

**RETIREMENT AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel R. Liljenquist**

House Sponsor: Melvin R. Brown

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions related to the retirement systems.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of defined contribution to include deferred compensation plans;
- ▶ allows an employer to pay required retirement contributions to a nonqualified compensation plan administered by the board, if the employer is not participating in a qualified defined contribution plan;
- ▶ allows the retirement system to deduct money that is owed to the retirement system from payments made to beneficiaries;
- ▶ repeals transition language related to eligibility of an enhanced public safety retirement cost-of-living adjustment;
- ▶ provides an application process for employers to participate in the Firefighters Retirement System; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

30 AMENDS:

31 **49-11-102**, as last amended by Laws of Utah 2008, Chapter 335

32 **49-11-504**, as last amended by Laws of Utah 2007, Chapter 130

33 **49-11-612**, as last amended by Laws of Utah 2008, Chapter 229

34 **49-14-403**, as last amended by Laws of Utah 2008, Chapter 227

35 **49-15-403**, as last amended by Laws of Utah 2008, Chapter 227

36 **49-16-202**, as renumbered and amended by Laws of Utah 2002, Chapter 250

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

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

40 **49-11-102. Definitions.**

41 As used in this title:

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

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

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

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

50 (4) (a) "Agency" means:

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

53 (ii) a county, municipality, school district, local district, or special service district;

54 (iii) a state college or university; or

55 (iv) any other participating employer.

56 (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a  
57 subdivision of another entity listed under Subsection (4)(a).

58 (5) "Allowance" or "retirement allowance" means the pension plus the annuity,  
59 including any cost of living or other authorized adjustments to the pension and annuity.

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

62 (7) "Annuity" means monthly payments derived from member contributions.

63 (8) "Appointive officer" means an employee appointed to a position for a definite and  
64 fixed term of office by official and duly recorded action of a participating employer whose  
65 appointed position is designated in the participating employer's charter, creation document, or  
66 similar document, and who earns during the first full month of the term of office \$500 or  
67 more, indexed as of January 1, 1990, as provided in Section 49-12-407.

68 (9) (a) "At-will employee" means a person who is employed by a participating  
69 employer and:

70 (i) who is not entitled to merit or civil service protection and is generally considered  
71 exempt from a participating employer's merit or career service personnel systems;

72 (ii) whose on-going employment status is entirely at the discretion of the person's  
73 employer; or

74 (iii) who may be terminated without cause by a designated supervisor, manager, or  
75 director.

76 (b) "At-will employee" does not include a career employee who has obtained a  
77 reasonable expectation of continued employment based on inclusion in a participating  
78 employer's merit system, civil service protection system, or career service personnel systems,  
79 policies, or plans.

80 (10) "Beneficiary" means any person entitled to receive a payment under this title  
81 through a relationship with or designated by a member, participant, covered individual, or  
82 alternate payee of a defined contribution plan.

83 (11) "Board" means the Utah State Retirement Board established under Section  
84 49-11-202.

85 (12) "Board member" means a person serving on the Utah State Retirement Board as

86 established under Section 49-11-202.

87 (13) "Contributions" means the total amount paid by the participating employer and  
88 the member into a system or to the Utah Governors' and Legislators' Retirement Plan under  
89 Chapter 19, Utah Governors' and Legislators' Retirement Act.

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

92 (15) "Covered individual" means any individual covered under Chapter 20, Public  
93 Employees' Benefit and Insurance Program Act.

94 (16) "Current service" means covered service as defined in Chapters 12, 13, 14, 15,  
95 16, 17, 18, and 19.

96 (17) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a  
97 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's  
98 spouse after retirement that is based on a set formula involving one or more of the following  
99 factors:

- 100 (a) years of service;
- 101 (b) final average monthly salary; or
- 102 (c) a retirement multiplier.

103 (18) "Defined contribution" or "defined contribution plan" means any defined  
104 contribution plan or deferred compensation plan authorized under the Internal Revenue Code  
105 and administered by the board.

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

- 109 (a) the State Board of Education and its instrumentalities;
- 110 (b) any institution of higher education and its branches;
- 111 (c) any school district and its instrumentalities;
- 112 (d) any vocational and technical school; and
- 113 (e) any entity arising out of a consolidation agreement between entities described

114 under this Subsection (19).

115 (20) (a) "Employer" means any department, educational institution, or political  
116 subdivision of the state eligible to participate in a government-sponsored retirement system  
117 under federal law.

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

120 (21) "Exempt employee" means an employee working for a participating employer:

121 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,  
122 49-14-203, 49-15-203, or 49-16-203; and

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

125 (22) "Final average monthly salary" means the amount computed by dividing the  
126 compensation received during the final average salary period under each system by the number  
127 of months in the final average salary period.

