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RETIREMENT OFFICE AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Ann W. Hardy



LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act, including technical and conforming amendments.

Highlighted Provisions:

This bill:

- ▶ defines “exempt employee” to mean an employee working for a participating employer but who is not eligible for service credit and for whom a participating employer is not required to pay contributions;
- ▶ requires a member to retire from the system which most recently covered the member;
- ▶ allows a member to purchase service credit from employment covered by a Teachers Insurance and Annuity Association of America retirement plan if the member forfeits any retirement benefit from that plan for the period of credit to be purchased;
- ▶ repeals an exemption from restrictions on reemployment after retirement for appointed officers;
- ▶ requires beneficiary designations to be signed by the member and filed with the office to be binding;
- ▶ provides that any dispute regarding a benefit, right, obligation, or employment right under the Utah State Retirement and Insurance Benefit Act is subject to the administrative hearing process;



- 28 ▶ provides that an employee is not considered “terminated” simply because a
- 29 participating employer’s legal structure is changed and allows the board to adopt
- 30 rules to implement this provision;
- 31 ▶ clarifies provisions for positions eligible for exemption;
- 32 ▶ clarifies that only the spouse married to the member immediately prior to the death
- 33 of covered employee is eligible for certain death benefits;
- 34 ▶ clarifies that future service credit in a particular retirement system may only be
- 35 purchased by members retiring from that system;
- 36 ▶ amends the definition of “volunteer firefighter” to include a person who is trained
- 37 and continues to be trained as a firefighter;
- 38 ▶ provides that a fire chief shall comply with reemployment after retirement
- 39 provisions;
- 40 ▶ requires each volunteer fire department to maintain a current roll of all volunteer
- 41 firefighters who meet the definition of a volunteer firefighter;
- 42 ▶ provides that the monthly long-term disability benefits offset is consistent with the
- 43 amount received from Social Security benefits and terminates no later than the date
- 44 the eligible employee receives a reduced allowance; and
- 45 ▶ makes technical corrections.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

- 52 **49-11-102**, as last amended by Chapter 240, Laws of Utah 2003
- 53 **49-11-303**, as last amended by Chapter 89, Laws of Utah 2004
- 54 **49-11-401**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 55 **49-11-403**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 56 **49-11-504**, as last amended by Chapter 118, Laws of Utah 2004
- 57 **49-11-609**, as last amended by Chapter 118, Laws of Utah 2004
- 58 **49-11-613**, as renumbered and amended by Chapter 250, Laws of Utah 2002

- 59 **49-12-203**, as last amended by Chapter 154, Laws of Utah 2003
- 60 **49-12-402**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 61 **49-12-405**, as last amended by Chapter 240, Laws of Utah 2003
- 62 **49-12-409**, as enacted by Chapter 216, Laws of Utah 2004
- 63 **49-13-203**, as last amended by Chapter 156, Laws of Utah 2004
- 64 **49-13-205**, as last amended by Chapter 118, Laws of Utah 2004
- 65 **49-13-402**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 66 **49-13-405**, as last amended by Chapter 240, Laws of Utah 2003
- 67 **49-13-408**, as last amended by Chapter 240, Laws of Utah 2003
- 68 **49-16-102**, as last amended by Chapter 240, Laws of Utah 2003
- 69 **49-16-203**, as enacted by Chapter 250, Laws of Utah 2002
- 70 **49-16-601**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 71 **49-16-701**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 72 **49-21-402**, as last amended by Chapter 240, Laws of Utah 2003
- 73 **49-21-403**, as last amended by Chapter 240, Laws of Utah 2003

74 ENACTS:

- 75 **49-11-621**, Utah Code Annotated 1953
- 76 **49-16-601.5**, Utah Code Annotated 1953



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

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

80 **49-11-102. Definitions.**

81 As used in this title:

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

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

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

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

- 90 (4) "Agency" means:
- 91 (a) a department, division, agency, office, authority, commission, board, institution, or
- 92 hospital of the state;
- 93 (b) a county, municipality, school district, or special district;
- 94 (c) a state college or university; or
- 95 (d) any other participating employer.
- 96 (5) "Allowance" means the pension plus the annuity, including any cost of living or
- 97 other authorized adjustments to the pension and annuity.
- 98 (6) "Alternate payee" means a member's former spouse or family member eligible to
- 99 receive payments under a Domestic Relations Order in compliance with Section 49-11-612.
- 100 (7) "Annuity" means monthly payments derived from member contributions.
- 101 (8) "Appointive officer" means an employee appointed to a position for a definite and
- 102 fixed term of office by official and duly recorded action of a participating employer whose
- 103 appointed position is designated in the participating employer's charter, creation document, or
- 104 similar document, and who earns during the first full month of the term of office \$500 or more,
- 105 indexed as of January 1, 1990, as provided in Section 49-12-407.
- 106 (9) "Beneficiary" means any person entitled to receive a payment under this title
- 107 through a relationship with or designated by a member, participant, covered individual, or
- 108 alternate payee of a defined contribution plan.
- 109 (10) "Board" means the Utah State Retirement Board established under Section
- 110 49-11-202.
- 111 (11) "Board member" means a person serving on the Utah State Retirement Board as
- 112 established under Section 49-11-202.
- 113 (12) "Contributions" means the total amount paid by the participating employer and the
- 114 member into a system or to the Utah Governors' and Legislators' Retirement Plan under
- 115 Chapter 19, Utah Governor's and Legislators' Retirement Act.
- 116 (13) "Council member" means a person serving on the Membership Council
- 117 established under Section 49-11-202.
- 118 (14) "Covered individual" means any individual covered under Chapter 20, Public
- 119 Employees' Benefit and Insurance Program Act.
- 120 (15) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16,

121 17, 18, and 19.

