfirefighter service employee shall become a member of the system for which the nonfirefighter service employee qualifies for service credit.

(c) The service credit exclusion under this Subsection (3) may not be interpreted to prohibit the assignment of a disabled or partially disabled firefighter to a nonfirefighter service position.

(d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for service credit in this system.

(4) An allowance or other benefit may not be granted under this system that is based upon the same service for benefits received under some other system.

(5) Service as a volunteer firefighter is not eligible for service credit in this system.

Section 128. Section **49-16-202**, which is renumbered from Section 49-5-204 is renumbered and amended to read:

**~~[49-5-204].~~ 49-16-202. Participation of employers -- Full participation in system -- Supplemental programs authorized.**

~~[(1) All political subdivisions are participating employers in the system and may not withdraw from participation in the system. As participating employers, political subdivisions shall meet all requirements for full participation in the system.]~~

~~[(2) No participating employer may maintain participation in the system by covering only part of its eligible employees, but the chief of any fire department may elect not to participate in the system, but cannot continue employment in the same covered employer unit and receive payment from the retirement office at the same time.]~~

(1) An employer that employs firefighter service employees and is required by Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory

Retirement System or the Public Employees' Noncontributory Retirement System shall cover all of its firefighter service employees under one of the following systems:

(a) Chapter 12, Public Employees' Contributory Retirement Act;

(b) Chapter 13, Public Employees' Noncontributory Retirement Act; or

(c) Chapter 16, Firefighters' Retirement Act.

(2) Any employer that covers its firefighter service employees under Subsection (1)(c) is a participating employer in this system.

(3) If a participating employer under Subsection (1) covers any of its firefighter service employees under the Firefighters' Retirement System, that participating employer shall cover all of its firefighter service employees under that system.

(4) A participating employer may not withdraw from this system.

~~[(3)]~~ (5) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or [deferred income program] defined contribution plan, either directly or indirectly, for their firefighter service employees.

Section 129. Section **49-16-203** is enacted to read:

**49-16-203. Exemption of certain employees from coverage -- Exception.**

(1) A firefighter service employee serving as the chief of any fire department or district is excluded from coverage under this system if that firefighter service employee files a formal written request seeking exemption.

(2) A firefighter service employee serving as the chief of any fire department or district may not continue employment with the same participating employer and receive an allowance from the office based on firefighter service at the same time.

Section 130. Section **49-16-301**, which is renumbered from Section 49-5-301 is renumbered and amended to read:

**Part 3. Contributions**

~~[49-5-301].~~ **49-16-301. Contributions -- Two divisions -- Election by employer to pay employee contributions -- Accounting for and vesting of worker contributions -- Deductions.**

(1) ~~[The system shall be maintained on a financially and actuarially sound basis by means of contributions made by the state, the employing units, and the active members of the system]~~ In addition to the monies paid to this system under Subsection (6), participating employers and firefighter service employees shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.

(2) For purposes of determining contribution rates ~~[and benefits, the]~~, this system is divided into two divisions according to Social Security coverage~~[. Firefighters]~~ as follows:

(a) members of this system with on-the-job Social Security coverage are in Division A~~[, and firefighters]; and~~

(b) members of this system without on-the-job Social Security coverage are in Division B.

~~[(2) Any city, town, special district, or county]~~

(3) (a) A participating employer may elect to pay all or part of ~~[its members']~~ the required member contributions, in addition to the required participating employer contributions.

(b) Any amount contributed by ~~[a city, town, or county]~~ a participating employer under this ~~[subsection]~~ section shall vest to the member's ~~[credit]~~ benefit as though the member had made the contribution.

(c) The ~~[member's]~~ required [contribution] member contributions shall be reduced by the amount that is paid by the participating employer.

~~[(3)]~~ (4) (a) All member contributions are credited by the office to the account of the individual ~~[and]~~ member.

(b) This amount is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) All member contributions are ~~[100%]~~ vested and nonforfeitable.

~~[(4)]~~ (5) (a) Each member is considered to consent to ~~[monthly]~~ payroll deductions of member contributions.

(b) The payment of compensation less ~~[retirement]~~ these payroll deductions is considered to be full payment ~~[of the salary of the employee]~~ for services rendered by the member.

~~[(5) The board shall report to the governor, the Legislature, and each employing unit under~~

~~Division A or B the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer and employee shall pay the certified contribution rates.]~~

(6) (a) In addition to contribution rates described under this section, there shall be paid to the Firefighters' Retirement Trust Fund created under Section 49-16-104:

~~[(a)]~~ (i) 50% of the annual tax ~~[for each year that is]~~ levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon property insurance premiums, as defined ~~[by]~~ under Section 31A-1-301, and as applied to fire and allied lines insurance collected by insurance companies within the state; and

~~[(b)]~~ (ii) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon life insurance premiums as defined in Section 31A-1-301 within the state.

(b) Payments to the fund shall be made annually until the service liability is liquidated, after which the tax revenue provided in this subsection for the Firefighters' Retirement Trust Fund ceases.

Section 131. Section **49-16-401**, which is renumbered from Section 49-5-401 is renumbered and amended to read:

#### **Part 4. Defined Benefit**

~~[49-5-401].~~ **49-16-401. Eligibility for service retirement -- Date of retirement -- Qualifications.**

~~[(1) (a) Any member who qualifies for service retirement may retire by submitting to the retirement office an application form notarized by a notary public. The application shall state the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.]~~

~~[(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must follow the last day of actual work.]~~

~~[(c) The member shall actually terminate employment and provide evidence of termination.]~~

~~[(2) The member is qualified to retire upon termination of service on or before the effective date of retirement if one of the following requirements on that date is met:]~~

(1) A member is qualified to receive an allowance from this system when:

(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

~~[(a)]~~ (i) the member ~~[is credited with]~~ has accrued at least 20 years of service credit;

~~[(b)]~~ (ii) the member ~~[is credited with]~~ has accrued at least ten years of service credit and ~~[is]~~ has attained an age of 60 years ~~[of age or more]~~; or

~~[(c)]~~ (iii) the member ~~[is credited with]~~ has accrued at least four years of service credit and ~~[is]~~ has attained an age of 65 years ~~[of age or more]~~.

(2) (a) The member's retirement date shall be the 1st or the 16th day of the month, as selected by the firefighter service employee, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days after the date the application is received by the office.

Section 132. Section **49-16-402**, which is renumbered from Section 49-5-402 is renumbered and amended to read:

~~[49-5-402].~~ **49-16-402. Calculation of retirement allowance.**

~~[Upon retirement as provided in Section 49-5-401, the member shall receive a retirement allowance as follows:]~~

~~[(1) If the member is a participant in Division A or B and has 20 or more years of service credit, the monthly retirement allowance is equal to:]~~

~~[(a) 2-1/2% of the member's final average monthly salary multiplied by the number of years of service credited the member, limited to 20 years, plus]~~

~~[(b) 2% of the member's final average monthly salary multiplied by the number of service credit years credited the member in excess of 20 years.]~~

~~[(2) If the member is a participant in Division A or B and is 60 but less than 65 years of age and has ten but less than 20 years of service credit, the monthly retirement allowance is an amount~~

equal to 2-1/2% of the member's final average monthly salary multiplied by the number of years of service credit.]

~~[(3) If the member is a participant in Division A or B and is 65 years of age or older and has four years of service credit or more, the monthly retirement allowance is an amount equal to:]~~

~~[(a) 2-1/2% of the member's final average monthly salary multiplied by the number of years of service credit, limited to 20 years; plus]~~

~~[(b) 2% of the final average monthly salary multiplied by the number of years of service credit in excess of 20 years.]~~

~~[(4) The monthly service retirement allowance as calculated under this section may not exceed 70% of the member's final average monthly salary.]~~

~~[(5) Years of service include any fractions of years of service to which the member may be entitled. Notwithstanding the formula for computing the service retirement allowance under this section for members participating in the program, the board shall, in as far as practical, adjust the percentage factor used in the service retirement allowance formula, in its application to the years of service of a retiring member, to a percentage amount not less than 1-1/2%, nor more than 2-1/2% per year of service, limited to the first 25 years. This adjustment when made shall maintain the retirement trust account on an actuarially sound basis if the employer contributions, member contributions, insurance fees, and earnings of the fund are insufficient to fund the benefits provided for members participating in the program.]~~

(1) A retiree under this system shall receive an allowance equal to:

(a) 2.5% of final average monthly salary multiplied by the number of years of service credit, limited to 20 years; plus

(b) 2% of final average monthly salary, multiplied by the number of years of service credit in excess of 20 years.

(2) The minimum annual allowance payable under this section is \$500.

(3) Except as modified by cost-of-living adjustments, an allowance under this system may not exceed 70% of a firefighter service employee's final average monthly salary.

Section 133. Section **49-16-403**, which is renumbered from Section 49-5-601 is renumbered

and amended to read:

~~[49-5-601].~~ **49-16-403. Annual cost-of-living adjustment.**

(1) ~~[(a)]~~ The ~~[retirement]~~ office shall ~~[compute and pay, upon approval by the board,]~~ make an annual cost-of-living adjustment to ~~[all retired members after those members have been retired for one year.];~~

~~[(b)]~~ The adjustment is equal to the decrease in the purchasing power of the dollar during the preceding year, as measured by the Consumer Price Index, United States City Average, prepared by the United States Bureau of Labor Statistics, and is limited to a maximum of 4% of the retirant's or beneficiary's original retirement allowance.];

~~[(c)]~~ Decreases in the purchasing power of the dollar exceeding 4% annually are accumulated and used in subsequent allowances when the cost-of-living adjustment is less than 4% annually.];

~~[(2) (a)]~~ The cost-of-living adjustment shall be reduced if the index shows a decline of 4% or more during any period of more than one year.];

~~[(b)]~~ These reductions may not exceed 2% per year based upon the original retirement allowance.];

~~[(c)]~~ Payments made under this section are a part of the retired member's allowance.];

~~[(d)]~~ Payments and adjustments for the retirant also apply to the beneficiary.];

~~[(e)]~~ The net cost of increasing the cost-of-living adjustment from 2-1/2% to 4% annually under this section, after recognizing the decrease in the contribution rates for actuarial expense, is 1.74% for Division A firefighters and 1.9% for Division B firefighters. The net cost shall be added to the employee contribution rate in Division A and Division B.];

(a) an original allowance paid under Section 49-16-402, Part 5, Death Benefit, and Part 6, Disability Benefit, of this chapter if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.

(b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and

used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 134. Section **49-16-501**, which is renumbered from Section 49-5-701 is renumbered and amended to read:

#### **Part 5. Death Benefit**

~~[49-5-701].~~ **49-16-501. Death of active member in Division A -- Payment of benefits.**

(1) If an active member of [the] this system enrolled in Division A under Section 49-16-301 dies, [the following] benefits are payable as follows:

~~[(1)(a) Except as provided in Subsection (1)(b), if]~~

(a) If the death is classified by the office as a line-of-duty[, the dependent spouse receives] death, benefits are payable as follows:

(i) If the member has accrued less than 20 years of firefighter service credit, the spouse at the time of death shall receive a lump sum of \$1,500 and [a monthly] an allowance equal to 30% of the [deceased] member's final average monthly salary.

~~[(b)]~~ (ii) If the member has accrued 20 or more years of firefighter service credit, the member shall be considered to have retired with [a monthly] an allowance calculated under [Subsection 49-5-402(1)] Section 49-16-402 and the [dependent] spouse at the time of death shall receive the death benefit payable to a [dependent] spouse under Section [49-5-704] 49-16-504.

~~[(2)]~~ (b) If the death is not classified as a line-of-duty[, the benefit is] death by the office, benefits are payable as follows:

~~[(a)]~~ (i) If the member has accrued less than ten years of firefighter service credit, [at the time of death,] the [member's] beneficiary [receives] shall receive a sum of \$1,000 or a refund of the member's member contributions, whichever is greater.

~~[(b)]~~ (ii) If the member has accrued ten or more years of firefighter service credit the [dependent] spouse [receives] at the time of death shall receive a sum of \$500, plus [a monthly] an

allowance equal to 2% of the member's final average monthly salary [~~of the deceased member~~] for each year of service credit [~~with a~~] accrued by the member up to a maximum of 30% [allowed] of the member's final average monthly salary.

~~[(3) In the event of the death of the member and there is no spouse,]~~

(2) (a) If the member dies without a current spouse, the spouse's benefit shall be equally divided and paid to each unmarried child until the child reaches age 21.

(b) The payment shall be made to a duly appointed guardian or as provided under Sections 49-11-609 and 49-11-610.

~~[(4) (3) If the benefit is not distributed under this section, [and there is] and the member has designated a beneficiary, the [vested contribution] member's member contributions shall be paid to the beneficiary.~~

Section 135. Section **49-16-502**, which is renumbered from Section 49-5-702 is renumbered and amended to read:

~~[49-5-702].~~ **49-16-502. Death of active member in Division B -- Payment of benefits.**

(1) If an active member of ~~[the]~~ this system enrolled in Division B under Section 49-16-301 dies, ~~[the following]~~ benefits are payable as follows:

~~[(1) (a) If the death is classified by the office as a line-of-duty[, the dependent spouse receives] death, benefits are payable as follows:~~

(i) If the member has accrued less than 20 years of firefighter service credit, the spouse at the time of death shall receive a lump sum of \$1,500 and [a monthly] an allowance equal to [37-1/2%] 37.5% of the [deceased] member's final average monthly salary[~~, subject to Section 49-5-503~~].

~~[(2) (ii) If [death is classified as line-of-duty, and] the member has accrued 20 or more years of firefighter service credit, the member shall be considered to have retired with an allowance calculated under Subsection 49-16-402 and the [dependent] spouse at the time of death shall receive the death benefit payable to a [retired member] spouse under Section [49-5-704] 49-16-504.~~

~~[(3) (b) If the death is not classified by the office as a line-of-duty [and the deceased] death, the benefits are payable as follows:~~

(i) If the member has accrued five or more years of firefighter service credit, the death is considered line-of-duty and the same benefits are payable as established under Subsection (1) ~~[or (2)]~~ (a).

~~[(4)]~~ (ii) If ~~[death is not classified as line-of-duty and the deceased]~~ the member has accrued less than five years of firefighter service credit, the ~~[benefit is]~~ spouse at the time of death shall receive a refund of the ~~[deceased]~~ member's contributions, plus 50% of the member's most recent 12 months ~~[regular salary]~~ compensation.

~~[(5)]~~ (c) If the ~~[deceased]~~ member has accrued five or more years of firefighter service credit, the member's unmarried children~~;~~ until they reach age 21~~;~~ or dependent unmarried mentally or physically disabled children, shall receive a monthly allowance of \$75.

(2) (a) In the event of the death of the member and spouse, the spouse's benefits are equally divided and paid to each unmarried child until the child reaches age 21.

(b) The payments shall be made to the surviving parent or duly appointed guardian or ~~[pursuant to Section 49-1-607]~~ as provided under Sections 49-11-609 and 49-11-610.

~~[(6)]~~ (3) If ~~[the]~~ a benefit is not distributed under ~~[this section, and there is]~~ the previous subsections, and the member has designated a beneficiary, the ~~[vested contribution]~~ member's member contributions shall be paid to the beneficiary.

~~[(7)]~~ (4) The ~~[total monthly]~~ combined monthly payments made ~~[on behalf of any one deceased member's account]~~ to the beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.

Section 136. Section **49-16-503**, which is renumbered from Section 49-5-703 is renumbered and amended to read:

~~[49-5-703].~~ **49-16-503. Benefits payable upon death of inactive member.**

~~[(1) The death settlement payable on behalf of an active or inactive member who dies without spouse or minor children is 100% of the employee's contributions or \$500, whichever is larger.]~~

~~[(2) The death benefit payable monthly on behalf of an inactive member who dies and is survived by a spouse to whom the member was married at the time of death is]~~

(1) If an inactive member who has less than 20 years of firefighter service credit dies, the designated beneficiary shall receive a refund of the member's member contributions or \$500, whichever is greater.