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

130 (24) (a) "Inactive member" means a member who has not been employed by a  
131 participating employer for a period of at least 120 days.

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

133 (25) (a) "Member" means a person, except a retiree, with contributions on deposit with  
134 a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah  
135 Governors' and Legislators' Retirement Act, or with a terminated system.

136 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)  
137 of the Internal Revenue Code, if the employees have contributions on deposit with the office.  
138 If leased employees constitute less than 20% of the participating employer's work force that is  
139 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue  
140 Code, "member" does not include leased employees covered by a plan described in Section  
141 414(n)(5) of the federal Internal Revenue Code.

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

145 (a) the member; and

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

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

150 (28) "Office" means the Utah State Retirement Office.

151 (29) "Participant" means an individual with voluntary deferrals or nonelective  
152 contributions on deposit with the defined contribution plans administered under this title.

153 (30) "Participating employer" means a participating employer, as defined by Chapters  
154 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public funds which  
155 is participating in a system or plan as of January 1, 2002.

156 (31) "Pension" means monthly payments derived from participating employer  
157 contributions.

158 (32) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by  
159 Chapter 19, Utah Governors' and Legislators' Retirement Act, or the defined contribution plans  
160 created under Section 49-11-801.

161 (33) (a) "Political subdivision" means any local government entity, including cities,  
162 towns, counties, and school districts, but only if the subdivision is a juristic entity that is  
163 legally separate and distinct from the state and only if its employees are not by virtue of their  
164 relationship to the entity employees of the state.

165 (b) "Political subdivision" includes local districts, special service districts, or  
166 authorities created by the Legislature or by local governments, including the office.

167 (c) "Political subdivision" does not include a project entity created under Title 11,  
168 Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

169 (34) "Program" means the Public Employees' Insurance Program created under

170 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
171 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
172 Disability Act.

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

178 (36) "Qualified defined contribution plan" means a defined contribution plan that  
179 meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

180 (37) "Refund interest" means the amount accrued on member contributions at a rate  
181 adopted by the board.

182 (38) "Retiree" means an individual who has qualified for an allowance under this title.

183 (39) "Retirement" means the status of an individual who has become eligible, applies  
184 for, and is entitled to receive an allowance under this title.

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

187 (41) "Service credit" means:

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

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

193 (42) "System" means the individual retirement systems created by Chapter 12, Public  
194 Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory  
195 Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public  
196 Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17,  
197 Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act,

198 and Chapter 19, Utah Governors' and Legislators' Retirement Act.

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

201 Section 2. Section **49-11-504** is amended to read:

202 **49-11-504. Reemployment of a retiree -- Restrictions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

251 (b) The contributions shall be paid to a retiree-designated:

252 ~~[(a)]~~ (i) qualified defined contribution plan administered by the board, if the  
253 participating employer participates in a qualified defined contribution plan administered by

254 the board; or

255 ~~[(b)]~~ (ii) qualified defined contribution plan offered by the participating employer if  
256 the participating employer does not participate in a qualified defined contribution plan  
257 administered by the board.

258 (c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not  
259 participating in a qualified defined contribution plan administered by the board, the employer  
260 may elect to pay the contributions to a nonqualified deferred compensation plan administered  
261 by the board.

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

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

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

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

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

271 Section 3. Section **49-11-612** is amended to read:

272 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**  
273 **payments -- Exemption from legal process.**

274 (1) As used in this section, "domestic relations order benefits" means:

275 (a) an allowance;

276 (b) a defined contribution account established under Title 49, Chapter 11, Part 8,  
277 Defined Contribution Plans;

278 (c) a continuing monthly death benefit established under:

279 (i) Title 49, Chapter 14, Part 5, Death Benefit;

280 (ii) Title 49, Chapter 15, Part 5, Death Benefit;

281 (iii) Title 49, Chapter 16, Part 5, Death Benefit;

- 282 (iv) Title 49, Chapter 17, Part 5, Death Benefit;
- 283 (v) Title 49, Chapter 18, Part 5, Death Benefit; or
- 284 (vi) Title 49, Chapter 19, Part 5, Death Benefit;
- 285 (d) a death benefit provided under a group insurance policy under[;];
- 286 (i) Title 49, Chapter 12, Part 5, Death Benefit; or
- 287 (ii) Title 49, Chapter 13, Part 5, Death Benefit; or
- 288 (e) a refund of member contributions upon termination.
- 289 (2) Except as provided in Subsections (3), (4), and (5), the right of any member,
- 290 retiree, participant, covered individual, or beneficiary to any retirement benefit, retirement
- 291 payment, or any other retirement right accrued or accruing under this title and the assets of the
- 292 funds created by this title are not subject to alienation or assignment by the member, retiree,
- 293 participant, or their beneficiaries and are not subject to attachment, execution, garnishment, or
- 294 any other legal or equitable process.
- 295 (3) The office may, upon the request of the retiree, deduct from the retiree's allowance
- 296 insurance premiums or other dues payable on behalf of the retiree, but only to those entities
- 297 that have received the deductions prior to February 1, 2002.
- 298 (4) (a) The office shall provide for the division of domestic relations order benefits
- 299 with former spouses and family members under an order of a court of competent jurisdiction
- 300 with respect to domestic relations matters on file with the office.
- 301 (b) The court order shall specify the manner in which the domestic relations order
- 302 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.
- 303 (c) Domestic relations order benefits split under a domestic relations order are subject
- 304 to the following:
- 305 (i) the amount to be paid or the period for which payments shall be made under the
- 306 original domestic relations order may not be altered if the alteration affects the actuarial
- 307 calculation of the allowance;
- 308 (ii) payments to an alternate payee shall begin at the time the member or beneficiary
- 309 begins receiving payments; and