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

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

127 (a) the State Board of Education and its instrumentalities;

128 (b) any institution of higher education and its branches;

129 (c) any school district and its instrumentalities;

130 (d) any vocational and technical school; and

131 (e) any entity arising out of a consolidation agreement between entities described under
132 this Subsection (17).

133 (18) (a) "Employer" means any department, educational institution, or political
134 subdivision of the state eligible to participate in a government-sponsored retirement system
135 under federal law.

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

138 (19) "Exempt employee" means an employee working for a participating employer:

139 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,
140 49-14-203, 49-15-203, or 49-16-203; and

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

143 [~~19~~] (20) "Final average monthly salary" means the amount computed by dividing the
144 compensation received during the final average salary period under each system by the number
145 of months in the final average salary period.

146 [~~20~~] (21) "Fund" means any fund created under this title for the purpose of paying
147 benefits or costs of administering a system, plan, or program.

148 [~~21~~] (22) (a) "Inactive member" means a member who has not been employed by a
149 participating employer for a period of at least 120 days.

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

151 [~~22~~] (23) (a) "Member" means a person, except a retiree, with contributions on

152 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,
153 or with a terminated system.

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

160 [~~23~~] (24) "Member contributions" means the sum of the contributions paid to a
161 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
162 allowed by a system, and which are made by:

163 (a) the member; and

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

166 [~~24~~] (25) "Nonelective contribution" means an amount contributed by a participating
167 employer into a participant's defined contribution account.

168 [~~25~~] (26) "Office" means the Utah State Retirement Office.

169 [~~26~~] (27) "Participant" means an individual with voluntary deferrals or nonelective
170 contributions on deposit with the defined contribution plans administered under this title.

171 [~~27~~] (28) "Participating employer" means a participating employer, as defined by
172 Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public
173 funds which is participating in a system or plan as of January 1, 2002.

174 [~~28~~] (29) "Pension" means monthly payments derived from participating employer
175 contributions.

176 [~~29~~] (30) "Plan" means the Utah Governors' and Legislators' Retirement Plan created
177 by Chapter 19 or the defined contribution plans created under Section 49-11-801.

178 [~~30~~] (31) (a) "Political subdivision" means any local government entity, including
179 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
180 legally separate and distinct from the state and only if its employees are not by virtue of their
181 relationship to the entity employees or the state.

182 (b) "Political subdivision" includes special districts or authorities created by the

183 Legislature or by local governments, including the office.

184 (c) "Political subdivision" does not include a project entity created under Title 11,
185 Chapter 13, Interlocal Cooperation Act.

186 [~~(31)~~] (32) "Program" means the Public Employees' Insurance Program created under
187 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'
188 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term
189 Disability Act.

190 [~~(32)~~] (33) "Public funds" means those funds derived, either directly or indirectly, from
191 public taxes or public revenue, dues or contributions paid or donated by the membership of the
192 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,
193 the governmental, educational, and social programs and systems of the state or its political
194 subdivisions.

195 [~~(33)~~] (34) "Refund interest" means the amount accrued on member contributions at a
196 rate adopted by the board.

197 [~~(34)~~] (35) "Retiree" means an individual who has qualified for an allowance under this
198 title.

199 [~~(35)~~] (36) "Retirement" means the status of an individual who has become eligible,
200 applies for, and is entitled to receive an allowance under this title.

201 [~~(36)~~] (37) "Retirement date" means the date selected by the member on which the
202 member's retirement becomes effective with the office.

203 [~~(37)~~] (38) "Service credit" means:

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

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

209 [~~(38)~~] (39) "System" means the individual retirement systems created by Chapters 12,
210 13, 14, 15, 16, 17, and 18.

211 [~~(39)~~] (40) "Voluntary deferrals" means an amount contributed by a participant into
212 that participant's defined contribution account.

213 Section 2. Section **49-11-303** is amended to read:

214 **49-11-303. Fund investment standard -- Prudent investor rule.**

215 The fund shall be invested in accordance with the prudent [man] investor rule
216 established in Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act.

217 Section 3. Section **49-11-401** is amended to read:

218 **49-11-401. Transfer of service credit -- Eligibility for service credit --**
219 **Computation of service credit -- Retirement from most recent system.**

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

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

224 (2) Transfer of employment from a position covered by one system to a position
225 covered by another system does not cause the employee to lose active member status.

226 (3) In the accrual of service credit, the following provisions apply:

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

231 (b) An allowance or other benefit may not accrue under this title which is based upon
232 the same period of employment as has been the basis for any retirement benefits under some
233 other public retirement system.

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

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

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

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

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

247 (5) A member shall retire from the system which most recently covered the member.

248 Section 4. Section **49-11-403** is amended to read:

249 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

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

253 (a) United States federal employment;

254 (b) employment in a private school based in the United States;

255 (c) public employment in another state which qualifies the member for membership in
256 the public plan or system covering the employment, but only if the member does not qualify for
257 any retirement benefits based on the employment;

258 (d) forfeited service credit in this state if the member does not qualify for an allowance
259 based on the service credit;

260 (e) full-time public service while on an approved leave of absence; [~~or~~]

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

262 (i) the member was receiving:

263 (A) long-term disability benefits;

264 (B) short-term disability benefits; or

265 (C) worker's compensation disability benefits; and

266 (ii) the member's employer had not entered into a benefit protection contract under
267 Section 49-11-404 during the period the member was disabled due to sickness or accident[~~:-~~]; or

268 (g) employment covered by a Teachers Insurance and Annuity Association of America
269 retirement plan if the member forfeits any retirement benefit from that retirement plan for the
270 period of employment to be purchased under this Subsection (1)(g).

271 (2) A member shall have:

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

274 (b) forfeited service credit under any other retirement system or plan based on the
275 public employment for which service credit is being purchased.

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

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

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

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

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

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

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

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

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

297 Section 5. Section **49-11-504** is amended to read:

298 **49-11-504. Reemployment of a retiree -- Restrictions.**

299 (1) A person who retires from a nonparticipating employer is not subject to any
300 postretirement restrictions under this title.