(2) (a) If an inactive member with 20 or more years of firefighter service credit dies, the spouse at the time of death shall receive an allowance in the amount of 50% of the amount the member would have received had [the member retired] retirement occurred on the first [day] of the month following the month in which the death occurred[~~, the computation being based upon~~].

(b) This allowance shall be based on years of service credit and final average monthly salary under Section 49-16-402, reduced actuarially from age 50 to the age of the member at the time of death[~~, if the member was not 50 years of age when death occurred~~].

~~[(3) No monthly pension may be paid under this section unless the member had 20 years of service credit at the time of death.]~~

Section 137. Section **49-16-504**, which is renumbered from Section 49-5-704 is renumbered and amended to read:

~~[49-5-704].~~ **49-16-504. Benefits payable upon death of retired member.**

~~[(1) (a) 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]~~

(1) If a retiree who retired under either Division A or Division B dies, the retiree's spouse at the time of death shall receive an allowance equal to 75% of the allowance that was being paid to the retiree at the time of death.

(2) If the retiree retired solely under Division B and dies leaving unmarried children under the age of 18 or dependent unmarried mentally or physically disabled children, the children shall qualify for a benefit as prescribed under Subsection 49-16-502(1)(c) which is payable on the first day of the month following the month in which the [retirant] retiree died.

~~[(c) 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.]

Section 138. Section **49-16-505** is enacted to read:

**49-16-505. Benefits for surviving spouse under Division A or Division B.**

The spouse at the time of death, if eligible, shall receive a benefit computed under either Division A or Division B, whichever provides the larger benefit, but may not receive a benefit under both divisions if it would result in a duplicate benefit.

Section 139. Section **49-16-506** is enacted to read:

**49-16-506. Minimum allowance for spouse.**

The minimum allowance payable to the spouse who qualifies for an allowance under Section 49-16-501, 49-16-502, 49-16-503 or 49-16-504, shall be \$350 per month.

Section 140. Section **49-16-601**, which is renumbered from Section 49-5-501 is renumbered and amended to read:

**Part 6. Disability Benefit**

**[49-5-501]. 49-16-601. Disability benefit -- Line-of-duty disability -- Benefits -- Monthly allowance.**

[Any] (1) An active member of this system who [becomes disabled] is unable to perform firefighter service due to a physical or mental condition may apply to the [retirement] office for a disability retirement benefit subject to the following provisions:

[(1)] (a) If the [disability] condition is classified by the office as a line-of-duty disability, the member shall [retire on disability and] be granted a disability [allowance] retirement benefit subject to Section [49-5-502] 49-16-602.

[(b) If the member is a participant in Division A or B, the monthly disability allowance is an amount equal to 50% of the member's final average monthly salary.]

(b) If the condition is classified by the office as a nonline-of-duty disability and if the member has less than five years of service credit in this system, disability benefits are not payable.

[(2)-(a)] (c) If the [disability] condition is classified by the office as [ordinary disability and not incurred in the line-of-duty] a nonline-of-duty disability and if the member has five or more years of service credit in this system, the member shall [retire on disability and] be granted a disability

[allowance] retirement benefit subject to Section ~~[49-5-502]~~ 49-16-602.

~~[(b) If the member is a participant in Division A or B, the monthly]~~

(2) The monthly disability [allowance] retirement benefit is ~~[an amount equal to]~~ 50% of the member's final average monthly salary.

Section 141. Section **49-16-602**, which is renumbered from Section 49-5-502 is renumbered and amended to read:

~~[49-5-502].~~ **49-16-602. 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]~~ A member of this system who applies and is qualified for disability retirement shall receive a disability [allowance] retirement benefit until the earlier of:

(a) the date the member of this system is no longer disabled;  
 (b) the date the member of this system has accumulated 20 years of service credit, including years earned while disabled; or

(c) the date the member of this system has received disability retirement benefits for the following time periods:

(i) if the member is under age 60 or the date of disability, the disability [allowance] retirement benefit is payable until age 65;

(ii) if the member is 60~~[=]~~ or 61 years of age on the date of disability, the disability [allowance] retirement benefit is payable for five years;

(iii) if the member is 62~~[=]~~ or 63 years of age on the date of disability, the disability [allowance] retirement benefit is payable for four years;

(iv) if the member is 64~~[=]~~ or 65 years of age on the date of disability, the disability [allowance] retirement benefit is payable for three years;

(v) if the member is 66~~[=]~~, 67, or 68 years of age on the date of disability, the disability [allowance] retirement benefit is payable for two years; and

(vi) if the member is ~~[age]~~ 69 [or older] years of age or older on the date of disability, the disability retirement benefit is payable for one year.

(2) (a) (i) The ~~[member]~~ disability retiree shall receive service credit in this system during the period of disability. ~~[However, if the member]~~

(ii) If the disability retiree is employed by a participating employer during the period of disability, the [member] disability retiree may not receive service credit for that employment.

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

(3) The ~~[board]~~ office shall approve or disapprove applications for disability retirement benefits based upon ~~[both]:~~

(a) the evaluation and recommendations of one or more treating 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]~~ condition;

(b) the evaluation and recommendations of one or more independent physicians selected by the office; and

~~[(b)]~~ (c) receipt of [proof] documentation by the ~~[board]~~ office from the participating employer that the member [has become totally disabled] is mentally or physically unable to perform firefighter service.

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

~~[(5)]~~ (4) (a) ~~[Members receiving]~~ A disability retiree who receives benefits under this section shall, upon request of the ~~[administrator]~~ executive director, submit to a medical examination by one or more physicians as directed by the ~~[board]~~ office.

~~[(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)]~~ (b) If, after an examination, the examiners report that the ~~[retiree]~~ disability retiree is physically able and capable of resuming firefighter service employment, the ~~[retiree]~~ disability retiree shall be reinstated by the participating employer for which the disability retiree last worked at the [retiree's] disability retiree's former classification and rank, and the disability [benefits]

retirement benefit shall terminate.

~~[(d) Examinations]~~ (c) A disability retiree may not be required to submit to an examination under this Subsection (4) more than once every year.

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

~~[(6) Retired members are]~~ (5) A disability retiree is not subject to medical examinations after reaching age 55.

~~[(7)]~~ (6) Refusal or neglect of a member to submit to an examination as requested by the office either before or after a decision regarding disability benefits has been made is sufficient cause for denial, suspension, or discontinuance of benefits and if the refusal or neglect continues for one year, the member's or disability retiree's rights to ~~[all]~~ disability retirement benefits may be revoked by the ~~[board]~~ office.

~~[(8) Retirants]~~ (7) (a) A disability retiree who ~~[receive]~~ receives 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]~~ disability retiree receives benefits.

(b) The sworn statement shall indicate whether or not the ~~[retirant]~~ disability retiree 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]~~

(c) If the total amount received in one year by a disability retiree for disability retirement benefits and gross earnings from other employment exceeds 125% of the disability retiree's final average salary, the office shall offset the disability retirement benefit paid the following year by the amount in excess of 125% of the [retirant's] disability retiree's final average salary.

~~[(b)]~~ (d) (i) If ~~[any retirant]~~ a disability retiree refuses or neglects to file a sworn statement

as required under this Subsection (7), the [administrator] executive director may suspend payment of any and all benefits pending receipt of the statement.

(ii) Upon filing the statement, the [retirant's] disability retiree's payments shall be resumed.

~~[(9)]~~ (8) The disability [allowance] retirement benefit shall be improved by the annual cost-of-living increase factor applied to ~~[retired members]~~ retirees of the system that covered the firefighter service employee at the time of disability.

~~[(10)]~~ (9) A line of duty disability allowance paid on or after January 1, 2002, under ~~[Subsection 49-5-501(1)]~~ Section 49-16-601 is exempt from taxation to the extent permitted under federal law.

(10) (a) An active member of this system with five or more years of firefighter service credit shall be eligible for a line-of-duty death or disability benefit resulting from heart disease, lung disease, or respiratory tract disease.

(b) An active member of this system who receives a line-of-duty disability benefit for more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract disease, and then returns to paid firefighter service, is not eligible for a line-of-duty death or disability benefit due to those diseases for two years after the member returned to paid firefighter service unless clear and convincing evidence is presented that the heart, lung, or respiratory tract disease was directly a result of firefighter service.

Section 142. Section **49-16-603**, which is renumbered from Section 49-5-503 is renumbered and amended to read:

~~[49-5-503].~~ **49-16-603. Suspension of benefit upon settlement of workers' compensation claim.**

(1) Settlement of a claim for workers' compensation for injury or disability shall suspend ~~[payments]~~ disability retirement benefits granted under this part, except for the initial three months, to a member granted ~~[disability]~~ the benefits until workers' compensation payments terminate.

(2) If there is a lump-sum settlement of the workers' compensation claim, the ~~[administrator]~~ office shall suspend the ~~[allowance]~~ disability retirement benefit until the total of suspended ~~[payments]~~ benefits is equal to 75% of the settlement received from workers' compensation. ~~[If~~

death is in the line of duty, the surviving spouse is eligible for a firefighter's pension on the first day of the month following the date of death. Settlement with workers' compensation has no effect on the spouse's retirement allowance, nor do other benefits paid at the member's death have any effect on the spouse's allowance.]

Section 143. Section **49-16-701**, which is renumbered from Section 49-5-802 is renumbered and amended to read:

#### **Part 7. Volunteer Firefighters**

**[49-5-802]. 49-16-701. Volunteer firefighters eligible for line-of-duty death and disability benefits in Division A -- Computation of benefit.**

[Volunteer firefighters are considered members of the system but are]

(1) A volunteer firefighter is only eligible for line-of-duty death and line-of-duty disability benefits provided for firefighters enrolled in Division A, subject to Section [49-5-503] 49-16-603.

(2) The lowest monthly [salary] compensation of firefighters of a city of the first class in this state at the time of death or disability shall be [the basis for computing] considered to be the final average monthly salary [payable to] of a volunteer firefighter[; the surviving spouse, and children] for purposes of computing these benefits.

Section 144. Section **49-17-101**, which is renumbered from Section 49-6-101 is renumbered and amended to read:

### **CHAPTER 17. JUDGES' CONTRIBUTORY RETIREMENT ACT**

#### **Part 1. General Provisions**

**[49-6-101]. 49-17-101. Title.**

This chapter is known as the "Judges' Contributory Retirement Act."

Section 145. Section **49-17-102**, which is renumbered from Section 49-6-103 is renumbered and amended to read:

**[49-6-103]. 49-17-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation[;]" ["salary," or "wages"] means the total amount of payments which are currently includable in gross income made by [an] a participating employer to [an employee] a

member of this system for services rendered to the participating employer.

(b) "Compensation" includes:

(i) performance-based bonuses;

(ii) cost-of-living adjustments;

(iii) payments subject to Social Security deductions;

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

(v) amounts which the ~~[employee]~~ member authorizes to be deducted or reduced for salary deferral or other ~~[authorized benefit programs.]~~ benefits authorized by federal law; and

(vi) member contributions.

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

(d) "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]~~ a participating employer under any system or plan for the benefit of a member or participant;

~~[(iii) salary paid to an employee working under the minimum number of hours required for membership;]~~

~~[(iv)]~~ (iii) salary paid to a temporary or exempt employee;

~~[(v)]~~ (iv) payments upon termination or any other special payments including early retirement inducements; or

~~[(vi)]~~ (v) uniform, travel, or similar ~~[allowances]~~ payments.

(2) "Final average salary" means the amount computed by averaging the highest two years of annual compensation preceding retirement, subject to Subsections (2)(a) and (b).

(a) Except as provided in Subsection (2)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's ~~[salary]~~ compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by ~~[the Consumer Price Index prepared by the]~~ a United States

Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the [~~employing unit~~] participating employer provides acceptable documentation to the board, the limitation in Subsection (2)(a) may be exceeded if:

(i) the member has transferred from another [~~employing unit~~] participating employer; or

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

~~[(3) "Normal retirement age" means the age of 65 years.]~~

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

(4) "Participating employer" means the state.

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

~~[(4)] (6) "Years of service credit" [or "service years"] means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a [member] judge was employed [to perform services for the] by a participating employer.~~

Section 146. Section **49-17-103**, which is renumbered from Section 49-6-201 is renumbered and amended to read:

~~[49-6-201].~~ **49-17-103. Creation of system.**

There is created for [~~justices and~~] judges [~~of the courts of record,~~] the "Judges' Contributory Retirement System."

Section 147. Section **49-17-104**, which is renumbered from Section 49-6-202 is renumbered and amended to read:

~~[49-6-202].~~ **49-17-104. Creation of trust fund.**

(1) There is created the "Judges' Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

(2) The fund shall consist of all money, including interest, and assets transferred to it under any terminated system, the money paid into it under this system, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by [~~Title 49,~~] Chapter [~~+~~] 11, Utah State Retirement Systems Administration.

Section 148. Section **49-17-201**, which is renumbered from Section 49-6-203 is renumbered

and amended to read:

## **Part 2. Membership Eligibility**

### **[49-6-203]. 49-17-201. System membership -- Eligibility.**

~~[Justices and judges of the courts of record shall become members of this system.]~~ Except as provided in Section 49-18-201, judges are members of and are eligible for service credit in this system.

Section 149. Section **49-17-301**, which is renumbered from Section 49-6-301 is renumbered and amended to read:

## **Part 3. Contributions**

### **[49-6-301]. 49-17-301. Contributions by members and participating employers -- Retirement fees -- Deductions.**

(1) ~~[The system shall be maintained]~~ In addition to the monies paid to this system under Subsection (3), participating employers and members shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis ~~[by means of contributions made jointly by the employer and by the active members of the system].~~

(2) The participating employer may make contributions on behalf of ~~[justices and judges of the courts of record]~~ members of this system in addition to the contribution required of the ~~[state]~~ participating employer, except ~~[for]~~ that 2% of [covered salary, which] compensation shall be paid by the member. ~~[All contributions paid on behalf of the member vest to the member's credit. These contributions shall begin upon agreement between an employer and the board. Payment of members' contributions under this section by the employer does not include the cost-of-living contribution provided under Section 49-6-601.]~~

~~[(3) Fees and contributions shall be remitted monthly to the retirement office.]~~

(3) Fees collected under Subsection 78-7-35(1)(i) shall be paid monthly to the office to maintain this system and the system established under Chapter 18, Judges' Noncontributory Retirement Act.

(4) (a) All member contributions are credited by the ~~[retirement]~~ office to the account of the individual member.

(b) This amount, [~~together with regular~~] plus refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) All member contributions are [~~100%~~] vested and nonforfeitable.

(5) (a) Each member is [~~deemed~~] considered to consent to [~~monthly~~] payroll deductions of the member contributions.

(b) The payment of compensation less [~~retirement~~] these payroll deductions is considered [a] full payment [~~of member's salary~~] for services rendered by the member.

~~[(6) The board shall report to the governor, the Legislature, and the employing unit the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer and employee shall pay the certified contribution rates.]~~

Section 150. Section **49-17-401**, which is renumbered from Section 49-6-401 is renumbered and amended to read:

**Part 4. Defined Benefit**

~~[49-6-401].~~ **49-17-401. Eligibility for an allowance -- Date of retirement --**  
**Qualifications.**

~~[(1) (a) Any judge who qualifies for service retirement may retire by submitting to the retirement office an application form notarized by a notary public. The application shall state the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.]~~

~~[(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must be after the last day of actual work.]~~

~~[(c) The member shall actually terminate employment and provide evidence of termination.]~~

~~[(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:]~~

(1) A member is qualified to receive an allowance when:

(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that states

the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

~~[(a)]~~ (i) the member has ~~[been credited with]~~ accrued at least six years of service credit and has attained an age of 70 years ~~[or more]~~;

~~[(b)]~~ (ii) the member has ~~[been credited with]~~ accrued at least ten years of service credit and has attained an age of 62 years ~~[or more]~~;

~~[(c)]~~ (iii) the member has ~~[been credited with]~~ accrued at least 20 years of service credit and has attained an age of 55 years ~~[or more]~~; or

~~[(d)]~~ (iv) the member has ~~[been credited with]~~ accrued at least 25 years of service credit.