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

312 (d) A court order under this section may not be issued more than 12 months after the  
313 death of the member.

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

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

319 Section 4. Section **49-14-403** is amended to read:

320 **49-14-403. Annual cost-of-living adjustment -- Enhanced adjustment --**

321 **Eligibility.**

322 (1) The office shall make an annual cost-of-living adjustment to:

323 (a) an original allowance paid under Section 49-14-402 and Part 5, Death Benefit, of  
324 this chapter if the allowance has been paid for at least one year; and

325 (b) an original payment made to an alternate payee under a domestic relations order, if  
326 the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

327 (2) (a) Unless Subsection (2)(b) applies, the original allowance shall be increased by  
328 the annual increase in the Consumer Price Index up to a maximum of 2.5%.

329 (b) If the participating employer has made an election under Subsection (5), and in  
330 lieu of the annual increase under Subsection (2)(a), the original allowance shall be increased  
331 by the annual increase in the Consumer Price Index up to a maximum of 4%.

332 (c) Annual increases in the Consumer Price Index in excess of the applicable  
333 maximum annual increase under this Subsection (2), shall be accumulated and used in  
334 subsequent adjustments when the annual increase in the Consumer Price Index is less than the  
335 applicable maximum annual increase under this Subsection (2).

336 (3) The Consumer Price Index used in calculating adjustments shall be a United States  
337 Bureau of Labor Statistics Consumer Price Index average as determined by the board.

338 (4) The cost-of-living adjustment made under this section may not decrease the  
339 allowance.

340 (5) (a) A participating employer may make a one-time election to provide the annual  
341 cost-of-living adjustment under Subsection (2)(b), in lieu of the annual cost-of-living  
342 adjustment under Subsection (2)(a), for the participating employer's current and future retirees.

343 (b) A participating employer shall make the election under this Subsection (5) prior to  
344 December 1, 2009.

345 (c) The participating employer shall indicate whether or not it elects to participate in  
346 this benefit by enacting a resolution or ordinance to that effect and making an application to  
347 the office.

348 (d) The effective date for the annual cost-of-living adjustment under Subsection (2)(b)  
349 is January 1 of the year following an election under Subsection (5)(a).

350 (e) Notwithstanding the election provided under this section, the state, as a  
351 participating employer, shall provide the annual cost-of-living adjustment under Subsection  
352 (2)(b) to its eligible employees and retirees effective on January 1, 2009.

353 (6) (a) To be eligible for the annual cost-of-living adjustment under Subsection (2)(b),  
354 a retiring employee shall earn the final 72 months of service credit prior to initial retirement:

355 (i) as an employee of a participating employer who:

356 (A) has made the election under Subsection (5)(a); or

357 (B) is included under Subsection (5)(e); and

358 (ii) in a covered position under Title 49, Chapter 14, Public Safety Contributory  
359 Retirement System Act or under Title 49, Chapter 15, Public Safety Noncontributory  
360 Retirement System Act.

361 ~~[(b) The eligibility requirements under Subsection (6)(a)(i) do not apply to a person  
362 who retires prior to July 1, 2008:]~~

363 ~~[(c)]~~ (b) The annual cost-of-living adjustment under Subsection (2)(b) may not be paid  
364 to a retiree who is not eligible under this Subsection (6).

365 (7) An allowance adjustment made under Subsections (2)(b) and (5) may not be paid

366 prior to the effective date of the enhanced cost-of-living adjustment for the participating  
367 employer.

368 (8) The board may adopt rules for:

369 (a) the administration of the election provided under Subsection (5); and

370 (b) the effective date of the enhanced cost-of-living adjustment for participating  
371 employers.