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

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

306 (4) A retiree of an agency who is reemployed on a full-time basis by the same agency

307 within six months of the date of retirement is subject to the following:

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

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

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

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

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

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

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

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

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

328 (d) any suspension of a retiree's allowance under this Subsection (5) shall be applied
329 on a calendar year basis.

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

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

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

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

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

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

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

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

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

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

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

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

357 (10) This section does not apply to ~~[appointive officers or]~~ elected positions.

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

359 Section 6. Section **49-11-609** is amended to read:

360 **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**
361 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**
362 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**
363 **expenses.**

364 (1) As used in this section, "member" includes a member, retiree, participant, covered
365 individual, a spouse of a retiree participating in the insurance benefits created by Sections
366 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a
367 defined contribution account.

368 (2) The most recent beneficiary designations ~~[contained in office records]~~ signed by the

369 member and filed with the office, including electronic records, at the time of the member's
370 death are binding in the payment of any benefits due under this title.

371 (3) (a) Except where an optional continuing benefit is chosen, or the law makes a
372 specific benefit designation to a dependent spouse, a member may revoke a beneficiary
373 designation at any time and may execute and file a different beneficiary designation with the
374 office.

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

377 (4) (a) All benefits payable by the office may be paid or applied to the benefit of the
378 surviving next of kin of the deceased in the order of precedence established under Title 75,
379 Chapter 2, Intestate Succession and Wills, if:

380 (i) no beneficiary is designated or if all designated beneficiaries have predeceased the
381 member;

382 (ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by
383 the office within 12 months of the date a reasonable attempt is made by the office to locate the
384 beneficiaries; or

385 (iii) the beneficiary has not completed the forms necessary to pay the benefits within
386 six months of the date that beneficiary forms are sent to the beneficiary's last-known address.

387 (b) (i) A payment may not be made to a person included in any of the groups referred
388 to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups
389 preceding it.

390 (ii) Payment to a person in any group based upon receipt from the person of an
391 affidavit in a form satisfactory to the office that:

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

393 (B) the probate of the estate of the deceased has not been commenced; and

394 (C) more than three months have elapsed since the date of death of the decedent.

395 (5) Benefits paid under this section shall be:

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

397 (b) payable by reason of the death of the decedent.

398 Section 7. Section **49-11-613** is amended to read:

399 **49-11-613. Appeals procedure -- Right of appeal to hearing officer -- Board**

400 **reconsideration -- Judicial review.**

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

404 (b) Any dispute regarding a benefit, right, obligation, or employment right under this
405 title is subject to the procedures provided under this section.

406 ~~[(b)]~~ (c) A person who ~~[claims]~~ disputes a benefit, ~~[legal]~~ right, obligation, or
407 employment right under this title shall request a ruling by the executive director.

408 ~~[(c)]~~ (d) A person who is dissatisfied by a ruling of the executive director with respect
409 to any benefit ~~[claim or legal right under any system, plan, or program]~~, right, obligation, or
410 employment right under this title shall request a review of that claim by a hearing officer.

411 (2) The hearing officer shall:

412 (a) be hired by the executive director after consultation with the board;

413 (b) follow the procedures and requirements of Title 63, Chapter 46b, Administrative
414 Procedures Act, except as specifically modified under this title;

415 (c) hear and determine all facts pertaining to applications for benefits under any
416 system, plan, or program under this title and all matters pertaining to the administration of the
417 office; and

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

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

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

424 (5) A party may file an application for reconsideration by the board upon any of the
425 following grounds:

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

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

428 (c) that the evidence does not justify the determination of the hearing officer; or

429 (d) that the party has discovered new material evidence that could not, with reasonable
430 diligence, have been discovered or procured prior to the hearing.

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

433 (7) A party aggrieved by the board's decision may obtain judicial review by complying
434 with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

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

436 Section 8. Section **49-11-621** is enacted to read:

437 **49-11-621. Change in employer -- Eligibility for retirement.**

438 (1) If a participating employer is dissolved, consolidated, merged, or is structurally
439 changed in any way, but similar services are provided by the same members after the change,
440 the members may not be considered terminated for purposes of eligibility for retirement until
441 the members actually terminate and are otherwise eligible for retirement.

442 (2) The board may adopt rules to implement this section.

443 Section 9. Section **49-12-203** is amended to read:

444 **49-12-203. Exclusions from membership in system.**

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

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

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

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

457 [~~(b) A full-time student, the spouse of a full-time student, or a person employed in a~~
458 ~~trainee relationship who files a formal request for exemption.]~~

459 [(~~e~~)] (b) (i) A current or future employee of a two-year or four-year college or
460 university who holds, or is entitled to hold, under Section 49-12-204, a retirement annuity
461 contract with the Teachers' Insurance and Annuity Association of America or with any other

462 public or private system, organization, or company during any period in which required
463 contributions based on compensation have been paid on behalf of the employee by the
464 employer.

465 (ii) The employee, upon cessation of the participating employer contributions, shall
466 immediately become eligible for service credit in this system.

467 ~~[(d)]~~ (c) An employee serving as an exchange employee from outside the state.

468 ~~[(e) An elected official who files a formal request for exemption.]~~

469 ~~[(f)]~~ (d) An executive department head of the state, a member of the State Tax
470 Commission, the Public Service Commission, and a member of a full-time or part-time board
471 or commission who files a formal request for exemption.