(2) (a) The member's retirement date shall be the 1st or the 16th day of the month, as selected

by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days after the date the application is received by the office.

Section 151. Section **49-17-402**, which is renumbered from Section 49-6-402 is renumbered and amended to read:

~~[49-6-402].~~ **49-17-402. Calculation of retirement allowance.**

~~[Upon the service retirement of a justice or judge under Section 49-6-401, the justice or judge shall receive a retirement allowance determined as follows:]~~

~~[(1) If the justice or judge has attained the age of 62 years and has ten or more years of judicial service credit, the retirement allowance is a monthly amount equal to:]~~

(1) A retiree under this system shall receive an allowance equal to:

(a) 5% of the final average monthly salary multiplied by the number of years of ~~[judicial]~~ service ~~[credited, limited]~~ credit, limited to ten years~~[-];~~ plus

(b) 2.25% of the final average monthly salary multiplied by the number of years of ~~[judicial]~~ service ~~[credited]~~ credit in excess of ten years ~~[but less than]~~ and up to and including 20 years~~[-];~~ plus

(c) 1% of the final average monthly salary multiplied by the number of years of ~~[judicial]~~ service ~~[credited]~~ credit in excess of 20 years. ~~[Total monthly retirement allowance to which a~~

~~justice or judge is entitled may not exceed 75% of the final average monthly salary.]~~

~~[(2) If the justice or judge has attained age 70 years and has six years or more of judicial service credit, the retirement allowance is the same as computed under Subsection (1).]~~

~~[(3) If the justice or judge has 25 years or more of judicial service credit, the retirement allowance is the same as computed under Subsection (1).]~~

(2) Except as modified by cost-of-living adjustments, an allowance under this system may not exceed 75% of the member's final average monthly salary.

~~[(4)] (3) If the [justice or judge] retiree has attained the age of 55 years and has 20 years or more of [judicial] service credit, the [retirement allowance is the same as computed under Subsection (1) reduced to an amount payable monthly for life which would be the same actuarial equivalent based on the justice's or judge's age at retirement as would be the value of the retirement pay based on life expectancy if the justice or judge were 65 years of age] retiree shall receive an early retirement reduction to the allowance based on an actuarial calculation assuming a normal retirement age of 65 years.~~

~~[(5) All members and their beneficiaries, as of July 1, 1983, shall receive an increase in monthly benefits in the amount of \$120 for each member or \$60 for each beneficiary. The cost of implementing this subsection shall be shared equally between the employer and employee.]~~

~~[(6) Years of service include any fractions of years of service to which the members may be entitled. Notwithstanding the formula for computing the service retirement allowance for members participating in the program, the board shall, in as far as practical, adjust the percentage factor used in the service retirement allowance formula, in its application to the years of service of a retiring member to a percentage amount which maintains the retirement trust account on an actuarially sound basis if the employer contributions, members' contributions, retirement court fees, and earnings of the fund are insufficient to fund the benefits provided for members participating in the program.]~~

Section 152. Section **49-17-403** is enacted to read:

**49-17-403. Minimum allowance.**

Beginning July 1, 1990, all retirees or beneficiaries under this chapter who receive an allowance less than \$1,000 per month shall have the allowance increased 10%, but the increased

allowance may not equal more than \$1,000.

Section 153. Section **49-17-404**, which is renumbered from Section 49-6-404 is renumbered and amended to read:

~~[49-6-404].~~ **49-17-404. Temporary retirement window for 20 years of service.**

(1) If a member qualified to retire under ~~[Subsection 49-6-401 (2)]~~ Section 49-17-401 or a member of this system of any age ~~[credited]~~ with at least 20 years of service credit or a member ~~[who is credited]~~ of this system with at least six years of service credit and has attained an age of 65 years or older retires on or after July 1, 1992, and on or before December 31, 1992, the retirement allowance shall be the same as calculated in ~~[Subsection 49-6-402 (1)]~~ Section 49-17-402, except that the final average monthly salary shall be calculated upon the member's final year of service.

(2) (a) Nominations for appointments resulting from this section shall be presented to the governor not later than October 15, 1992.

(b) To qualify, the member shall give notice of intent to retire under this section to the Administrative Office of the Courts no later than February 28, 1992.

(c) Notice of intent to retire under this section may not be revoked.

(d) The Administrative Office of the Courts shall provide the member's application to retire to the ~~[retirement]~~ office as required by Section ~~[49-6-401]~~ 49-17-401.

Section 154. Section **49-17-405**, which is renumbered from Section 49-6-601 is renumbered and amended to read:

~~[49-6-601].~~ **49-17-405. Annual cost-of-living adjustment.**

~~[(1) Beginning in 1975, in a month selected by the board, there shall be computed and paid from the Judges' Retirement Fund an annual cost-of-living allowance adjustment to all retired members after one year of retirement equal to the decrease in the purchasing power of the dollar during the preceding year measured by the Consumers Price Index. The cost-of-living adjustment shall be limited each year to a maximum of 4% of the retired member's or beneficiary's monthly retirement allowance. Decreases in the purchasing power of the dollar in excess of 4% annually shall be accumulated over two or more years and used in whole or in part in making subsequent annual adjustments when the cost-of-living adjustment is less than 4%.]~~

~~[(2) The cost-of-living adjustment is based upon the retirant's or beneficiary's allowance as of July 1, 1973, and is subject to reduction if the cost of living shows a decline of 4% for more than one year and applies to any cost-of-living increases made after January 1, 1975. These reductions may not exceed the rate of 2% per year based upon the established retirement allowance base. Payments made under this section are a part of the retired member's allowance. The payments and subsequent adjustments as prescribed for the retirant shall likewise apply to any beneficiary who is paid an allowance. Cost-of-living benefits granted prior to January 1, 1975, are not subject to adjustment.]~~

~~[(3) Funds for the benefits provided by this section shall be obtained from contributions paid on covered salaries.]~~

(1) The office shall make an annual cost-of-living adjustment to:

(a) an allowance paid under Section 49-17-402 and Part 5, Death Benefit, of this chapter if the benefit has been paid for at least one year; and

(b) a payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.

(b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 155. Section **49-17-501**, which is renumbered from Section 49-6-701 is renumbered and amended to read:

#### **Part 5. Death Benefit**

~~[49-6-701].~~ **49-17-501. Death benefit for members before retirement -- Computation.**

(1) Upon the receipt of acceptable proof of death of a member [or an inactive member]

before the ~~[effective date of]~~ member's retirement date, the ~~[dependent]~~ member's spouse at the time of death shall have the choice of the following death benefits:

~~[(1)]~~ (a) a refund of ~~[accumulated]~~ the member's member contributions, including refund interest, plus 65% of the [judge's final average salary on a yearly rate] member's most recent 12 months' compensation prior to death; or

~~[(2) a monthly]~~ (b) an allowance equal to 65% of the [monthly] allowance computed [on the basis of the service retirement allowance formula, based upon the years of service and final average salary] in accordance with Section 49-17-402, but disregarding early retirement reductions. [The pension may not exceed an amount which would have been paid if the deceased judge served to age 70 and had the retirement allowance then computed on the basis of final average salary under Section 49-6-402.]

~~[(3)]~~ (2) ~~[Where]~~ If there is no [dependent] spouse[, accumulated] to whom the member is married at the time of death, member contributions, including refund interest, shall be refunded to a [designated] beneficiary, in accordance with [Section 49-1-607] Sections 49-11-609 and 49-11-610.

Section 156. Section **49-17-502**, which is renumbered from Section 49-6-702 is renumbered and amended to read:

~~[49-6-702].~~ **49-17-502. Benefits payable upon death of retired member.**

(1) (a) The death benefit payable to a ~~[dependent] retiree's spouse [after the death of a retired member of this system is a monthly amount]~~ at the time of death is an allowance equal to 65% of the allowance which was being paid to the [retired member] retiree at the time of death.

(b) The effective date of the accrual of this ~~[pension] allowance~~ is the first day of the month following the month in which the [retirant] retiree died. [Payment of the full pension for this latter month shall be made to the dependent beneficiary in lieu of the deceased member.]

(2) ~~[A member]~~ (a) At the time of retirement, a retiree may elect to increase the [surviving spouse's monthly allowance] spousal death benefit up to 75% of [a monthly] an allowance computed [on the basis of the service retirement allowance formula under] in accordance with Section [49-6-402] 49-17-402.

(b) The ~~[amount payable to the member upon retirement would be reduced to an amount payable monthly for life, which would]~~ member's allowance shall be reduced to reflect the actuarial equivalent necessary to [fund] pay for the increased [percentage for the surviving spouse] spousal death benefit above 65%.

Section 157. Section **49-17-701**, which is renumbered from Section 49-6-801 is renumbered and amended to read:

**Part 6. Reserved**

**Part 7. Early Retirement Incentive**

~~[49-6-801].~~ **49-17-701. Judges' mandatory retirement age.**

(1) Except as provided in Subsection (2), a ~~[justice or]~~ judge ~~[who qualifies as a member of this system under Section 49-6-203]~~ shall retire upon attaining the age of 75 years.

(2) A ~~[justice or]~~ judge serving on July 1, 1996, who is 75 years of age or older on July 1, 1996, or who attains 75 years of age prior to the ~~[justice or]~~ judge's next retention election may not be a candidate in that retention election and shall retire on or before December 31 of the year in which the ~~[justice or]~~ judge would have been subject to a retention election.

Section 158. Section **49-18-101**, which is renumbered from Section 49-6a-101 is renumbered and amended to read:

**CHAPTER 18. JUDGES' NONCONTRIBUTORY RETIREMENT ACT**

**Part 1. General Provisions**

~~[49-6a-101].~~ **49-18-101. Title.**

This chapter is known as the "Judges' Noncontributory Retirement Act."

Section 159. Section **49-18-102**, which is renumbered from Section 49-6a-103 is renumbered and amended to read:

~~[49-6a-103].~~ **49-18-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation[;]" ~~["salary," or "wages"]~~ means the total amount of payments which are currently includable in gross income made by ~~[an]~~ a participating employer to ~~[an employee]~~ a member of this system for services rendered to the participating employer.

(b) "Compensation" includes:

- (i) performance-based bonuses;
- (ii) cost-of-living adjustments;
- (iii) payments subject to Social Security deductions;
- (iv) any payments in excess of the maximum amount subject to deduction under Social Security law; and
- (v) amounts which the ~~[employee]~~ member authorizes to be deducted or reduced for salary deferral or other ~~[authorized benefit programs]~~ benefits authorized by federal law.

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

(d) "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]~~ a participating employer under ~~[any]~~ a system or plan for the benefit of a member or participant;

~~[(iii) salary paid to an employee working under the minimum number of hours required for membership;]~~

~~[(iv)]~~ (iii) salary paid to a temporary or exempt employee;

~~[(v)]~~ (iv) payments upon termination or any other special payments including early retirement inducements; or

~~[(vi)]~~ (v) uniform, travel, or similar ~~[allowances]~~ payments.

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

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

(b) In cases where the ~~[employing unit]~~ participating employer provides acceptable

documentation to the board, the limitation in Subsection (2)(a) may be exceeded if:

- (i) the member has transferred from another [~~employing unit~~] agency; or
- (ii) the member has been promoted to a new position.

~~[(3) "Normal retirement age" means the age of 65 years.]~~

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

(4) "Participating employer" means the state.

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

~~[(4)]~~ (6) "Years of service credit" [or "~~service years~~" mean] means the number of periods, each to consist of 12 full months or as determined by the board, whether consecutive or not, during which a [member] judge was employed [to perform services for the] by a participating employer.

Section 160. Section **49-18-103**, which is renumbered from Section 49-6a-201 is renumbered and amended to read:

~~[49-6a-201].~~                    **49-18-103. Creation of system.**

There is created for [~~justices and~~] judges [~~of courts of record,~~] the "Judges' Noncontributory Retirement System."

Section 161. Section **49-18-104**, which is renumbered from Section 49-6a-202 is renumbered and amended to read:

~~[49-6a-202].~~                    **49-18-104. Creation of trust fund.**

(1) There is created the "Judges' Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

(2) The fund shall consist of all money, including interest, and assets transferred to it under any terminated system, the money paid into it under this system, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by [~~Title 49,~~] Chapter [~~+~~] 11, Utah State Retirement Systems Administration.

Section 162. Section **49-18-201**, which is renumbered from Section 49-6a-203 is renumbered and amended to read:

## Part 2. Membership Eligibility

### ~~[49-6a-203].~~ **49-18-201. System membership -- Eligibility.**

(1) ~~[Justices and judges of courts of record]~~ Judges appointed after July 1, 1997, ~~[shall automatically become]~~ are members of ~~[this system]~~ and are eligible for service credit in this system.

(2) (a) Any ~~[justice or]~~ judge appointed prior to July 1, 1997, may either become a member of ~~[this noncontributory system]~~ the Judges' Noncontributory Retirement System or remain a member of the Judges' Contributory Retirement System established under ~~[Title 49,]~~ Chapter ~~[6]~~ 17, Judges' Contributory Retirement Act, by following the procedures established by the board pursuant to this chapter.

~~[(3) Justices and judges]~~ (b) Judges may only elect to participate in ~~[the noncontributory]~~ this system under Subsection (2) prior to January 1, 1998.

Section 163. Section **49-18-301**, which is renumbered from Section 49-6a-301 is renumbered and amended to read:

## Part 3. Contributions

### ~~[49-6a-301].~~ **49-18-301. Contributions by employees and employers -- Retirement fees.**

(1) ~~[The system shall be maintained]~~ In addition to the monies paid to this system under Subsection (2), participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis ~~[by means of contributions and fees made entirely by the employer].~~

~~[(2) Fees and contributions shall be remitted monthly to the retirement office.]~~

~~[(3) The board shall report to the governor, the Legislature, and the employing unit the contribution rates and any adjustments necessary to maintain the system on a financially and actuarially sound basis, and the employer shall pay the certified contribution rates.]~~

(2) Fees collected under Subsection 78-7-35(1)(i) shall be paid monthly to the office to maintain this system and the system established under Chapter 17, Judges' Contributory Retirement Act.

Section 164. Section **49-18-401**, which is renumbered from Section 49-6a-401 is renumbered

and amended to read:

**Part 4. Defined Benefit**

~~[49-6a-401].~~ **49-18-401. Eligibility for an allowance -- Date of retirement --**

**Qualifications.**

~~[(1) (a) Any judge who qualifies for service retirement may retire by submitting to the retirement office an application form notarized by a notary public. The application shall state the proposed effective date of retirement, which may not be more than 90 days before or after the date of application.]~~

~~[(b) The effective date shall be the 1st or 16th day of the month, as selected by the member, but must be after the last day of actual work.]~~

~~[(c) The member shall actually terminate employment and provide evidence of termination.]~~

~~[(2) The member is qualified to retire upon termination of services on or before the effective date of retirement if one of the following requirements on that date is met:]~~

(1) A member is qualified to receive an allowance when:

(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

~~[(a)]~~ (i) the member has ~~[been credited with]~~ accrued at least six years of service credit and has attained an age of 70 years ~~[or more]~~;

~~[(b)]~~ (ii) the member has ~~[been credited with]~~ accrued at least ten years of service credit and has attained an age of 62 years ~~[or more]~~;

~~[(c)]~~ (iii) the member has ~~[been credited with]~~ accrued at least 20 years of service credit and has attained an age of 55 years ~~[or more]~~; or

~~[(d)]~~ (iv) the member has ~~[been credited with]~~ accrued at least 25 years of service credit.

(2) (a) The member's retirement date shall be the 1st or the 16th day of the month, as selected

by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days after the date the application is received by the office.