372 Section 5. Section **49-15-403** is amended to read:

373 **49-15-403. Annual cost-of-living adjustment.**

374 (1) The office shall make an annual cost-of-living adjustment to:

375 (a) an original allowance paid under Section 49-15-402 and Part 5, Death Benefit, of  
376 this chapter if the allowance has been paid for at least one year; and

377 (b) an original payment made to an alternate payee under a domestic relations order if  
378 the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

379 (2) (a) Unless Subsection (2)(b) applies, the original allowance shall be increased by  
380 the annual increase in the Consumer Price Index up to a maximum of 2.5%.

381 (b) If the participating employer has made an election under Subsection (5), and in  
382 lieu of the annual increase under Subsection (2)(a), the original allowance shall be increased  
383 by the annual increase in the Consumer Price Index up to a maximum of 4%.

384 (c) Annual increases in the Consumer Price Index in excess of the applicable  
385 maximum annual increase under this Subsection (2), shall be accumulated and used in  
386 subsequent adjustments when the annual increase in the Consumer Price Index is less than the  
387 applicable maximum annual increase under this Subsection (2).

388 (3) The Consumer Price Index used in calculating adjustments shall be a United States  
389 Bureau of Labor Statistics Consumer Price Index average as determined by the board.

390 (4) The cost-of-living adjustment made under this section may not decrease the  
391 allowance.

392 (5) (a) A participating employer may make a one-time election to provide the annual  
393 cost-of-living adjustment under Subsection (2)(b), in lieu of the annual cost-of-living

394 adjustment under Subsection (2)(a), for the participating employer's current and future retirees.

395 (b) A participating employer shall make the election under this Subsection (5) prior to  
396 December 1, 2009.

397 (c) The participating employer shall indicate whether or not it elects to participate in  
398 this benefit by enacting a resolution or ordinance to that effect and making an application to  
399 the office.

400 (d) The effective date for the annual cost-of-living adjustment under Subsection (2)(b)  
401 is January 1 of the year following an election under Subsection (5)(a).

402 (e) Notwithstanding the election provided under this section, the state, as a  
403 participating employer, shall provide the annual cost-of-living adjustment under Subsection  
404 (2)(b) to its eligible employees and retirees effective on January 1, 2009.

405 (6) (a) To be eligible for the annual cost-of-living adjustment under Subsection (2)(b),  
406 a retiring employee shall earn the final 72 months of service credit prior to initial retirement  
407 [~~effective on January 1, 2009~~]:

408 (i) as an employee of a participating employer who:

409 (A) has made the election under Subsection (5)(a); or

410 (B) is included under Subsection (5)(e); and

411 (ii) in a covered position under Title 49, Chapter 14, Public Safety Contributory  
412 Retirement System Act or under Title 49, Chapter 15, Public Safety Noncontributory  
413 Retirement System Act.

414 [~~(b) The eligibility requirements under Subsection (6)(a)(i) do not apply to a person  
415 who retires prior to July 1, 2008.~~]

416 [~~(e)~~] (b) The annual cost-of-living adjustment under Subsection (2)(b) may not be paid  
417 to a retiree who is not eligible under this Subsection (6).

418 (7) An allowance adjustment made under Subsections (2)(b) and (5) may not be paid  
419 prior to the effective date of the enhanced cost-of-living adjustment for the participating  
420 employer.

421 (8) The board may adopt rules for:

- 422 (a) the administration of the election provided under Subsection (5); and
- 423 (b) the effective date of the enhanced cost-of-living adjustment for participating
- 424 employers.

425 Section 6. Section **49-16-202** is amended to read:

426 **49-16-202. Participation of employers -- Full participation in system --**  
427 **Supplemental programs authorized.**

428 (1) An employer that employs firefighter service employees and is required by Section  
429 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory  
430 Retirement System or the Public Employees' Noncontributory Retirement System shall cover  
431 all of its firefighter service employees under one of the following systems:

- 432 (a) Chapter 12, Public Employees' Contributory Retirement Act;
- 433 (b) Chapter 13, Public Employees' Noncontributory Retirement Act; or
- 434 (c) Chapter 16, Firefighters' Retirement Act.

435 (2) Any employer that covers its firefighter service employees under Subsection (1)(c)  
436 is a participating employer in this system.

437 (3) If a participating employer under Subsection (1) covers any of its firefighter  
438 service employees under the Firefighters' Retirement System, that participating employer shall  
439 cover all of its firefighter service employees under that system.

440 (4) (a) An employer that is not participating in this system may, by resolution of its  
441 governing body submitted to the board, apply for coverage of its firefighter service employees  
442 by this system.

443 (b) Upon approval of the board, the employer shall become a participating employer in  
444 this system subject to this title.

445 [~~4~~] (5) A participating employer may not withdraw from this system.

446 [~~5~~] (6) In addition to their participation in the system, participating employers may  
447 provide or participate in any additional public or private retirement, supplemental or defined  
448 contribution plan, either directly or indirectly, for their firefighter service employees.