472 ~~[(g)]~~ (e) An employee of the Department of Workforce Services who is covered under
473 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

474 ~~[(h) (i) A person appointed as a city manager or chief city administrator or another
475 person employed by a municipality, county, or other political subdivision who is not entitled to
476 merit or civil service protection.]~~

477 ~~[(ii) A person eligible for exclusion under Subsection (1)(h)(i) shall file a formal
478 request for exemption and be employed in a position designated as exempt under an employee
479 exemption plan developed by the municipality, county, or political subdivision.]~~

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

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

484 (b) an elected official;

485 (c) an executive department head of the state or a legislative director, senior executive
486 employed by the governor's office, a member of the State Tax Commission, a member of the
487 Public Service Commission, and a member of a full-time or part-time board or commission;
488 and

489 (d) a person appointed as a city manager or chief city administrator or another person
490 employed by a municipality, county, or other political subdivision, who is not entitled to merit
491 or civil service protection.

492 (3) (a) Each participating employer shall prepare a list designating those positions

493 eligible for exemption under Subsection (2).

494 (b) An employee may not be exempted unless they are employed in a position
495 designated by the participating employer.

496 ~~[(2)(a) A]~~ (4) (a) In accordance with this section, a municipality, county, or political
497 subdivision may not exempt more than 50 positions or a number equal to 10% of the
498 employees of the municipality, county, or political subdivision whichever is lesser.

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

501 ~~[(3)]~~ (5) Each participating employer shall:

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

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

504 ~~[(4)]~~ (6) The office may make rules to implement this section.

505 Section 10. Section **49-12-402** is amended to read:

506 **49-12-402. Service retirement plans -- Calculation of retirement allowance --**

507 **Social Security limitations.**

508 (1) (a) Except as provided under Section 49-12-701, retirees of this system may choose
509 from the six retirement options described in this section.

510 (b) Options Two, Three, Four, Five, and Six are modifications of the Option One
511 calculation.

512 (2) The Option One benefit is an annual allowance calculated as follows:

513 (a) If the retiree is at least 65 years of age or has accrued at least 30 years of service
514 credit, the allowance is:

515 (i) an amount equal to 1.25% of the retiree's final average monthly salary multiplied by
516 the number of years of service credit accrued prior to July 1, 1975; plus

517 (ii) an amount equal to 2% of the retiree's final average monthly salary multiplied by
518 the number of years of service credit accrued on and after July 1, 1975.

519 (b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for
520 each year of retirement from age 60 to age 65, unless the member has 30 or more years of
521 accrued credit in which event no reduction is made to the allowance.

522 (c) (i) Years of service includes any fractions of years of service to which the retiree
523 may be entitled.

524 (ii) At the time of retirement, if a retiree's combined years of actual, not purchased,
525 service credit is within 1/10 of one year of the total years of service credit required for
526 retirement, the retiree shall be considered to have the total years of service credit required for
527 retirement.

528 (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated
529 by reducing an Option One benefit based on actuarial computations to provide the following:

530 (a) Option Two is a reduced allowance paid to and throughout the lifetime of the
531 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's
532 member contributions, the remaining balance of the retiree's member contributions shall be
533 paid in accordance with Sections 49-11-609 and 49-11-610.

534 (b) Option Three is a reduced allowance paid to and throughout the lifetime of the
535 retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout
536 the lifetime of the retiree's lawful spouse at the time of retirement.

537 (c) Option Four is a reduced allowance paid to and throughout the lifetime of the
538 retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid
539 to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

540 (d) Option Five is a modification of Option Three so that if the lawful spouse at the
541 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the
542 time of initial retirement under Option One shall be paid to the retiree for the remainder of the
543 retiree's life, beginning on the last day of the month following the month in which the lawful
544 spouse dies.

545 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time
546 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time
547 of initial retirement under Option One shall be paid to the retiree for the remainder of the
548 retiree's life, beginning on the last day of the month following the month in which the lawful
549 spouse dies.

550 (4) (a) (i) The final average salary is limited in the computation of that part of an
551 allowance based on service rendered prior to July 1, 1967, during a period when the retiree
552 received employer contributions on a portion of compensation from an educational institution
553 toward the payment of the premium required on a retirement annuity contract with the
554 Teachers' Insurance and Annuity Association of America or with any other public or private

555 system, organization, or company to \$4,800.

556 (ii) This limitation is not applicable to retirees who elected to continue in the this
557 system by July 1, 1967.

558 (b) Periods of employment which are exempt from this system under Subsection
559 49-12-203(1)(~~e~~)(b), may be purchased by the member for the purpose of retirement only if all
560 benefits from the Teachers' Insurance and Annuity Association of America or any other public
561 or private system or organization based on this period of employment are forfeited.

562 (5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement
563 date, the retirement is canceled and the death shall be considered as that of a member before
564 retirement.

565 (b) Any payments made to the retiree shall be deducted from the amounts due to the
566 beneficiary.

567 (6) If a retiree retires under either Option Five or Six and subsequently divorces, the
568 retiree may elect to convert the benefit to a Option One benefit at the time of divorce, if there is
569 no court order filed in the matter.

570 Section 11. Section **49-12-405** is amended to read:

571 **49-12-405. Death of married member -- Service retirement benefits to surviving**
572 **spouse.**

573 (1) Upon the request of a deceased member's lawful spouse at the time of the member's
574 death, the deceased member is considered to have retired under Option Three on the first day of
575 the month following the month in which the member died if the following requirements are
576 met:

577 (a) the member has:

578 (i) 25 or more years of service credit;

579 (ii) attained age 60 with 20 or more years of service credit;

580 (iii) attained age 62 with ten or more years of service credit; or

581 (iv) attained age 65 with four or more years of service credit; and

582 (b) the member dies leaving a spouse to whom the member has been married at least
583 six months immediately prior to the death date.

584 (2) The spouse who requests a benefit under this section shall apply in writing to the
585 office. The allowance shall begin on the first day of the month:

586 (a) following the month in which the member died, if the application is received by the
587 office within 90 days of the member's death; or

588 (b) in which the application is received by the office.

589 (3) The Option Three benefit calculation, when there are 25 or more years of service
590 credit, shall be calculated without a reduction in allowance under Section 49-12-402.