Section 165. Section **49-18-402**, which is renumbered from Section 49-6a-402 is renumbered and amended to read:

~~[49-6a-402].~~                    **49-18-402. Calculation of retirement allowance.**

~~[Upon the service retirement of a justice or judge under Section 49-6a-401, the justice or judge shall receive a retirement allowance determined as follows:]~~

~~[(1) If the justice or judge has attained the age of 62 years and has ten or more years of judicial service credit, the retirement allowance is a monthly amount equal to:]~~

(1) A retiree under this system shall receive an allowance equal to:

(a) 5% of the final average monthly salary multiplied by the number of years of [judicial] service ~~[credited, limited]~~ credit, limited to ten years[;]; plus

(b) 2.25% of the final average monthly salary multiplied by the number of years of [judicial] service ~~[credited]~~ credit in excess of ten years ~~[but less than]~~ and up to and including 20 years[;]; plus

(c) 1% of the final average monthly salary multiplied by the number of years of [judicial] service ~~[credited]~~ credit in excess of 20 years. ~~[Total monthly retirement allowance to which a justice or judge is entitled may not exceed 75% of the final average monthly salary.]~~

~~[(2) If the justice or judge has attained the age of 70 years and has six years or more of judicial service credit, the retirement allowance is the same as computed under Subsection (1).]~~

~~[(3) If the justice or judge has 25 years or more of judicial service credit, the retirement allowance is the same as computed under Subsection (1).]~~

(2) Except as modified by cost-of-living adjustments, an allowance under this system may not exceed 75% of the member's final average monthly salary.

~~[(4)] (3) If the [justice or judge] retiree has attained the age of 55 years and has 20 years or more of [judicial] service credit, the [retirement allowance is the same as computed under Subsection (1)] reduced to an amount payable monthly for life which would be the same actuarial equivalent based on the justice's or judge's age at retirement as would be the value of the retirement pay based~~

~~on life expectancy if the justice or judge were 65 years of age] retiree shall receive an early retirement reduction to the allowance based on an actuarial calculation assuming a normal retirement age of 65 years.~~

~~[(5) All members and their beneficiaries, as of July 1, 1983, shall receive an increase in monthly benefits in the amount of \$120 for each member or \$60 for each beneficiary. The cost of implementing this subsection shall be shared equally between the employer and employee.]~~

~~[(6) Years of service include any fractions of years of service to which the members may be entitled. Notwithstanding the formula for computing the service retirement allowance for members participating in the program, the board shall, in as far as practical, adjust the percentage factor used in the service retirement allowance formula, in its application to the years of service of a retiring member to a percentage amount which maintains the retirement trust account on an actuarially sound basis if the employer contributions, retirement court fees, and earnings of the fund are insufficient to fund the benefits provided for members participating in the program.]~~

Section 166. Section **49-18-403**, which is renumbered from Section 49-6a-501 is renumbered and amended to read:

~~[49-6a-501].~~                    **49-18-403. Annual cost-of-living adjustment.**

~~[(1) There shall be computed and paid from the Judges' Noncontributory Retirement Fund an annual cost-of-living allowance adjustment to all retired members after one year of retirement equal to the decrease in the purchasing power of the dollar during the preceding year measured by the Consumers Price Index. The cost-of-living adjustment shall be limited each year to a maximum of 4% of the retired member's or beneficiary's monthly retirement allowance. Decreases in the purchasing power of the dollar in excess of 4% annually shall be accumulated over two or more years and used in whole or in part in making subsequent annual adjustments when the cost-of-living adjustment is less than 4%.]~~

~~[(2) The cost-of-living adjustment is based upon the retirant's or beneficiary's allowance, is subject to reduction if the cost-of-living shows a decline of 4% for more than one year, and applies to any cost-of-living increase. These reductions may not exceed the rate of 2% per year based upon the established retirement allowance base. Payments made under this section are a part of the retired~~

~~member's allowance. The payments and subsequent adjustments as prescribed for the retirant shall likewise apply to any beneficiary who is paid an allowance.]~~

~~[(3) Funds for the benefits provided by this section shall be obtained from contributions and fees paid on covered salaries.]~~

~~(1) The office shall make an annual cost-of-living adjustment to:~~

~~(a) an allowance paid under Section 49-18-402 and Part 5, Death Benefit, of this chapter if the benefit has been paid for at least one year; and~~

~~(b) a payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.~~

~~(2) (a) The allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.~~

~~(b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the increase in the Consumer Price Index is less than 4%.~~

~~(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.~~

~~(4) The cost-of-living adjustment made under this section may not decrease the allowance.~~

Section 167. Section **49-18-501**, which is renumbered from Section 49-6a-601 is renumbered and amended to read:

#### **Part 5. Death Benefit**

~~[49-6a-601].~~      **49-18-501. Death benefit for members before retirement --**

#### **Computation.**

~~[(1)]~~ Upon the receipt of acceptable proof of death of a member ~~[or an inactive member]~~ before the ~~[effective date of]~~ member's retirement date, the ~~[dependent]~~ member's spouse at the time of death shall have the choice of the following death benefits:

~~[(a)]~~ (1) a refund of ~~[accumulated]~~ the member's member contributions, if any, including refund interest, plus 65% of the ~~[judge's final average salary on a yearly rate]~~ member's most recent 12 months' compensation prior to death; or

~~[(b) a monthly]~~ (2) an allowance equal to 65% of the ~~[monthly]~~ allowance computed ~~[on~~

the basis of the service retirement allowance formula, based upon the years of service and final average salary] in accordance with Section 49-18-402, but disregarding early retirement reductions.

~~[(2) The pension may not exceed an amount which would have been paid if the deceased judge served to age 70 and had the retirement allowance then computed on the basis of final average salary under Section 49-6a-402.]~~

Section 168. Section **49-18-502**, which is renumbered from Section 49-6a-602 is renumbered and amended to read:

~~[49-6a-602].~~                    **49-18-502. Benefits payable upon death of retired member.**

(1) ~~(a)~~ The death benefit payable to a ~~[dependent]~~ retiree's spouse ~~[after the death of a retired member of this system is a monthly amount]~~ at the time of death is an allowance equal to 65% of the allowance which was being paid to the ~~[retired member]~~ retiree at the time of death.

~~(b)~~ The effective date of the accrual of this ~~[pension]~~ allowance is the first day of the month following the month in which the ~~[retirant]~~ retiree died. ~~[Payment of the full pension for this latter month shall be made to the dependent beneficiary in lieu of the deceased member.]~~

~~(2) [A member]~~ (a) At the time of retirement, a retiree may elect to increase the [surviving spouse's monthly allowance] spousal death benefit up to 75% of [a monthly] an allowance computed [on the basis of the service retirement allowance formula under] in accordance with Section ~~[49-6a-402]~~ 49-18-402.

~~(b)~~ The ~~[amount payable to the member upon retirement would]~~ member's allowance shall be reduced to an amount payable monthly for life~~[-, which would]~~ to reflect the actuarial equivalent necessary to ~~[fund] pay~~ for the increased [percentage for the surviving spouse] spousal death benefit above 65%.

Section 169. Section **49-18-701**, which is renumbered from Section 49-6a-701 is renumbered and amended to read:

**Part 6. Reserved**

**Part 7. Early Retirement Incentive**

~~[49-6a-701].~~                    **49-18-701. Judges' mandatory retirement age.**

(1) Except as provided in Subsection (2), a ~~[justice or]~~ judge ~~[who qualifies as a member of~~

~~this system under Section 49-6a-203]~~ shall retire upon attaining the age of 75 years.

(2) A ~~[justice or]~~ judge serving on July 1, 1996, who is 75 years of age or older on July 1, 1996, or who attains 75 years of age prior to the ~~[justice or]~~ judge's next retention election may not be a candidate in that retention election and shall retire on or before December 31 of the year in which the ~~[justice or]~~ judge would have been subject to a retention election.

Section 170. Section **49-19-101**, which is renumbered from Section 49-7-101 is renumbered and amended to read:

## **CHAPTER 19. UTAH GOVERNORS' AND LEGISLATORS' RETIREMENT ACT**

### **Part 1. General Provisions**

~~[49-7-101].~~    **49-19-101. Title.**

This chapter is known as the "~~[Governor's and Legislative Service Pension]~~ Utah Governors' and Legislators' Retirement Act."

Section 171. Section **49-19-102** is enacted to read:

**49-19-102. Definitions.**

As used in this chapter:

(1) "Governor" includes former governors.

(2) "Legislator" includes former legislators.

(3) "Plan" means the Utah Governors' and Legislators' Retirement Plan created under this chapter.

Section 172. Section **49-19-103**, which is renumbered from Section 49-7-201 is renumbered and amended to read:

~~[49-7-201].~~    **49-19-103. Creation of plan.**

There is created for Utah governors[;] and legislators[; ~~and legislative employees enumerated under this chapter]~~ the "~~[Governor's and Legislative Service Pension]~~ Utah Governors' and Legislators' Retirement Plan."

Section 173. Section **49-19-104**, which is renumbered from Section 49-7-202 is renumbered and amended to read:

**[49-7-202]. 49-19-104. Creation of trust fund.**

(1) There is created the "[~~Governor's and Legislative Service Pension~~] Utah Governors' and Legislators' Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this [~~pension~~] plan.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by [~~Title 49,~~] Chapter [~~+~~] 11, Utah State Retirement Systems Administration.

Section 174. Section **49-19-201**, which is renumbered from Section 49-7-203 is renumbered and amended to read:

**Part 2. Membership Eligibility**

**[49-7-203]. 49-19-201. Plan participation -- Eligibility.**

[~~The following persons are eligible for benefits from this pension plan:~~]

[~~(1) former governors of the state who reach age 65, who serve at least one term, and who apply for the pension benefit to the retirement office; and~~]

[~~(2) legislators with four or more years of service in the Utah Legislature.~~]

Governors and legislators are eligible for service credit in this plan during their term of service in their elected position.

Section 175. Section **49-19-301**, which is renumbered from Section 49-7-301 is renumbered and amended to read:

**Part 3. Contribution**

**[49-7-301]. 49-19-301. Contribution rate -- Annual legislative appropriation.**

(1) [~~The pension plan shall be maintained~~] The Legislature, by means of annual appropriations, shall maintain this plan on a financially and actuarially sound basis [~~by means of annual appropriations by the Legislature~~].

[~~(2) The board shall certify to the director of the Division of Finance the amount necessary to fund the cost of the pension provided under this chapter, plus any liability which may have~~]

~~accrued. The director of the Division of Finance shall then pay the trust fund the certified and appropriated amount.]~~

(2) The Legislature shall cause the appropriate amount to be paid to the office.

Section 176. Section **49-19-401**, which is renumbered from Section 49-7-401 is renumbered and amended to read:

#### **Part 4. Defined Benefit**

~~[49-7-401].~~ **49-19-401. Eligibility for an allowance -- Governor -- Legislator.**

~~[(1) Upon reaching age 65, each former governor of Utah is eligible, upon application, to receive a lifetime monthly pension of \$500 per term. Payments under this lifetime pension cease during any period that a former governor holds an office of profit or trust with the government of United States, this state, or a political subdivision of the state paying more than the retirant is entitled to receive per month under this section.]~~

~~[(2) Upon reaching age 65, and upon application, a legislative pension shall be paid to a member who has four or more years of service as a legislator in the Utah Legislature. The pension is \$10 per month for each year of service as a member of the Legislature. If the retired member is elected to another term in the Legislature or continues to serve in the Legislature after reaching age 65, the legislative allowance ceases at the beginning of each session under rules established by the board, but is restored at the same amount at the end of the session. Members receiving an allowance while serving as legislators are eligible for additional service credits and allowance adjustments at the end of each two-year term of office if they continue as contributing members during their service as legislators.]~~

~~[(3) A member who is eligible for a pension under this section, may apply for an allowance at age 62, if the member has ten or more years of service credit, and receive a reduced allowance.]~~

~~[(4) The allowance provided for former governors, legislators, and their beneficiaries shall include any normal retirement benefits accrued in any system administered by the board by reason of their contributions and service as a governor or legislator in the system.]~~

(1) A governor is qualified to receive an allowance when:

(a) the governor has submitted to the office a notarized retirement application form that

states the proposed retirement date; and

(b) one of the following conditions is met as of the retirement date:

(i) the governor has completed at least one full term in office and has attained an age of 65 years; or

(ii) the governor has served as governor of the state for at least ten years and has attained an age of 62 years.

(2) A legislator is qualified to receive an allowance when:

(a) the legislator has submitted to the office a notarized retirement application form that states the proposed retirement date; and

(b) one of the following conditions is met as of the retirement date:

(i) the legislator has completed at least four years in the Legislature and has attained an age of 65 years; or

(ii) the legislator has completed at least ten years in the Legislature and has attained an age of 62 years.

(3) (a) The retirement date shall be the 1st or the 16th day of the month as selected by the member.

(b) The retirement date may not be more than 90 days after the date the application is received by the office.

(4) A member who retires and continues to serve in office may not receive an additional increase to the allowance from that service.

(5) A ~~[withdrawal of]~~ member who withdraws member contributions ~~[by a governor, legislator, or legislative employee]~~ shall forfeit all ~~[pensions and]~~ allowances ~~[provided under this chapter]~~ based on those contributions.

Section 177. Section **49-19-402** is enacted to read:

**49-19-402. Calculation of allowance -- Reduction for early retirement.**

(1) (a) The base retirement amount for a governor under this plan is \$500 per term, adjusted as provided in Section 49-19-404 since 1973.

(b) A governor's allowance shall be calculated by multiplying the base retirement amount

at the end of the governor's service by the number of terms the governor served, including fractions of terms.

(2) (a) The base retirement amount for a legislator under this plan is \$10 per year of service in the Legislature, adjusted as provided in Section 49-19-404, since 1967.

(b) A legislator's allowance shall be calculated by multiplying the base retirement amount at the end of the legislator's service by the number of years the legislator served, including fractions of years.

(3) If a governor or legislator retires prior to age 65, the allowance shall be reduced by 3% for each year of retirement between age 62 and age 65.

Section 178. Section **49-19-403** is enacted to read:

**49-19-403. Retirement option.**

A governor or legislator may elect to forfeit the allowance provided by this chapter and in lieu thereof participate, on the same basis as other state elected and appointed officers under Title 67, Chapter 22, State Officer Compensation, in a defined contribution plan administered by the office, in accordance with Section 49-11-801 and in accordance with federal law.

Section 179. Section **49-19-404** is enacted to read:

**49-19-404. Annual cost-of-living adjustment.**

(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-19-402 and Part 5, Death Benefit, of this chapter if the benefit has been paid for at least one year;

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount; and

(c) the base retirement amount for governors and legislators under Section 49-19-402.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.

(b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the increase in the Consumer Price Index is less than 4%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States

Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 180. Section **49-19-501**, which is renumbered from Section 49-7-403 is renumbered and amended to read:

#### **Part 5. Death Benefit**

**[49-7-403]. 49-19-501. Death of member or retiree -- Surviving spouse benefit.**

(1) Upon the death of a [member or retiree having] governor or legislator who has not yet retired and who has completed four or more years [of service as a governor or legislator, there is paid to the surviving spouse a monthly pension] in the elected office, the member's spouse at the time of death shall receive an allowance equal to 50% of the [retirement] allowance [paid, or] to which the [retiree or member] governor or legislator would have been entitled upon reaching age 65, if the [deceased member or retiree] governor or legislator and surviving spouse had been married at least six months.

(2) Upon the death of a governor or legislator receiving an allowance under this plan, the member's spouse is entitled to an allowance equal to 50% of the allowance being paid to the member at the time of death.

Section 181. Section **49-20-101**, which is renumbered from Section 49-8-101 is renumbered and amended to read:

### **CHAPTER 20. PUBLIC EMPLOYEES' BENEFIT AND INSURANCE PROGRAM ACT**

#### **Part 1. General Provisions**

**[49-8-101]. 49-20-101. Title.**

This chapter is known as the "[Group] Public Employees' Benefit and Insurance Program Act."

Section 182. Section **49-20-102**, which is renumbered from Section 49-8-103 is renumbered and amended to read:

**[49-8-103]. 49-20-102. Definitions.**

As used in this chapter[;]:

(1) "Covered employer" means an employer that offers employee benefit plans under this chapter to its employees and their dependents.

(2) "Covered individual" means an employee and the employee's dependents eligible for coverage under this chapter.

(3) "Employee [~~group~~] Benefit Plans" means any group health, dental, medical, disability, life insurance, medicare supplement, conversion coverage, cafeteria, flex plans, or other program for [~~employees~~] covered individuals administered by the [~~board and approved by the Legislature~~] Public Employees' Benefit and Insurance Program.

(4) "Employer" means the state, its political subdivisions, and educational institutions.

(5) "Program" means the Public Employees' Benefit and Insurance Program.

Section 183. Section **49-20-103**, which is renumbered from Section 49-8-201 is renumbered and amended to read:

**[49-8-201]. 49-20-103. Creation of insurance program.**

There is created for the employees of the state, its educational institutions, and political subdivisions the "~~[Group Insurance]~~ Public Employees' Benefit and Insurance Program[-]" within the office.

Section 184. Section **49-20-104**, which is renumbered from Section 49-8-202 is renumbered and amended to read:

**[49-8-202]. 49-20-104. Creation of fund.**

(1) There is created the "~~[Group Insurance]~~ Public Employees' Trust Fund" for the purpose of paying the benefits and the costs of administering this program.

(2) The fund shall consist of all money and interest paid into it in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by [~~Title 49,~~] Chapter [~~+~~] 11, Utah State Retirement Systems Administration.

Section 185. Section **49-20-105**, which is renumbered from Section 49-8-102 is renumbered and amended to read:

**[49-8-102]. 49-20-105. Purpose.**

The purpose of this chapter is to provide a mechanism ~~[whereby the state, its educational institutions, and political subdivisions may provide their employees]~~ for covered employers to provide covered individuals with group health, dental, medical, disability, life insurance, medicare supplement, conversion coverage, cafeteria, flex plan, and other programs requested by the state, its political subdivisions, or educational institutions in the most efficient and economical manner.

Section 186. Section **49-20-201**, which is renumbered from Section 49-8-203 is renumbered and amended to read:

**Part 2. Membership Eligibility****[49-8-203]. 49-20-201. Program participation -- Eligibility -- Optional for certain groups.**

(1) (a) ~~[All employers of the state, its educational institutions, and political subdivisions are]~~ The state shall participate in the program on behalf of its employees.

(b) Other employers, including political subdivisions and educational institutions, are eligible, but are not required, to participate in [this] the program~~[-but this section does not require political subdivisions, school districts, or institutions of higher education, including technical colleges, to participate in the program]~~ on behalf of their employees.

(2) (a) The Department of Health may participate in ~~[this] the~~ program for the purpose of providing ~~[program] health and dental~~ benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act, if the provisions in Subsection 26-40-110(4) occur.

(b) If the Department of Health participates in the program under the provisions of this Subsection (2), all insurance risk associated with the Children's Health Insurance Program shall be the responsibility of the Department of Health and not the ~~[group insurance division or the retirement] program or the office.~~

(3) A covered individual covered under a medical employee benefit plan shall be eligible for coverage after termination of employment under rules adopted by the board.

(4) Only retirees, members, participants, and their current spouses are eligible for Medicare

supplement coverage under this chapter upon becoming eligible for Medicare Part A and Part B coverage.

Section 187. Section **49-20-202**, which is renumbered from Section 49-8-204 is renumbered and amended to read:

**[49-8-204]. 49-20-202. Establishment of separate risk pools.**

(1) The ~~[group insurance division]~~ program shall establish~~[-(1)]~~ separate risk pools for:  
(a) state employees~~[-, political subdivisions, and, if applicable, children enrolled in]; and~~  
(b) the Utah Children's Health Insurance Program~~[-, created in Title 26, Chapter 40, for purposes of providing the benefits permitted by this chapter; and (2) rules and procedures governing the admission of political subdivisions to the program].~~

(2) The program shall create risk pools for other covered employers separate from those created in Subsection (1) as determined by the program.

Section 188. Section **49-20-301**, which is renumbered from Section 49-8-301 is renumbered and amended to read:

**Part 3. Premiums**

**[49-8-301]. 49-20-301. Premiums paid by employer and employee.**

The ~~[self-funded]~~ program shall be maintained on a financially and actuarially sound basis by means of ~~[contributions by the employer and the employee]~~ payments from covered employers and covered individuals.

Section 189. Section **49-20-401**, which is renumbered from Section 49-8-401 is renumbered and amended to read:

**Part 4. Insurance Program**

**[49-8-401]. 49-20-401. Program -- Powers and duties.**

(1) The ~~[group insurance division of the retirement office]~~ program shall:  
(a) act as a self-insurer of employee ~~[group]~~ benefit plans and administer those plans;  
(b) enter into contracts with private insurers or carriers to underwrite employee ~~[group]~~ benefit plans ~~[and to reinsure any appropriate self-insured plans]~~ as considered appropriate by the program;

(c) indemnify employee benefit plans or purchase commercial reinsurance as considered appropriate by the program;

~~[(e)]~~ (d) [publish and disseminate] provide descriptions of all employee benefit plans under this chapter in cooperation with ~~[the Department of Human Resource Management and political subdivisions]~~ covered employers;

~~[(d)]~~ (e) [administer the] process [of] claims [administration of] for all employee benefit plans under this chapter or enter into contracts, after competitive bids are taken, with other benefit administrators to provide for the administration of the claims process;

~~[(e)]~~ (f) obtain an annual actuarial [evaluation] review of all [self-insured] health and dental benefit plans and [prepare an annual report for the governor and the Legislature describing the employee benefit plans being administered by the retirement office detailing historical and projected program costs and the status of reserve funds] a periodic review of all other employee benefit plans;

~~[(f)]~~ (g) consult with the [Department of Human Resource Management and the executive bodies of other political subdivisions] covered employers to evaluate employee benefit plans and develop recommendations for ~~[new or improved]~~ benefit [plans] changes;

~~[(g)]~~ (h) annually submit [annually] a budget and audited financial statements to the governor and Legislature which includes total projected benefit costs and administrative costs;

~~[(h)]~~ (i) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the [self-funded] employee [group] benefit plans as estimated by the [board's] program's consulting actuary;

~~[(i)]~~ (j) submit its recommended benefit adjustments for state employees [upon approval of the board] to the director of the state Department of Human Resource Management[. The Department of Human Resource Management shall include the benefit adjustments in the total compensation plan recommended to the governor required by Subsection 67-19-12(6)(a)];

~~[(j)] adjust benefits, upon approval of the board, and upon appropriate notice to the state, its educational institutions, and political subdivisions;~~

~~[(k)] for the purposes of stimulating competition, establishing better geographical distribution of medical care services, and providing alternative health and dental plan coverage for both active~~

and retired employees;]

(k) determine benefits and rates, upon approval of the board, for multiemployer risk pools, retiree coverage, and conversion coverage;

(l) determine benefits and rates, upon approval of the board and the Legislature, for state employees;

(m) administer benefits and rates, upon ratification of the board, for single employer risk pools;

(n) request proposals for [alternative health and dental coverage] provider networks or benefit plans administered by third party carriers at least once every three years[; proposals] for the purposes of:

(i) stimulating competition for the benefit of covered individuals;

(ii) establishing better geographical distribution of medical care services; and

(iii) providing coverage for both active and retired covered individuals;

(o) offer proposals which meet the criteria specified in [the request shall be offered] a request

for proposals and accepted by the program to active and retired state [employees and may be offered] covered individuals and which may be offered to active and retired [employees of political subdivisions] covered individuals of other covered employers at the option of the [political subdivision; and] covered employer;

[†] (p) perform the same functions established in Subsections (1)(a), (b), [†] (e), and [†] (h) for the Department of Health if the [group insurance division] program provides program benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40[-], Utah Children's Health Insurance Act;

(q) establish rules and procedures governing the admission of political subdivisions or educational institutions and their employees to the program; and

(r) contract directly with medical providers to provide services for covered individuals.

(2) (a) Funds budgeted and expended shall accrue from [premiums] rates paid by the [various] covered employers and covered individuals.

(b) Administrative costs [may not exceed that percentage of premium income which is

~~recommended]~~ shall be approved by the board and ~~[approved by]~~ reported to the governor and the Legislature.

(3) The Department of Human Resource Management shall include the benefit adjustments described in Subsection (1)(j) in the total compensation plan recommended to the governor required under Subsection 67-19-12(6)(a).

Section 190. Section **49-20-402**, which is renumbered from Section 49-8-402 is renumbered and amended to read:

~~[49-8-402].~~ **49-20-402. Reserves to be held -- Refunds.**

~~[In no case may the average total]~~

(1) The reserves in a risk pool in a given fiscal year [fall below the level of two months' premiums] shall be maintained at the level recommended by the program's consulting actuary and approved or ratified by the board. If the reserves drop below that level, covered employers in the risk pool are required to cure any deficiency in the reserve.

(2) If substantial excess reserves are accrued above those required by this chapter, and the board determines that a refund is appropriate, [refunds] a refund shall be made to [an employer and employee] covered employers which shall then make a refund to covered individuals on the basis of the contribution of each to the plan. [The board may make a full refund to any employer, other than the state, and the employer is responsible for refunding employee contributions in accordance with this section.]

Section 191. Section **49-20-403** is enacted to read:

**49-20-403. Assistance to members in purchase of life, health, dental, and medical insurance after retirement -- Employment of personnel to administer section.**

(1) The program may assist active and retired covered individuals and inactive covered individuals of the covered employers to purchase life, health, dental, and medical coverage on a group basis which can be continued after retirement under rules adopted by the board.

(2) The executive director may employ any personnel, including consultants, to administer this section.

Section 192. Section **49-20-404**, which is renumbered from Section 49-8-403 is renumbered

and amended to read:

~~[49-8-403].~~ **49-20-404. Governors' and legislative benefit.**

~~[(1) (a) The board may assist active and retired members and beneficiaries and inactive members of the various retirement systems administered under its direction, to purchase life, health, dental, and medical insurance on a group basis which can be continued after retirement under rules adopted by the board.]~~

~~[(b) The executive director may employ any personnel, including consultants, to administer this section.]~~

~~[(2)(a) (1) The [board shall annually report and the] state shall pay the percentage described in Subsection [(2)(c)] (3) of the cost of providing [a] paid-up group health [insurance] coverage policy for members and their surviving spouses covered under [Title 49,] Chapter [7, Governor's and Legislative Service Pension] 19, Utah Governors' and Legislators' Retirement Act who:~~

~~[(i) (a) retire after January 1, 1998;~~

~~[(ii) (b) are at least 62 but less than 65 years of age;~~

~~[(iii) (c) elect to receive and apply for this benefit to the [group insurance division] program;~~

and

~~[(iv) (d) are active members at the time of retirement or have retired and continued [insurance] coverage with the [group insurance division] program until the date of eligibility for the benefit under this Subsection [(2)] (1).~~

~~[(b) (2) The [board shall annually report and the] state shall pay the percentage described in Subsection [(2)(c)] (3) of the cost of providing Medicare supplemental [insurance] coverage for members and their surviving spouses covered under [Title 49,] Chapter [7, Governor's and Legislative Service Pension] 19, Utah Governors' and Legislators' Retirement Act who:~~

~~[(i) (a) retire after January 1, 1998;~~

~~[(ii) (b) are at least 65 years of age; and~~

~~[(iii) (c) elect to receive and apply for this benefit to the [group insurance division] program.~~

~~[(c) (3) The following percentages apply to the benefit described in Subsections [(2)(a)] (1) and [(b)] (2):~~

- [(i)] (a) 100% if the member has accrued 10 or more years of service credit;
- [(ii)] (b) 80% if the member has accrued 8 or more years of service credit;
- [(iii)] (c) 60% if the member has accrued 6 or more years of service credit; and
- [(iv)] (d) 40% if the member has accrued 4 or more years of service credit.

Section 193. Section **49-20-405**, which is renumbered from Section 49-8-404 is renumbered and amended to read:

**[49-8-404]. 49-20-405. Audit required -- Report to governor and Legislature.**

The Insurance Department shall biennially audit [~~all funds~~] the Public Employees' Trust Fund and programs authorized under this chapter and report its findings to the governor and the Legislature, but the commissioner may accept the annual audited statement of the programs under this chapter in lieu of the biennial audit requirement.

Section 194. Section **49-20-406**, which is renumbered from Section 49-8-405 is renumbered and amended to read:

**[49-8-405]. 49-20-406. Insurance benefits for employees' beneficiaries.**

(1) As used in this section:

(a) "Children" includes stepchildren and legally adopted children.

(b) "Line-of-duty death" means a death resulting from external force or violence occasioned by an act of duty as an employee.

(2) The beneficiary of [~~an employee~~] a covered individual who is employed by the state and who dies in the line of duty shall receive:

(a) the proceeds of a group term life insurance policy in the amount of \$50,000 to be purchased by the [~~division~~] program and paid for by the [~~employing unit~~] state; and

(b) [~~a~~] group health [~~insurance policy~~] coverage paid for by the [~~employing unit~~] state that covers the [~~employee's~~] covered individual's:

(i) surviving spouse until remarriage or becoming eligible for Medicare, whichever comes first; and

(ii) unmarried children up to the age of 26.

(3) Any [~~political subdivision~~] covered employer may provide the benefit under Subsection

(2).

Section 195. Section **49-21-101**, which is renumbered from Section 49-9-101 is renumbered and amended to read:

## **CHAPTER 21. PUBLIC EMPLOYEES' LONG-TERM DISABILITY ACT**

### **Part 1. General Provisions**

#### **[49-9-101]. 49-21-101. Title.**

This chapter is known as the "[Utah] Public Employees' Long-Term Disability Act."

Section 196. Section **49-21-102**, which is renumbered from Section 49-9-103 is renumbered and amended to read:

#### **[49-9-103]. 49-21-102. Definitions.**

As used in this chapter:

(1) "Date of disability" means the date on which a period of continuous disability commences, and may not commence on or before the last day of actual work.

~~[(2) "Educational institution" means a political subdivision or an instrumentality of a political subdivision, an instrumentality of the state, or any combination of these entities, which is primarily engaged in educational activities or the administration or servicing of educational activities. The term includes the State Board of Education and any instrumentality of the State Board of Education, institutions of higher education and their branches, school districts, and vocational and technical schools.]~~

~~[(3)]~~ (2) "Elimination period" means the three months at the beginning of each continuous period of total disability for which no benefit will be paid and commences with the date of disability.

~~[(4) "Employee"]~~

(3) (a) "Eligible employee" means:

(i) any regular full-time employee [of an employer who participates in any system administered by the board, except those employees exempt from coverage under Section 49-9-102.] as defined under Section 49-12-102 or 49-13-102, public safety service employee as defined under Section 49-14-102 or 49-15-102, or judge as defined under Section 49-17-102 or 49-18-102, whose employer provides coverage under this chapter, or the governor of the state; and

(ii) an employee who is covered by a retirement program offered by the Teachers' Insurance and Annuity Association of America, if the employee's employer provides coverage under this chapter; and

(b) "Eligible employee" does not include any employee that is exempt from coverage under Section 49-21-201.

~~[(5)]~~ (4) "Maximum benefit period" means the maximum period of time the monthly disability income benefit will be paid under Section 49-21-403 for any continuous period of total disability.

~~[(6) "Medically determinable impairment" means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the individual's statement of symptoms.]~~

(5) "Monthly disability benefit" means the monthly payments and accrual of service credit under Section 49-21-401 and health insurance reimbursements paid under Section 49-21-408, or any combination of them.

(6) "Objective medical impairment" means an impairment resulting from an injury or illness which is diagnosed by a physician and which is based on accepted objective medical tests or findings rather than subjective complaints.

(7) "Physician" means a ~~[legally qualified]~~ licensed physician.

(8) "Regular monthly salary" means the amount certified by the participating employer as the monthly salary of the eligible employee, unless there is a discrepancy between the certified amount and the amount actually paid, in which case the office shall determine the regular monthly salary.

(9) "Regular occupation" means either the primary duties performed by the eligible employee for the twelve months preceding the date of disability, or a permanent assignment of duty to the eligible employee.

~~[(8)]~~ (10) "Rehabilitative employment" means any ~~[board-approved]~~ occupation or

employment for wage or profit, for which the eligible employee is reasonably qualified [by] to perform based on education, training, or experience[; in which the employee engages] while unable to perform [his] the employee's regular occupation [as a result of injury or illness].