591 (4) Except for a return of member contributions, benefits payable under this section are
592 retirement benefits and shall be paid in addition to any payments made under Section
593 49-12-501 and constitute a full and final settlement of the claim of the spouse or any other
594 beneficiary filing claim for benefits under Section 49-12-501.

595 Section 12. Section **49-12-409** is amended to read:

596 **49-12-409. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination**
597 **policy.**

598 (1) (a) A member may purchase or a member and a participating employer may jointly
599 purchase a maximum of five years of service credit which cannot otherwise be purchased under
600 this title.

601 (b) At a minimum, the years of service credit purchased shall be sufficient to allow the
602 member to meet the retirement eligibility requirements of this system with no actuarial
603 reduction.

604 (c) The member's retirement date shall be immediately after the purchase of years of
605 service credit.

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

607 (e) To qualify for a purchase of service credit under this section, the member shall:

608 (i) have at least five years of service credit; and

609 (ii) otherwise meet federal eligibility requirements.

610 (2) The purchase price for the years of service credit shall be calculated and paid for as
611 provided in Section 49-11-403.

612 (3) Prior to making any purchase of years of service credit under this section, a
613 participating employer shall adopt a purchase policy that includes nondiscriminatory
614 participation standards for all regular full-time employees.

615 (4) Only members retiring from this system may purchase service credit under this
616 section.

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

618 **49-13-203. Exclusions from membership in system.**

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

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

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

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

631 ~~[(b) A full-time student or the spouse of a full-time student and another person
632 employed in a trainee relationship who file a formal request for exemption.]~~

633 ~~[(c)]~~ (b) (i) A current or future employee of a two-year or four-year college or
634 university who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity
635 contract with the Teachers' Insurance and Annuity Association of America or with any other
636 public or private system, organization, or company during any period in which required
637 contributions based on compensation have been paid on behalf of the employee by the
638 employer.

639 (ii) The employee, upon cessation of the participating employer contributions, shall
640 immediately become eligible for service credit in this system.

641 ~~[(d)]~~ (c) An employee serving as an exchange employee from outside the state.

642 ~~[(e) An elected official who files a formal request for exemption.]~~

643 ~~[(f)]~~ (d) An executive department head of the state or a legislative director, senior
644 executive employed by the governor's office, a member of the State Tax Commission, a
645 member of the Public Service Commission, and a member of a full-time or part-time board or
646 commission who files a formal request for exemption.

647 ~~[(g)]~~ (e) An employee of the Department of Workforce Services who is covered under

648 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

649 ~~[(h) (i) A person appointed as a city manager or chief city administrator or another~~
650 ~~person employed by a municipality, county, or other political subdivision, who is not entitled to~~
651 ~~merit or civil service protection.]~~

652 ~~[(ii) A person eligible for exclusion under Subsection (1)(h)(i) shall file a formal~~
653 ~~request for exemption and be employed in a position designated as exempt under an employee~~
654 ~~exemption plan developed by the municipality, county, or political subdivision.]~~

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

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

659 (b) an elected official;

660 (c) an executive department head of the state or a legislative director, senior executive
661 employed by the governor's office, a member of the State Tax Commission, a member of the
662 Public Service Commission, and a member of a full-time or part-time board or commission;
663 and

664 (d) a person appointed as a city manager or chief city administrator or another person
665 employed by a municipality, county, or other political subdivision, who is not entitled to merit
666 or civil service protection.

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

669 (b) An employee may not be exempted unless they are employed in a position
670 designated by the participating employer.

671 ~~[(2)(a) A]~~ (4) (a) In accordance with this section, a municipality, county, or political
672 subdivision may not exempt more than 50 positions or a number equal to 10% of the
673 employees of the municipality, county, or political subdivision, whichever is lesser.

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

676 ~~[(3)]~~ (5) Each participating employer shall:

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

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

679 [~~(4)~~] (6) The office may make rules to implement this section.

680 Section 14. Section **49-13-205** is amended to read:

681 **49-13-205. Conversion to system -- Time schedule -- Conversion windows.**

682 (1) An employee governed under Section 49-13-201 shall make the election to
683 participate in this system within six months of July 1, 1986.

684 (2) (a) (i) An employer governed under Sections 49-13-201 and 49-13-202 shall make
685 the election to participate in this system within six months of July 1, 1986.

686 (ii) The employer shall indicate whether or not it elects to participate by enacting a
687 resolution or ordinance to that effect.

688 (iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the
689 employer, at which all employees of the political subdivision shall be given an opportunity to
690 be heard on the question of participating in this system.

691 (iv) Notice of the hearing shall be mailed to all employees within 30 days of the
692 hearing and shall contain the time, place, and purpose of the hearing.

693 (b) A regular full-time employee has six months from the date the employer elects to
694 participate in this system in which to make the election to participate in this system and
695 become eligible for service credit in this system.

696 (3) Subsections (1) and (2) shall be used to provide a second time period of conversion
697 to this system beginning July 1, 1990.

698 (4) Subsections (1) and (2) shall be used to provide a third time period of conversion to
699 this system beginning July 1, 1995.

700 (5) A member of the Contributory Retirement System who is employed by one agency
701 and who either transfers to or is reemployed by another agency shall ~~[transfer to]~~ be enrolled in
702 the Noncontributory Retirement System as of the date of employment, if the participating
703 employer has elected to participate in the Noncontributory Retirement System.

704 Section 15. Section **49-13-402** is amended to read:

705 **49-13-402. Service retirement plans -- Calculation of retirement allowance --**
706 **Social Security limitations.**

707 (1) (a) Except as provided under Section 49-13-701, retirees of this system may choose
708 from the six retirement options described in this section.

709 (b) Options Two, Three, Four, Five, and Six are modifications of the Option One

710 calculation.