~~[(9)]~~ (11) (a) "Total disability" or "totally disabled" means the complete inability, due to [~~medically determinable physical or mental~~] objective medical impairment, whether physical or mental, to engage in the eligible employee's regular occupation during the elimination period and the first 24 months of disability benefits. [~~Thereafter, "total~~]

(b) "Total disability" means, after the elimination period and the first 24 months of disability benefits, the complete inability, based solely on [~~medically determinable physical~~] physical objective medical impairment, to engage in any gainful occupation which is reasonable, considering the eligible employee's education, training, and experience. [~~"Total disability" exists only if during any period of "total disability" the employee is under the regular care of a physician other than the employee.~~]

Section 197. Section **49-21-103**, which is renumbered from Section 49-9-201 is renumbered and amended to read:

~~[49-9-201].~~ **49-21-103. Creation of program.**

There is created for eligible employees [~~of employers participating in any system administered by the board, unless otherwise exempted under this chapter,~~] the "Public Employees' Long-Term Disability Program."

Section 198. Section **49-21-104**, which is renumbered from Section 49-9-202 is renumbered and amended to read:

~~[49-9-202].~~ **49-21-104. Creation of trust fund.**

(1) There is created the "Public Employees' Long-Term Disability Trust Fund" for the purpose of paying the benefits and costs of administering this program.

(2) The fund shall consist of all money and interest paid into it in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by [~~Title 49,~~]

Chapter [†] 11, Utah State Retirement Systems Administration.

Section 199. Section **49-21-105**, which is renumbered from Section 49-9-102 is renumbered and amended to read:

**[49-9-102]. 49-21-105. Purpose.**

(1) The purpose of this chapter is to provide long-term disability benefits for eligible employees [of employers participating in any system administered by the board except employees covered under the Firefighters' Retirement Act, or employees covered under the Public Safety Retirement Act who are covered under a long-term disability program offered by a political subdivision which is substantially equivalent to the program offered by the state under this chapter].

(2) The program shall be administered by the [executive officer of the board through the retirement] office, under [the] policies and rules [promulgated] adopted by the board.

Section 200. Section **49-21-201**, which is renumbered from Section 49-9-203 is renumbered and amended to read:

**Part 2. Membership Eligibility****[49-9-203]. 49-21-201. Program membership -- Eligibility.**

~~[(1) AH]~~ (1) The state shall cover all of its eligible employees under this chapter.

(2) Except as provided under Subsections (5), (6), and (7), all other employers [participating in any system administered by the board may cover their] may provide coverage for their eligible employees under this chapter[, except employees covered under the Firefighters' Retirement Act].

~~[(2)]~~ (3) If an employer elects to cover any of ~~[his]~~ its eligible employees under this chapter, all of ~~[those]~~ its eligible employees shall be covered~~[, except employees covered under the Firefighters' Retirement Act].~~

~~[(3)]~~ (4) Nothing in this chapter requires any ~~[political subdivision or educational institution to be covered by]~~ employer other than the state to cover its eligible employees under this chapter.

(5) Firefighter service employees, as defined under Section 49-16-102, are not eligible for coverage under this chapter.

(6) Public safety service employees, as defined in Sections 49-14-102 and 49-15-102, who are covered under a long-term disability program offered by an employer which is substantially

similar to this program are not eligible for coverage under this chapter.

(7) Legislators are not eligible for coverage under this chapter.

Section 201. Section **49-21-301**, which is renumbered from Section 49-9-301 is renumbered and amended to read:

### **Part 3. Contributions**

**[49-9-301]. 49-21-301. Contributions to fund program -- Adjustment of premium rate.**

(1) During each legislative session, the board shall certify to the Legislature the employer paid premium rate expressed as a percentage of salary which is required to fund the Public Employees' Long-Term Disability Trust Fund.

(2) Upon the board's recommendation, the Legislature shall adjust the premium rate to maintain adequate funding for the [~~disability trust fund~~] Public Employees' Long-Term Disability Trust Fund.

Section 202. Section **49-21-401**, which is renumbered from Section 49-9-401 is renumbered and amended to read:

### **Part 4. Disability Benefits**

**[49-9-401]. 49-21-401. Disability Benefits -- Application -- Eligibility.**

~~[(1) Upon receipt of proof by the board from the employer that an employee has become totally disabled as a result of:]~~

~~[(a) accidental bodily injury which is the sole cause of disability and is sustained while this chapter is in force;]~~

~~[(b) disease or illness causing total disability commencing while this chapter is in force; or]~~

~~[(c) physical injury resulting from external force or violence as a result of the performance of duty, the fund will pay to the employee a monthly disability benefit for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.]~~

(1) An eligible employee shall apply for long-term disability benefits under this chapter by:

(a) completing an application form prepared by the office;

(b) signing a consent form allowing the office access to the eligible employee's medical

records; and

(c) providing any documentation or information reasonably requested by the office.

(2) Upon request by the office, the participating employer of the eligible employee shall provide to the office documentation and information concerning the eligible employee.

(3) The office shall review all relevant information and determine whether or not the eligible employee is totally disabled.

(4) If the office determines that the eligible employee is totally disabled due to accidental bodily injury or physical illness which is not the result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to 2/3 of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.

(5) If the office determines that the eligible employee is totally disabled due to psychiatric illness, the eligible employee shall receive:

(a) a maximum of two years of monthly disability benefits equal to 2/3 of the eligible employee's regular monthly salary for each month the total disability continues beyond the elimination period;

(b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses approved by the office's consultants, paid during the period of monthly disability benefits; and

(c) payment of monthly disability benefits according to contractual provisions for a period not to exceed five years if the eligible employee is institutionalized due to psychiatric illness.

(6) If the office determines that the eligible employee is totally disabled due to a physical injury resulting from external force or violence as a result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to 100% of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.

[(2)] (7) (a) Successive periods of disability [~~which: (a) result~~] are considered as a continuous period of disability if the period of disability:

(i) results from the same or related causes[~~;(b) are~~];

(ii) is separated by less than six months of continuous full-time work at the individual's usual place of employment[;]; and [~~(c) commence~~]

(iii) commences while the individual is an eligible employee covered by this chapter[; ~~shall be considered as a single period of disability~~].

(b) The inability to work for a period of less than 15 consecutive days [~~may not be~~] is not considered as a period of disability. [~~Otherwise, successive~~]

(c) If Subsection (7)(a) or (b) does not apply, successive periods of disability [~~shall be~~] are considered as separate periods of disability.

[~~(3)~~] (8) The [~~board~~] office may, at any time, have any eligible employee claiming disability examined by a physician chosen by the [~~board~~] office to determine if the eligible employee is totally disabled[; ~~and if so, the extent of the disability~~].

[~~(4) (a) Except as provided in Subsection (4)(b), any~~]

(9) A claim brought by an eligible employee for long-term disability benefits under the Public Employee's Long-Term Disability Program is barred if it is not commenced within one year from the eligible employee's date of disability[; ~~(b) If an employee fails to commence a claim for long-term disability benefits within the time limitations prescribed by Subsection (4)(a), the board may permit an employee to commence a claim for long-term disability benefits if the employee demonstrates that~~], unless the office determines that under the surrounding facts and circumstances, the eligible employee's failure to comply with the time limitations was reasonable.

[~~(5) Benefits for disability based primarily on psychopathy shall be determined in accordance with Section 49-9-406.~~]

[~~(6)~~] (10) Medical or [~~psychological~~] psychiatric conditions which existed prior to enrollment [~~shall~~] may not be a basis for disability benefits until the eligible employee has had one year of continuous enrollment in the Public Employees Long-Term Disability Program.

(11) If there is a valid benefit protection contract, service credit shall accrue during the period of total disability, unless the disabled eligible employee is exempted from a system, or is otherwise ineligible for service credit.

Section 203. Section **49-21-402**, which is renumbered from Section 49-9-402 is renumbered

and amended to read:

~~[49-9-402].~~ **49-21-402. Reduction of benefit -- Circumstances -- Application for other benefits required.**

~~[(1) (a) The monthly income disability benefit is two-thirds of the regular monthly salary paid as of the last day of actual service for the disabilities defined in Subsections 49-9-401(1)(a) and (b) and 100% of the regular monthly salary paid as of the last day of actual service for the disabilities defined in Subsection 49-9-401(1)(c).]~~

~~[(b) Payments may]~~

(1) A monthly disability benefit may not be ~~[made by the fund]~~ paid for any period of total disability unless the eligible employee is under the ~~[regular]~~ ongoing care and treatment of a physician other than the eligible employee.

(2) The monthly disability ~~[income]~~ benefit shall be reduced by any amount received by, or ~~[due]~~ payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive ~~[the]~~ a monthly disability benefit:

(a) Social Security disability benefits, including all benefits received by the eligible employee, the eligible employee's spouse, and the eligible employee's dependent children~~[-except that if Social Security benefits are increased to compensate for a change in the Consumer Price Index, the monthly disability income benefit may not be further reduced, but shall only be offset by benefits determined at the level in effect at the time of the commencement of benefits];~~

(b) workers' compensation indemnity benefits;

~~[(c) armed services retirement or disability programs;]~~

~~[(d) civil service retirement or disability programs;]~~

~~[(e) disability benefits under any group insurance plan providing disability income benefits for which contributions or payroll deductions are made by the employer;]~~

~~[(f) any employer-paid public or private retirement or disability program for which the employee is eligible;]~~

~~[(g)]~~ (c) any monies received by judgment, legal action, or settlement from a third party liable to the employee for the disability; ~~[and]~~

~~[(4)]~~ (d) unemployment compensation benefits[-];

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

(f) any other disability benefits resulting from the disability for which benefits are being received under this chapter.

(3) The monthly disability benefit shall be reduced by any amount in excess of 1/3 of the eligible employee's regular monthly salary received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:

(a) any employer-sponsored retirement programs; and

(b) any disability benefit resulting from the disability for which benefits are being received under this chapter.

(4) Cost-of-living increases to any of the benefits listed in Subsection (2) may not be considered in calculating a reduction to the monthly disability benefit.

~~[(3)]~~ (5) Any amounts ~~[received by, or]~~ payable to~~[-]~~ the eligible employee from one or more of the sources under Subsection (2) ~~[shall be]~~ are considered as amounts received ~~[by the employee]~~ whether or not the amounts were actually received by the eligible employee.

~~[(4)]~~ (6) (a) ~~[In order to be eligible for benefits under this chapter the]~~ An eligible employee shall first apply for all disability benefits from governmental entities under Subsection (2) to which the eligible employee is or may be entitled, and provide to the office evidence of the applications.

(b) The eligible employee shall also first apply at the earliest eligible age for all unreduced retirement benefits to which the eligible employee is or may be entitled, and provide to the office evidence of the application.

~~[(c) If the employee fails to apply, the board may apply on behalf of the employee.]~~

(c) If the eligible employee fails to make application under Subsection (6)(a) or (b), the monthly disability benefit shall be suspended.

~~[(d) The board may treat as income any amount the employee is entitled to receive but does not receive because application for benefits is not made by the employee and may reduce the monthly disability accordingly.]~~

Section 204. Section **49-21-403**, which is renumbered from Section 49-9-403 is renumbered and amended to read:

~~[49-9-403].~~ **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

(1) ~~[Any member]~~ An eligible employee covered by this chapter and eligible for service credit under a system, including an eligible employee who relinquishes rights to retirement benefits ~~[pursuant to]~~ under Section ~~[49-1-405]~~ 49-11-619, who applies and is qualified for a monthly disability ~~[benefits]~~ benefit shall receive a monthly disability ~~[allowance]~~ benefit until the earlier of:

(a) the date the ~~[member or]~~ eligible employee ~~[who relinquishes rights to retirement benefits]~~ has accumulated:

(i) 20 years of service credit if the ~~[member]~~ eligible employee is covered by ~~[Chapters 4 or 4a;]~~ Chapter 14, Public Safety Contributory Retirement [and] Act, or Chapter 15, Public Safety Noncontributory Retirement [Acts] Act;

(ii) 25 years of service credit if the ~~[member]~~ eligible employee is covered by Chapter ~~[6]~~ 17, Judges' Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;  
or

(iii) 30 years of service credit if the ~~[member]~~ eligible employee is covered by ~~[Chapters 2 or 3]~~ Chapter 12, Public Employees' Contributory Retirement [and] Act, or Chapter 13, Public Employees' Noncontributory Retirement [Acts] Act; or

(b) the ~~[member]~~ date the eligible employee has received a monthly disability ~~[benefits]~~ benefit for the following applicable time periods:

(i) if the ~~[member]~~ eligible employee is under age 60, the monthly disability ~~[allowance]~~ benefit is payable until age 65;

(ii) if the ~~[member]~~ eligible employee is 60[=] or 61 years of age on the date of disability, the monthly disability ~~[allowance]~~ benefit is payable for five years;

(iii) if the ~~[member]~~ eligible employee is 62[=] or 63 years of age on the date of disability, the monthly disability ~~[allowance]~~ benefit is payable for four years;

(iv) if the ~~[member]~~ eligible employee is 64[=] or 65 years of age on the date of disability,

the monthly disability [allowance] benefit is payable for three years;

(v) if the [~~member~~] eligible employee is 66[=], 67, or 68 years of age on the date of disability, the monthly disability [allowance] benefit is payable for two years; and

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

(2) (a) Upon termination of a monthly disability [benefits, the disabled] benefit, an eligible employee [shall] eligible for service credit under a system may retire under the [~~retirement~~] system which covered the eligible employee [at the time] on the date of disability.

(b) The final average salary used in the calculation of the [~~retirement benefit~~] allowance shall be based on the annual rate of pay [~~at the time] on the date~~ of disability, improved by the annual cost-of-living increase factor applied to [~~retired participants in] retirees of~~ the system which covered the eligible employee [at the time] on the date of disability. [~~Retirement credit shall accrue during the period of disability unless the disabled employee is exempted from the system.~~]

(3) An eligible employee who is [~~in a position covered by a system administered by the board] eligible for service credit in a system~~, but has relinquished rights to [~~retirement benefits pursuant to] an allowance under Section [49-1-405] 49-11-619~~, may receive the [~~benefit] benefits~~ the eligible employee would have received by [~~full participation] being eligible for service credit~~ in the system covering the eligible employee on the date of disability, except for the accrual of service credit, in accordance with this title.

(4) An eligible employee receiving a monthly disability [benefits] benefit who has [~~years of] service credit from two or more systems [or plans administered by the board]~~ may not combine [~~these] service credits under Section [49-1-406] 49-11-405 in [determining eligibility] qualifying~~ for retirement, unless the eligible employee would receive a greater [~~retirement benefit] allowance~~ by combining [~~such] the service credits~~.

(5) A monthly disability benefit payable to an eligible employee who is not eligible for service credit under a system shall terminate at the earliest of:

(a) the date the eligible employee is eligible for an unreduced retirement benefit; or

(b) the date the eligible employee has received a monthly disability benefit for the applicable

time period as set forth in Subsection (1)(b).

Section 205. Section **49-21-404**, which is renumbered from Section 49-9-404 is renumbered and amended to read:

~~[49-9-404].~~ **49-21-404. Annual adjustment to disability benefit.**

(1) (a) An eligible employee receiving a monthly disability ~~[benefits]~~ benefit shall receive an annual adjustment on the ~~[employee's anniversary]~~ date following the end of the elimination period to reflect ~~[changes]~~ annual changes in the ~~[Consumer Price Index as computed by the]~~ United States Bureau of Labor Statistics Consumer Price Index average as determined by the board. ~~[The]~~

(b) This adjustment ~~[shall be approved by the board and]~~ may not exceed adjustments made to ~~[retirants]~~ retirees under the system which covered the eligible employee ~~[at the time]~~ on the date of disability.

(2) If an employee is not eligible for service credit under a system, the annual adjustment shall be equal to the adjustment calculated under Section 49-13-407.

Section 206. Section **49-21-405**, which is renumbered from Section 49-9-405 is renumbered and amended to read:

~~[49-9-405].~~ **49-21-405. Disability benefit -- Exclusions.**

~~[The disability trust fund does not cover any loss resulting from]~~ A monthly disability benefit is not payable for the following:

(1) self-inflicted injury;

~~[(2) war or any act of war, or suffering while in military or naval services of any country at war;]~~

~~[(3)]~~ (2) alcoholism;

~~[(4) drug addiction; or]~~

(3) substance abuse;

~~[(5)]~~ (4) disability arising from or caused by acts of aggression committed by the eligible employee~~[-];~~ or

(5) the eligible employee committing or attempting to commit a felony or other illegal act.

Section 207. Section **49-21-406**, which is renumbered from Section 49-9-407 is renumbered

and amended to read:

~~[49-9-407].~~ **49-21-406. Rehabilitative employment -- Interview by disability specialist -- Maintaining eligibility -- Additional treatment and care.**

(1) (a) If an eligible employee, following a period of total disability for which the monthly disability benefit is payable, engages in approved rehabilitative employment, the monthly disability benefit otherwise payable shall be reduced by an amount equal to 50% of the ~~[wages or profits]~~ income to which the eligible employee is entitled for the employment during the month.

(b) This benefit ~~[will be]~~ is payable for up to ~~[24 months]~~ two years or to the end of the maximum benefit period, whichever occurs first.

(2) (a) Each ~~[disabled]~~ eligible employee receiving a monthly disability benefit shall be interviewed ~~[by a disability specialist employed]~~ by the ~~[board]~~ office. ~~[The disability specialist shall prepare a written rehabilitation plan for the employee. If it appears that the employee cannot return to his regular occupation, other vocational alternatives shall be sought whenever feasible. These alternatives include, but are not limited to, training courses needed to qualify for a new occupation, aids to mobility and job performance, and job placement assistance.]~~

~~[(3) Each disabled employee, in order to maintain eligibility for benefits, shall engage actively in a rehabilitation program if it is determined by a physician, or by a majority of a panel of licensed physicians, that a rehabilitation program would reasonably ensure that the employee would become capable of holding regular employment in any occupation. Failure on the part of the employee to participate reasonably in a board-approved rehabilitation program shall result in forfeiture of the monthly benefit.]~~

(b) The office may refer the eligible employee to a disability specialist for a review of the eligible employee's condition and a written rehabilitation plan.

(3) If an eligible employee receiving a monthly disability benefit fails to participate in an office-approved rehabilitation program within the limitations set forth by a physician, the monthly disability benefit may be suspended or terminated.

(4) The ~~[board]~~ office may, as a condition of ~~[making any payment under this chapter]~~ paying a monthly disability benefit, require that the eligible employee receive ~~[additional]~~ medical

care and treatment [~~including, but not limited to, therapy, psychoanalysis, and regular medication,~~] if that treatment is reasonable or usual according to current medical practices.

Section 208. Section **49-21-407**, which is renumbered from Section 49-9-409 is renumbered and amended to read:

~~[49-9-409].~~ **49-21-407. Health insurance reimbursements for persons with a disability -- Limitations.**

~~[(1) The fund created under Section 49-9-202 shall pay the costs of health insurance coverage for each member receiving a disability benefit under this chapter beginning on the 25th month following the date of disability.]~~

~~[(2) Payments made from the fund for health insurance coverage may not exceed the amount the member and the employer would have paid by participating in the Preferred Care Program offered by the group insurance division to the member's employer pursuant to Title 49, Chapter 8, Group Insurance Program Act, at the time of disability.]~~

Beginning on the 25th month following the date of disability, the Public Employees' Long-Term Disability Trust Fund shall pay the cost of the health insurance coverage in effect at the time of disability up to the amount the state would have paid by participating in the Preferred Care Program offered by the Group Insurance Division under Chapter 20, Public Employees' Insurance Program Act.

Section 209. Section **51-7-4** is amended to read:

**51-7-4. Transfer of functions, powers, and duties relating to public funds to state treasurer -- Exceptions -- Deposit of income from investment of state money.**

(1) Unless otherwise required by the Utah Constitution or applicable federal law, the functions, powers, and duties vested by law in each and every state officer, board, commission, institution, department, division, agency, and other similar instrumentalities relating to the deposit, investment, or reinvestment of public funds, and the purchase, sale, or exchange of any investments or securities of or for any funds or accounts under the control and management of these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

(a) funds assigned to the Utah State Retirement Board for investment under Section

[~~49-1-302~~] 49-11-302;

(b) funds of member institutions of the state system of higher education:

(i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

(ii) derived from student fees or from income from operations of auxiliary enterprises, which fees and income are pledged or otherwise dedicated to the payment of interest and principal of bonds issued by such institutions; and

(iii) any other funds which are not included in the institution's work program as approved by the State Board of Regents;

(c) funds of the Utah Technology Finance Corporation;

(d) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work Programs for Prisoners;

(e) trust funds established by judicial order;

(f) funds of the Workers' Compensation Fund; and

(g) funds of the Utah Housing Finance Agency.

(2) All public funds held or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to the state treasurer as provided by this section shall be:

(a) deposited and invested by the custodian in accordance with this chapter, unless otherwise required by statute or by applicable federal law; and

(b) reported to the state treasurer in a form prescribed by the state treasurer.

(3) Unless otherwise provided by the constitution or laws of this state or by contractual obligation, the income derived from the investment of state money by the state treasurer shall be deposited in and become part of the General Fund.

Section 210. Section **53-6-107** is amended to read:

**53-6-107. General duties of council.**

(1) The council shall:

(a) advise the director regarding:

(i) the approval, certification, or revocation of certification of any certified academy

established in the state;

(ii) the refusal, suspension, or revocation of certification of a peace officer;

(iii) minimum courses of study, attendance requirements, and the equipment and facilities to be required at a certified academy;

(iv) minimum qualifications for instructors at a certified academy;

(v) the minimum basic training requirements that peace officers shall complete before receiving certification;

(vi) the minimum basic training requirements that dispatchers shall complete before receiving certification; and

(vii) categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements for the categories or classifications;

(b) recommend that studies, surveys, or reports, or all of them be made by the director concerning the implementation of the objectives and purposes of this chapter;

(c) make recommendations and reports to the commissioner and governor from time to time; and

(d) perform other acts as necessary to carry out the duties of the council in this chapter.

(2) The council may approve special function officers for membership in the Public Safety Retirement System in accordance with Sections [~~49-4-203~~] 49-14-201 and [~~49-4a-203~~] 49-15-201.

Section 211. Section **53-7-105** is amended to read:

**53-7-105. State fire marshal, deputies, and investigators -- Status of law enforcement officers -- Inclusion in Public Safety Retirement -- Training.**

(1) The state fire marshal, his deputies, and investigators, for the purpose of enforcing and investigating violations of fire related statutes and ordinances, have the status of law enforcement officers.

(2) Inclusion under Title 49, Chapter [~~4~~] 14, Public Safety Contributory Retirement Act, or Title 49, Chapter [~~4a~~] 15, Public Safety Noncontributory Retirement Act, is not authorized by Subsection (1) except as provided in those chapters.

(3) The commissioner, with the concurrence of the Peace Officer Standards and Training

Advisory Board may require peace officer standards and training for the state fire marshal, his deputies, and investigators.

Section 212. Section **53-13-108** is amended to read:

**53-13-108. Retirement.**

Eligibility for coverage under the Public Safety Contributory Retirement System or Public Safety Noncontributory Retirement System for persons and political subdivisions included in this chapter is governed by Title 49, Chapter ~~[4]~~ 14, Public Safety Contributory Retirement Act, and Chapter ~~[4a]~~ 15, Public Safety Noncontributory Retirement Act.

Section 213. Section **53A-17a-125** is amended to read:

**53A-17a-125. Appropriation for retirement and Social Security.**

(1) There is appropriated to the State Board of Education for the fiscal year beginning July 1, 2001, \$214,685,479 for retirement and Social Security costs.

(2) The employee's retirement contribution shall be 1% for employees who are under the state's contributory retirement program.

(3) The employer's contribution under the state's contributory retirement program is determined under Section ~~[49-2-301]~~ 49-12-301, subject to the 1% contribution under Subsection (2).

(4) The employer-employee contribution rate for employees who are under the state's noncontributory retirement program is determined under Section ~~[49-3-301]~~ 49-13-301.

Section 214. Section **63-95-102** is amended to read:

**63-95-102. Definitions.**

For purposes of this chapter:

(1) "Asset" means property of all kind, real and personal, tangible and intangible, and includes:

- (a) cash, except reasonable compensation or salary for services rendered;
- (b) stock or other investments;
- (c) goodwill;
- (d) real property;

- (e) an ownership interest;
  - (f) a license;
  - (g) a cause of action; and
  - (h) any similar property.
- (2) "Authorizing statutes" means the statutes creating an entity as a quasi-governmental entity.
- (3) "Business interest" means:
- (a) holding the position of trustee, director, officer, or other similar position with a business entity; or
  - (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares of a corporation or 10% interest in any other business entity, being held by:
    - (i) an individual;
    - (ii) the individual's spouse;
    - (iii) a minor child of the individual; or
    - (iv) any combination of Subsections (3)(b)(i) through (iii).
- (4) "Committee" means the Legislative Quasi-Governmental Entities Committee created in Section 63-95-201.
- (5) "Government requestor" means:
- (a) the governor;
  - (b) an executive branch officer other than the governor;
  - (c) an executive branch agency;
  - (d) a legislator, including a legislative sponsor of legislation creating a quasi-governmental entity; or
  - (e) a legislative committee.
- (6) "Interested party" means a person that held or holds the position of trustee, director, officer, or other similar position with a quasi-governmental entity within:
- (a) five years prior to the date of an action described in Subsection (8); or
  - (b) during the privatization of a quasi-governmental entity.

(7) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in Section 36-11-102, within:

- (a) five years prior to the date of an action described in Subsection (8); or
- (b) during the privatization of a quasi-governmental entity.

(8) (a) "Privatized" means an action described in Subsection (8)(b) taken under circumstances in which the operations of the quasi-governmental entity are continued by a successor entity that:

- (i) is privately owned;
- (ii) is unaffiliated to the state; and
- (iii) receives any asset of the quasi-governmental entity.

(b) An action referred to in Subsection (8)(a) includes:

- (i) the repeal of the authorizing statute of a quasi-governmental entity and the revision to state laws to terminate the relationship between the state and the quasi-governmental entity;
- (ii) the dissolution of the quasi-governmental entity;
- (iii) the merger or consolidation of the quasi-governmental entity with another entity; or
- (iv) the sale of all or substantially all of the assets of the quasi-governmental entity.

(9) (a) "Quasi-governmental entity" means an entity that:

(i) is created by the state or is given by the state the right to exist and conduct its affairs as a quasi-governmental entity:

- (A) to serve a public purpose; and
- (B) to meet a need that cannot be met through a private business; and
- (ii) is designated by the state as:
  - (A) an independent state agency;
  - (B) an independent public corporation;
  - (C) a quasi-public corporation; or
  - (D) a term similar to that described in Subsections (9)(a)(ii)(A) through (C).

(b) "Quasi-governmental entity" includes the:

- (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

- (ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and Small Business Finance Act;
  - (iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;
  - (iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;
  - (v) Utah Housing [~~Finance Agency~~] Corporation created in Title 9, Chapter 4, Part 9, Utah Housing [~~Finance Agency~~] Corporation Act;
  - (vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;
  - (vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;
  - (viii) Utah State Retirement Office created in Title 49, Chapter [~~1, Part 2, Retirement Office and Board~~] 11, Utah State Retirement Systems Administration;
  - (ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration; and
  - (x) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act.
- (c) Notwithstanding Subsection (9)(a), "quasi-governmental entity" does not include:
- (i) the Public Service Commission of Utah created in Section 54-1-1;
  - (ii) an institution within the state system of higher education;
  - (iii) a city, county, or town;
  - (iv) a local school district;
  - (v) a special district created under the authority of Title 17A, Special Districts; or
  - (vi) a local district created under the authority of Title 17B, Limited Purpose Local Government Entities.

Section 215. Section **63-95-202** is amended to read:

**63-95-202. Duties of the committee.**

- (1) The committee shall:
  - (a) study the scope of this chapter and determine what entities should be treated under this chapter as quasi-governmental entities;
  - (b) study the provisions of the Utah Code that govern each quasi-governmental entity including whether or not there should be consistency in these provisions;
  - (c) study what provisions of the Utah Code, if any, from which each quasi-governmental entity should be exempted;
  - (d) study whether or not the state should receive services from or provide services to each quasi-governmental entity;
  - (e) request and hear reports from each quasi-governmental entity;
  - (f) review the annual audit of each quasi-governmental entity that is performed in accordance with the statutes governing the quasi-governmental entity;
  - (g) comply with Part 3, Creation of Quasi-Governmental Entity, in reviewing a proposal to create a new quasi-governmental entity;
  - (h) if the committee recommends a change in the organizational status of a quasi-governmental entity as provided in Subsection (2) and subject to Part 4, Privatization of Quasi-Governmental Entities, recommend the appropriate method of changing the organizational status of the quasi-governmental entity;
  - (i) study the following concerning an entity created by local agreement under Title 11, Chapter 13, Interlocal Cooperation Act, if the state is a party to the agreement creating the entity:
    - (i) whether or not the entity should be subject to this chapter;
    - (ii) whether or not the state should receive services from or provide services to the entity;
    - (iii) reporting and audit requirements for the entity; and
    - (iv) the need, if any, to modify statutes related to the entity; and
  - (j) report annually to the Legislative Management Committee by no later than the Legislative Management Committee's November meeting.
- (2) The committee may:
  - (a) establish a form for any report required under Subsection (1);

(b) make recommendations to the Legislature concerning the organizational status of a quasi-governmental entity;

(c) advise the Legislature concerning issues involving quasi-governmental entities; and

(d) study issues related to the implementation of Title 49, Utah State Retirement and Insurance Benefit Act.

Section 216. Section **63E-1-102 (Effective 07/01/02)** is amended to read:

**63E-1-102 (Effective 07/01/02). Definitions.**

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Legislative Independent Entities Committee created in Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

(ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and Small Business Finance Act;

(iii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority;

(iv) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;

(v) Utah Housing [~~Finance Agency~~] Corporation created in Title 9, Chapter 4, Part 9, Utah Housing [~~Finance Agency~~] Corporation Act;

(vi) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;

(vii) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;

(viii) Utah State Retirement Office created in Title 49, Chapter ~~[1, Part 2, Retirement Office and Board]~~ 11, Utah State Retirement Systems Administration;

(ix) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration; and

(x) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act.

(c) Notwithstanding this Subsection (4), "independent entity" does not include:

(i) the Public Service Commission of Utah created in Section 54-1-1;

(ii) an institution within the state system of higher education;

(iii) a city, county, or town;

(iv) a local school district;

(v) a special district created under the authority of Title 17A, Special Districts; or

(vi) a local district created under the authority of Title 17B, Limited Purpose Local Government Entities.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Monies held in trust" means monies maintained for the benefit of:

(a) one or more private individuals, including public employees;

(b) one or more public or private entities; or

(c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually

created as a corporation by the state which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 217. Section **63E-1-202 (Effective 07/01/02)** is amended to read:

**63E-1-202 (Effective 07/01/02). Duties of the committee.**

(1) The committee shall:

(a) study the scope of this title and determine what entities should be treated under this title as independent entities;

(b) study the provisions of the Utah Code that govern each independent entity, including whether or not there should be consistency in these provisions;

(c) study what provisions of the Utah Code, if any, from which each independent entity should be exempted;

(d) study whether or not the state should receive services from or provide services to each independent entity;

(e) request and hear reports from each independent entity;

(f) review the annual audit of each independent entity that is performed in accordance with the statutes governing the independent entity;

(g) comply with Part 3, Creation of Independent Entities, in reviewing a proposal to create a new independent entity;

(h) if the committee recommends a change in the organizational status of an independent entity as provided in Subsection (2) and subject to Part 4, Privatization of Independent Entities, recommend the appropriate method of changing the organizational status of the independent entity;

(i) study the following concerning an entity created by local agreement under Title 11, Chapter 13, Interlocal Cooperation Act, if the state is a party to the agreement creating the entity:

(i) whether or not the entity should be subject to this chapter;

(ii) whether or not the state should receive services from or provide services to the entity;

(iii) reporting and audit requirements for the entity; and

(iv) the need, if any, to modify statutes related to the entity;

(j) make a recommendation on the organizational status of each independent entity prior to

the 2002 General Session; and

(k) report annually to the Legislative Management Committee by no later than the Legislative Management Committee's November meeting.