711 (2) The Option One benefit is an allowance calculated as follows:

712 (a) If the retiree is at least 65 years of age or has accrued at least 30 years of service
713 credit, the allowance is an amount equal to 2% of the retiree's final average monthly salary
714 multiplied by the number of years of service credit accrued.

715 (b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for
716 each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of
717 retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which
718 event no reduction is made to the allowance.

719 (c) (i) Years of service include any fractions of years of service to which the retiree
720 may be entitled.

721 (ii) At the time of retirement, if a retiree's combined years of actual, not purchased,
722 service credit is within 1/10 of one year of the total years of service credit required for
723 retirement, the retiree shall be considered to have the total years of service credit required for
724 retirement.

725 (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated
726 by reducing an Option One benefit based on actuarial computations to provide the following:

727 (a) Option Two is a reduced allowance paid to and throughout the lifetime of the
728 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's
729 member contributions, the remaining balance of the retiree's member contributions shall be
730 paid in accordance with Sections 49-11-609 and 49-11-610.

731 (b) Option Three is a reduced allowance paid to and throughout the lifetime of the
732 retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout
733 the lifetime of the retiree's lawful spouse at the time of retirement.

734 (c) Option Four is a reduced allowance paid to and throughout the lifetime of the
735 retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid
736 to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

737 (d) Option Five is a modification of Option Three so that if the lawful spouse at the
738 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the
739 time of initial retirement under Option One shall be paid to the retiree for the remainder of the
740 retiree's life, beginning on the last day of the month following the month in which the lawful

741 spouse dies.

742 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time
743 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time
744 of initial retirement under Option One shall be paid to the retiree for the remainder of the
745 retiree's life, beginning on the last day of the month following the month in which the lawful
746 spouse dies.

747 (4) (a) (i) The final average salary is limited in the computation of that part of an
748 allowance based on service rendered prior to July 1, 1967, during a period when the retiree
749 received employer contributions on a portion of compensation from an educational institution
750 toward the payment of the premium required on a retirement annuity contract with the
751 Teachers' Insurance and Annuity Association of America or with any other public or private
752 system, organization, or company to \$4,800.

753 (ii) This limitation is not applicable to retirees who elected to continue in the Public
754 Employees' Contributory Retirement System by July 1, 1967.

755 (b) Periods of employment which are exempt from this system as permitted under
756 Subsection 49-13-203(1)(~~e~~)(b) may be purchased by the member for the purpose of
757 retirement only if all benefits from the Teachers' Insurance and Annuity Association of
758 America or any other public or private system or organization based on this period of
759 employment are forfeited.

760 (5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement
761 date, the retirement is canceled and the death shall be considered as that of a member before
762 retirement.

763 (b) Any payments made to the retiree shall be deducted from the amounts due to the
764 beneficiary.

765 (6) If a retiree retires under either Option Five or Six and subsequently divorces, the
766 retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there
767 is no court order filed in the matter.

768 Section 16. Section **49-13-405** is amended to read:

769 **49-13-405. Death of married members -- Service retirement benefits to surviving**
770 **spouse.**

771 (1) As used in this section, "member's full allowance" means an Option Three

772 allowance calculated under Section 49-13-402 without an actuarial reduction.

773 (2) Upon the request of a deceased member's lawful spouse at the time of the member's
774 death, the deceased member is considered to have retired under Option Three on the first day of
775 the month following the month in which the member died if the following requirements are
776 met:

777 (a) the member has:

778 (i) 15 or more years of service credit;

779 (ii) attained age 62 with ten or more years of service credit; or

780 (iii) attained age 65 with four or more years of service credit; and

781 (b) the member dies leaving a spouse to whom the member has been married at least
782 six months immediately prior to the death date.

783 (3) The spouse who requests a benefit under this section shall apply in writing to the
784 office. The allowance shall begin on the first day of the month:

785 (a) following the month in which the member died, if the application is received by the
786 office within 90 days of the member's death; or

787 (b) in which the application is received by the office.

788 (4) The allowance payable to a surviving spouse under Subsection (2) is:

789 (a) if the member has 25 or more years of service credit at the time of death, the
790 surviving spouse shall receive the member's full allowance;

791 (b) if the member has between 20-24 years of service credit and is not age 60 or older
792 at the time of death, the surviving spouse shall receive [~~two-thirds~~] 2/3 of the member's full
793 allowance;

794 (c) if the member has between 15-19 years of service credit and is not age 62 or older
795 at the time of death, the surviving spouse shall receive [~~one-third~~] 1/3 of the member's full
796 allowance; or

797 (d) if the member is age 60 or older with 20 or more years of service credit, age 62 or
798 older with [~~10~~] ten or more years of service credit, or age 65 or older with four or more years of
799 service credit at the time of death, the surviving spouse shall receive an Option Three benefit
800 with actuarial reductions.

801 (5) Except for a return of member contributions, benefits payable under this section are
802 retirement benefits and shall be paid in addition to any other payments made under Section

803 49-13-501 and shall constitute a full and final settlement of the claim of the spouse or any other
804 beneficiary filing a claim for benefits under Section 49-13-501.

805 Section 17. Section **49-13-408** is amended to read:

806 **49-13-408. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination**
807 **policy.**

808 (1) (a) A member may purchase or a member and a participating employer may jointly
809 purchase a maximum of five years of service credit which cannot otherwise be purchased under
810 this title.

811 (b) At a minimum, the years of service credit purchased shall be sufficient to allow the
812 member to meet the retirement eligibility requirements of this system with no actuarial
813 reduction.

814 (c) The member's retirement date shall be immediately after the purchase of years of
815 service credit.

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

817 (e) To qualify for a purchase of service credit under this section, the member shall:

818 (i) have at least five years of service credit; and

819 (ii) otherwise meet federal eligibility requirements.

820 (2) The purchase price for the years of service credit shall be calculated and paid for as
821 provided in Section 49-11-403.