(2) The committee may:

(a) establish a form for any report required under Subsection (1);

(b) make recommendations to the Legislature concerning the organizational status of an independent entity;

(c) advise the Legislature concerning issues involving independent entities; and

(d) study issues related to the implementation of Title 49, Utah State Retirement and Insurance Benefit Act.

Section 218. Section **67-8-3** is amended to read:

**67-8-3. Compensation plan for appointive officers -- Exceptions -- Legislative approval -- Career status attorneys.**

(1) (a) The director of the Department of Human Resource Management, based upon recommendations of the Executive and Judicial Compensation Commission shall, before October 31 of each year, recommend to the governor a compensation plan for appointed officers of the state except those officers whose compensation is set under Section [~~49-1-203~~] 49-11-203, 53A-1-301, 53B-1-105, or 53C-1-301.

(b) The plan shall include salaries and wages, paid leave, group insurance plans, retirement programs, and any other benefits that may be offered to state officers.

(2) The governor shall include in each annual budget proposal to the Legislature specific recommendations on compensation for those appointed state officers in Subsection (1).

(3) (a) After consultation with the attorney general, the director of the Department of Human Resource Management shall place career status attorneys on a state salary schedule at a range comparable with salaries paid attorneys in private and other public employment.

(b) The attorney general and the director shall take into consideration the experience of the attorney, length of service with the Office of the Attorney General, quality of performance, and responsibility involved in legal assignments.

(c) The attorney general and the director shall periodically adjust the salary levels for attorneys in a career status to reasonably compensate them for full-time employment and the restrictions placed on the private practice of law.

Section 219. Section **67-20-7** is amended to read:

**67-20-7. Workers' compensation benefits for volunteer firefighters.**

(1) In addition to the purposes set out in Subsections 67-20-3(2) and (3), a volunteer firefighter, as defined in Section [~~49-5-103~~] 49-16-102, is considered an agency employee for the purpose of receiving workers' compensation benefits under Title [~~35A~~] 34A, Chapter [~~3~~] 2, Workers' Compensation and Chapter [~~3a~~] 3, Utah Occupational Disease Act.

(2) These benefits are the exclusive remedy for all injuries and occupational diseases resulting from his services as a volunteer firefighter. Compensation shall be computed as indicated in Section [~~49-5-802~~] 49-16-701.

Section 220. Section **67-22-1** is amended to read:

**67-22-1. Compensation -- Constitutional offices.**

(1) The Legislature fixes salaries for the constitutional offices as follows:

- (a) Governor \$100,600
- (b) Lieutenant Governor \$78,200
- (c) Attorney General \$84,600
- (d) State Auditor \$80,700
- (e) State Treasurer \$78,200

(2) The Legislature fixes benefits for the constitutional offices as follows:

- (a) Governor:
  - (i) a vehicle for official and personal use;
  - (ii) housing;
  - (iii) household and security staff;
  - (iv) household expenses;
  - (v) retirement benefits as provided in Title 49;
  - (vi) health insurance;

- (vii) dental insurance;
- (viii) basic life insurance;
- (ix) workers' compensation;
- (x) required employer contribution to Social Security;
- (xi) long-term disability income insurance; and
- (xii) the same additional state paid life insurance available to other noncareer service employees.

(b) Lieutenant governor, attorney general, state auditor, and state treasurer:

- (i) a vehicle for official and personal use;
- (ii) the option of participating in a state retirement system established by Title 49, Chapter [2] 12, Public Employees' Contributory Retirement Act, or Chapter [3] 13, Public Employees' Noncontributory Retirement Act, or in a deferred compensation plan administered by the State Retirement Office, in accordance with the Internal Revenue Code and its accompanying rules and regulations;

- (iii) health insurance;
- (iv) dental insurance;
- (v) basic life insurance;
- (vi) workers' compensation;
- (vii) required employer contribution to Social Security;
- (viii) long-term disability income insurance; and
- (ix) the same additional state paid life insurance available to other noncareer service employees.

(c) Each constitutional office shall pay the cost of the additional state-paid life insurance for its constitutional officer from its existing budget.

Section 221. Section **67-22-2** is amended to read:

**67-22-2. Compensation -- Other state officers.**

(1) The governor shall establish salaries for the following state officers within the following salary ranges fixed by the Legislature:

State Officer	Salary Range
Commissioner of Agriculture and Food	\$64,600 - \$87,500
Commissioner of Insurance	\$64,600 - \$87,500
Commissioner of the Labor Commission	\$64,600 - \$87,500
Director, Alcoholic Beverage Control Commission	\$64,600 - \$87,500
Commissioner, Department of Financial Institutions	\$64,600 - \$87,500
Members, Board of Pardons and Parole	\$64,600 - \$87,500
Executive Director, Department of Commerce	\$64,600 - \$87,500
Executive Director, Commission on Criminal and Juvenile Justice	\$64,600 - \$87,500
Adjutant General	\$64,600 - \$87,500
Chair, Tax Commission	\$69,900 - \$94,300
Commissioners, Tax Commission	\$69,900 - \$94,300
Executive Director, Department of Community and Economic Development	\$69,900 - \$94,300
Executive Director, Tax Commission	\$69,900 - \$94,300
Chair, Public Service Commission	\$69,900 - \$94,300
Commissioner, Public Service Commission	\$69,900 - \$94,300
Executive Director, Department of Corrections	\$76,000 - \$102,600
Commissioner, Department of Public Safety	\$76,000 - \$102,600
Executive Director, Department of Natural Resources	\$76,000 - \$102,600
Director, Office of Planning	

and Budget	\$76,000 - \$102,600
Executive Director, Department of Administrative Services	\$76,000 - \$102,600
Executive Director, Department of Human Resource Management	\$76,000 - \$102,600
Executive Director, Department of Environmental Quality	\$76,000 - \$102,600
State Olympic Officer	\$82,800 - \$111,800
Executive Director, Department of Workforce Services	\$82,800 - \$111,800
Executive Director, Department of Health	\$82,800 - \$111,800
Executive Director, Department of Human Services	\$82,800 - \$111,800
Executive Director, Department of Transportation	\$82,800 - \$111,800
Chief Information Officer	\$82,800 - \$111,800

(2) (a) The Legislature fixes benefits for the state offices outlined in Subsection (1) as follows:

(i) the option of participating in a state retirement system established by Title 49, Utah State Retirement and Insurance Benefit Act, or in a deferred compensation plan administered by the State Retirement Office in accordance with the Internal Revenue Code and its accompanying rules and regulations;

- (ii) health insurance;
- (iii) dental insurance;
- (iv) basic life insurance;
- (v) unemployment compensation;
- (vi) workers' compensation;

- (vii) required employer contribution to Social Security;
  - (viii) long-term disability income insurance;
  - (ix) the same additional state-paid life insurance available to other noncareer service employees;
  - (x) the same severance pay available to other noncareer service employees;
  - (xi) the same sick leave, converted sick leave, educational allowances, and holidays granted to Schedule B state employees, and the same annual leave granted to Schedule B state employees with more than ten years of state service;
  - (xii) the option to convert accumulated sick leave to cash or insurance benefits as provided by law or rule upon resignation or retirement according to the same criteria and procedures applied to Schedule B state employees;
  - (xiii) the option to purchase additional life insurance at group insurance rates according to the same criteria and procedures applied to Schedule B state employees; and
  - (xiv) professional memberships if being a member of the professional organization is a requirement of the position.
- (b) Each department shall pay the cost of additional state-paid life insurance for its executive director from its existing budget.
- (3) The Legislature fixes the following additional benefits:
- (a) for the executive director of the State Tax Commission a vehicle for official and personal use;
  - (b) for the executive director of the Department of Transportation a vehicle for official and personal use;
  - (c) for the executive director of the Department of Natural Resources a vehicle for commute and official use;
  - (d) for the Commissioner of Public Safety:
    - (i) an accidental death insurance policy if POST certified; and
    - (ii) a public safety vehicle for official and personal use;
  - (e) for the executive director of the Department of Corrections:

- (i) an accidental death insurance policy if POST certified; and
- (ii) a public safety vehicle for official and personal use;
- (f) for the Adjutant General a vehicle for official and personal use; and
- (g) for each member of the Board of Pardons and Parole a vehicle for commute and official use.

(4) (a) The governor has the discretion to establish a specific salary for each office listed in Subsection (1), and, within that discretion, may provide salary increases within the range fixed by the Legislature.

(b) The governor shall apply the same overtime regulations applicable to other FLSA exempt positions.

(c) The governor may develop standards and criteria for reviewing the performance of the state officers listed in Subsection (1).

(5) Salaries for other Schedule A employees, as defined in Section 67-19-15, which are not provided for in this chapter, or in Title 67, Chapter 8, Utah Executive and Judicial Salary Act, shall be established as provided in Section 67-19-15.

Section 222. Section **78-7-35** is amended to read:

**78-7-35. Civil fees of the courts of record -- Courts complex design.**

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is \$120.

(b) The fee for filing a complaint or petition is:

(i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$80 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$120 if the claim for damages or amount in interpleader is \$10,000 or more; and

(iv) \$80 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(c) The fee for filing a small claims affidavit is:

(i) \$37 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less; and

(ii) \$60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) \$45 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$60 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$90 if the original petition is filed under Subsection (1)(a), the claim for relief is \$10,000 or more, or the party seeks relief other than monetary damages; and

(iv) \$60 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) \$35 if the claim for relief exclusive of court costs, interest, and attorney fees is \$2,000 or less; and

(ii) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than \$2,000.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

(i) \$70 for trial de novo of an adjudication of the justice court or of the small claims department; and

(ii) \$40 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.

(h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or

petition for writ of certiorari is \$190.

(i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee for filing a petition for expungement is \$50.

(ii) There is no fee for a petition filed under Subsection 77-18-10(2).

(j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges' Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter [6] 17, Judges' Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement Act.

(ii) Two dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 63-63a-8.

(iii) One dollar of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as provided in Section 78-31b-9.

(k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is \$25.

(l) The fee for filing probate or child custody documents from another state is \$25.

(m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah State Tax Commission is \$30.

(ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is \$40.

(n) The fee for filing a judgment by confession without action under Section 78-22-3 is \$25.

(o) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78, Chapter 31a, Utah Arbitration Act, that is not part of an action before the court is \$25.

(p) The fee for filing a petition or counter-petition to modify a decree of divorce is \$30.

(q) The fee for filing any accounting required by law is:

(i) \$10 for an estate valued at \$50,000 or less;

- (ii) \$20 for an estate valued at \$75,000 or less but more than \$50,000;
- (iii) \$40 for an estate valued at \$112,000 or less but more than \$75,000;
- (iv) \$80 for an estate valued at \$168,000 or less but more than \$112,000; and
- (v) \$150 for an estate valued at more than \$168,000.
- (r) The fee for filing a demand for a civil jury is \$50.
- (s) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is \$25.
- (t) The fee for filing documents that require judicial approval but are not part of an action before the court is \$25.
- (u) The fee for a petition to open a sealed record is \$25.
- (v) The fee for a writ of replevin, attachment, execution, or garnishment is \$20 in addition to any fee for a complaint or petition.
- (w) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is \$5.
- (x) The fee for a certificate issued under Section 26-2-25 is \$2.
- (y) The fee for a certified copy of a document is \$2 per document plus 50 cents per page.
- (z) The fee for an exemplified copy of a document is \$4 per document plus 50 cents per page.
- (aa) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63, Chapter 2, Government Records Access and Management Act. Fees under this subsection shall be credited to the court as a reimbursement of expenditures.
- (bb) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.
- (cc) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.
- (dd) The filing fees under this section may not be charged to the state, its agencies, or

political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this subsection shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to \$3,750,000 of the revenue deposited in the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any monies remaining in the Capital Projects Fund under Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).

(b) After June 30, 1998, the administrator of the courts shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the court administrator into the restricted account created by this section.

(d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record or an administrative traffic proceeding in accordance with Section 10-3-703.5 to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate monies from the restricted account to the administrator of the courts for the following purposes only:

(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

(ii) to cover operations and maintenance costs on the court complex.

**Section 223. Repealer.**

This act repeals:

**Section 49-1-501, Termination of membership.**

**Section 49-1-605, Extra monthly payments authorized -- Adjustment of benefits and allowances -- Incorporation into normal allowance.**

Section **49-1-612**, Required distributions.

Section **49-1-617**, Payment of additional retirement benefit -- Rules for implementation.

Section **49-2-102**, Purpose.

Section **49-2-403**, Service retirement plans -- Additional options -- Death of member within 90 days after retirement -- Divorce of member.

Section **49-2-501**, Disability coverage.

Section **49-2-702**, Closing the retirement account -- Status of retirants and beneficiaries.

Section **49-3-102**, Purpose.

Section **49-3-403**, Service retirement plans -- Additional options -- Death of member within 90 days after retirement.

Section **49-3-501**, Disability coverage.

Section **49-3-702**, Closing the retirement account -- Status of retirants and beneficiaries.

Section **49-4-102**, Purpose.

Section **49-4-403**, Service credit under both Division A and B -- Computation of benefit -- Benefits for surviving spouse.

Section **49-4a-102**, Purpose.

Section **49-4a-403**, Service credit under both Division A and B -- Computation of benefit -- Benefits for surviving spouse.

Section **49-5-102**, Purpose.

Section **49-5-403**, Service credit under both Division A and B -- Computation of benefit.

Section **49-5-602**, Minimum monthly allowance -- Funded by member contributions.

Section **49-6-102**, Purpose.

Section **49-6-602**, Minimum retirement allowance.

Section **49-6a-102**, Purpose.

Section **49-7-102**, Purpose.

Section **49-7-402**, Cost-of-living adjustment.

Section **49-7-404**, Retirement option.

Section **49-9-302**, Rates established on basis of agency experience -- Limitations --

**Annual report to governor and Legislature.**

Section 49-9-406, **Psychopathy benefit.**

Section 49-9-408, **Administration of disabilities -- Members of Public Safety Retirement System Members of Judges' Retirement System.**

Section 49-10-303, **Preservation of Hill Air Force Base Expendable Trust Fund.**

Section 224. **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, except that the amendments to the following sections take effect on July 1, 2002:

(1) Section 63E-1-102(Effective 07/01/02); and

(2) Section 63E-1-202(Effective 07/01/02).

Section 225. **Coordination clause.**

If this bill and H.B. 105, Health Insurance Mandates - Pilot Program, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall make the following changes in preparing the database for publication:

1. Subsection 31A-22-605.5(3) shall read:

"(3) Any coverage offered on a group basis under Title 49, Chapter 20, Public Employees Benefit and Insurance Program Act must comply, for a period of one year, with the provisions of all insurance mandates which are imposed:"

2. Subsection 31A-22-605.5(4) shall read:

"(4) During the one-year pilot program in which the mandatory obligation is imposed under Subsection (3), the program regulated under Title 49, Chapter 20, Public Employees Benefit and Insurance Program Act shall:"

3. Subsection 31A-22-605.5(5)(a) shall read:

"(5) (a) If the program regulated under Title 49, Chapter 20, Public Employees Benefit and Insurance Program Act currently offers benefits whose features are the same as or greater than any proposed insurance mandate, the program shall, prior to the proposed insurance mandate being

considered, provide the Legislature an analysis of any additional costs the program has incurred as a consequence of offering the benefits."; and

4. Section 49-8-406 in H.B. 105 shall be renumbered to 49-20-406 and shall read: "Coverage offered on a group basis under this chapter shall comply with the provisions of Section 31A-22-605.5."