822 (3) Prior to making any purchase of years of service credit under this section, a
823 participating employer shall adopt a purchase policy that includes nondiscriminatory
824 participation standards for all regular full-time employees.

825 (4) Only members retiring from this system may purchase service credit under this
826 section.

827 Section 18. Section **49-16-102** is amended to read:

828 **49-16-102. Definitions.**

829 As used in this chapter:

830 (1) (a) "Compensation" means the total amount of payments that are includable as
831 gross income which are received by a firefighter service employee as base income for the
832 regularly scheduled work period. The participating employer shall establish the regularly
833 scheduled work period. Base income shall be determined prior to the deduction of member

834 contributions or any amounts the firefighter service employee authorizes to be deducted for
835 salary deferral or other benefits authorized by federal law.

836 (b) "Compensation" includes performance-based bonuses and cost-of-living
837 adjustments.

838 (c) "Compensation" does not include:

839 (i) overtime;

840 (ii) sick pay incentives;

841 (iii) retirement pay incentives;

842 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,
843 or similar payments;

844 (v) a lump-sum payment or special payments covering accumulated leave; and

845 (vi) all contributions made by a participating employer under this system or under any
846 other employee benefit system or plan maintained by a participating employer for the benefit of
847 a member or participant.

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

850 (2) (a) "Disability" means a physical or mental condition that, in the judgment of the
851 office, is total and presumably permanent, and prevents a member from performing firefighter
852 service.

853 (b) The determination of disability is based upon medical and other evidence
854 satisfactory to the office.

855 (3) "Final average salary" means the amount computed by averaging the highest three
856 years of annual compensation preceding retirement subject to Subsections (3)(a) and (b).

857 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
858 compensation in any one of the years used may not exceed the previous year's compensation by
859 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
860 of the dollar during the previous year, as measured by a United States Bureau of Labor
861 Statistics Consumer Price Index average as determined by the board.

862 (b) In cases where the participating employer provides acceptable documentation to the
863 office the limitation in Subsection (3)(a) may be exceeded if:

864 (i) the member has transferred from another agency; or

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

866 (4) "Firefighter service" means employment normally requiring an average of 2,080
867 hours of regularly scheduled employment per year rendered by a member who is a firefighter
868 service employee trained in firefighter techniques and assigned to a position of hazardous duty
869 with a regularly constituted fire department, but does not include secretarial staff or other
870 similar employees.

871 (5) "Firefighter service employee" means an employee of a participating employer who
872 provides firefighter service under this chapter. An employee of a regularly constituted fire
873 department who does not perform firefighter service is not a firefighter service employee.

874 (6) "Line-of-duty death or disability" means a death or any physical or mental disability
875 resulting from external force, violence, or disease directly resulting from firefighter service.

876 (a) A paid firefighter who has five years of firefighter service credit is eligible for a
877 line-of-duty death or disability resulting from heart disease, lung disease, or respiratory tract
878 condition.

879 (b) A paid firefighter who receives a service connected disability benefit for more than
880 six months due to violence or illness other than heart disease, lung disease, or respiratory tract
881 condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty
882 death or disability benefit due to heart disease, lung disease, or respiratory tract condition for
883 two years after the firefighter returned to work unless clear and convincing evidence is
884 presented that the heart disease, lung disease, or respiratory tract condition was directly a result
885 of firefighter service.

886 (7) "Participating employer" means an employer which meets the participation
887 requirements of Section 49-16-201.

888 (8) "Regularly constituted fire department" means a fire department that employs a fire
889 chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid
890 employment per year.

891 (9) "System" means the Firefighters' Retirement System created under this chapter.

892 (10) (a) "Volunteer firefighter" means any individual that is not regularly employed as
893 a firefighter service employee, but who ~~[is on the rolls of a regularly constituted fire~~
894 ~~department.];~~

895 (i) has been trained in firefighter techniques and skills;

896 (ii) continues to receive regular firefighter training; and
 897 (iii) is on the rolls of a legally organized volunteer fire department which provides
 898 ongoing training and serves a political subdivision of the state.

899 (b) An individual that volunteers assistance but ~~[is not a regularly enrolled firefighter]~~
 900 does not meet the requirements of Subsection (10)(a) is not a volunteer firefighter for purposes
 901 of this chapter.

902 (11) "Years of service credit" means the number of periods, each to consist of 12 full
 903 months as determined by the board, whether consecutive or not, during which a firefighter
 904 service employee was employed by a participating employer or received full-time pay while on
 905 sick leave, including any time the firefighter service employee was absent in the service of the
 906 United States on military duty.

907 Section 19. Section **49-16-203** is amended to read:

908 **49-16-203. Exemption of certain employees from coverage -- Exception.**

909 (1) A firefighter service employee serving as the chief of any fire department or district
 910 is excluded from coverage under this system if that firefighter service employee files a formal
 911 written request seeking exemption.

912 ~~[(2) A firefighter service employee serving as the chief of any fire department or~~
 913 ~~district may not continue employment with the same participating employer and receive an~~
 914 ~~allowance from the office based on firefighter service at the same time.]~~

915 (2) The chief of any fire department or district who retires from that position shall
 916 comply with the provisions of Section 49-11-504 upon reemployment by the participating
 917 employer.

918 Section 20. Section **49-16-601** is amended to read:

919 **49-16-601. Disability benefit -- Line-of-duty disability -- Benefits -- Monthly**
 920 **allowance.**

921 (1) An active member of this system who is unable to perform firefighter service due to
 922 a physical or mental condition that was not incurred in the line-of-duty may apply to the office
 923 for a disability retirement benefit subject to the following provisions:

924 ~~[(a) If the condition is classified by the office as a line-of-duty disability, the member~~
 925 ~~shall be granted a disability retirement benefit subject to Section 49-16-602.]~~

926 ~~[(b) If the condition is classified by the office as a nonline-of-duty disability and]~~

927 (a) if the member has less than five years of service credit in this system, disability
928 benefits are not payable[-]; and

929 ~~[(c)–(f)]~~ (b) if the condition is classified by the office as a nonline-of-duty disability and
930 if the member has five or more years of service credit in this system, the member shall be
931 granted a disability retirement benefit subject to Section 49-16-602.

932 (2) The monthly disability retirement benefit is 50% of the member's final average
933 monthly salary.

934 Section 21. Section **49-16-601.5** is enacted to read:

935 **49-16-601.5. Line-of-duty disability benefit -- Benefits -- Monthly allowance.**

936 (1) An active member of this system who is unable to perform firefighter service due to
937 a physical or mental condition incurred in the line-of-duty may apply to the office for a
938 disability retirement benefit under this section.

939 (2) If the condition is classified by the office as a line-of-duty disability, the member
940 shall be granted a disability retirement benefit subject to Section 49-16-602.

941 (3) The monthly disability retirement benefit is 50% of the member's final average
942 salary.

943 Section 22. Section **49-16-701** is amended to read:

944 **49-16-701. Volunteer firefighters eligible for line-of-duty death and disability**
945 **benefits in Division A -- Computation of benefit.**

946 (1) A volunteer firefighter is only eligible for line-of-duty death and line-of-duty
947 disability benefits provided for firefighters enrolled in Division A, subject to Section
948 49-16-603.

949 (2) The lowest monthly compensation of firefighters of a city of the first class in this
950 state at the time of death or disability shall be considered to be the final average monthly salary
951 of a volunteer firefighter for purposes of computing these benefits.

952 (3) Each volunteer fire department shall maintain a current roll of all volunteer
953 firefighters which meet the requirements of Subsection 49-16-102(10) to determine eligibility
954 for this benefit.

955 Section 23. Section **49-21-402** is amended to read:

956 **49-21-402. Reduction of benefit -- Circumstances -- Application for other benefits**
957 **required.**

958 (1) A monthly disability benefit may not be paid for any period of total disability unless
959 the eligible employee is under the ongoing care and treatment of a physician other than the
960 eligible employee.

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

964 (a) Social Security disability benefits, including all benefits received by the eligible
965 employee, the eligible employee's spouse, and the eligible employee's ~~dependent children~~
966 children as determined by the Social Security Administration;

967 (b) workers' compensation indemnity benefits;

968 (c) any monies received by judgment, legal action, or settlement from a third party
969 liable to the employee for the disability;

970 (d) unemployment compensation benefits; and

971 (e) automobile no-fault, medical payments, or similar insurance payments.

972 (3) The monthly disability benefit shall be reduced by any amount in excess of 1/3 of
973 the eligible employee's regular monthly salary received by, or payable to, the eligible employee
974 from the following sources for the same period of time during which the eligible employee is
975 entitled to receive a monthly disability benefit:

976 (a) any employer-sponsored retirement programs; and

977 (b) any disability benefit resulting from the disability for which benefits are being
978 received under this chapter.

979 (4) Cost-of-living increases to any of the benefits listed in Subsection (2) may not be
980 considered in calculating a reduction to the monthly disability benefit.

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

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

987 (b) The eligible employee shall also first apply at the earliest eligible age for all
988 unreduced retirement benefits to which the eligible employee is or may be entitled, and provide

989 to the office evidence of the application.

990 (c) If the eligible employee fails to make application under Subsection (6)(a) or (b), the
991 monthly disability benefit shall be suspended.

992 Section 24. Section **49-21-403** is amended to read:

993 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

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

998 (a) the date the eligible employee has accumulated:

999 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public
1000 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement
1001 Act;

1002 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'
1003 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act; or

1004 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public
1005 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory
1006 Retirement Act; or

1007 (b) the date the eligible employee has received a monthly disability benefit for the
1008 following applicable time periods:

1009 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
1010 until age 65;

1011 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
1012 monthly disability benefit is payable for five years;

1013 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1014 monthly disability benefit is payable for four years;

1015 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1016 monthly disability benefit is payable for three years;

1017 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1018 monthly disability benefit is payable for two years; and

1019 (vi) if the eligible employee is 69 years of age or older on the date of disability, the

1020 monthly disability benefit is payable for one year.

1021 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible
1022 for service credit under a system may retire under the system which covered the eligible
1023 employee on the date of disability.

1024 (b) The final average salary used in the calculation of the allowance shall be based on
1025 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase
1026 factor applied to retirees of the system which covered the eligible employee on the date of
1027 disability.

1028 (3) An eligible employee who is eligible for service credit in a system, but has
1029 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
1030 eligible employee would have received by being eligible for service credit in the system
1031 covering the eligible employee on the date of disability, except for the accrual of service credit,
1032 in accordance with this title.

1033 (4) An eligible employee receiving a monthly disability benefit who has service credit
1034 from two or more systems may not combine service credits under Section 49-11-405 in
1035 qualifying for retirement, unless the eligible employee would receive a greater allowance by
1036 combining the service credits.

1037 (5) A monthly disability benefit payable to an eligible employee who is not eligible for
1038 service credit under a system shall terminate at the earliest of:

1039 (a) the date the eligible employee would be eligible for an unreduced [~~retirement~~
1040 ~~benefit~~] allowance; [~~or~~]

1041 (b) the date the eligible employee has received a monthly disability benefit for the
1042 applicable time period as set forth in Subsection (1)(b)[~~;~~]; or

1043 (c) the date the eligible employee receives a reduced allowance.

Legislative Review Note

as of 12-29-04 12:31 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0180

Retirement Office Amendments

17-Jan-05

7:40 AM

State Impact

This bill clarifies retirement definitions. No fiscal impact is anticipated.

Individual and Business Impact

Some individuals may be impacted by these definitions, but it is expected to be minimal.

Office of the Legislative Fiscal Analyst