

**NEW PUBLIC EMPLOYEES' TIER II  
CONTRIBUTORY RETIREMENT ACT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel R. Liljenquist**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act to provide for modified retirement benefits for new public employees.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides for a "Tier I" system or plan for which an employee is eligible to participate if the employee initially enters regular full-time employment before July 1, 2011;
- ▶ creates a "Tier II" retirement system and plan for which an employee is eligible to participate, if the employee initially enters regular full-time employment on or after July 1, 2011 and which includes a:
  - New Public Employees' Tier II Hybrid Retirement System; and
  - New Public Employees' Tier II Defined Contribution Plan;
- ▶ provides that all new public employees including public safety, firefighters, judges, governors, and legislators may only participate in a Tier II retirement system or plan;
- ▶ provides that new employees may choose between the Tier II hybrid system or the Tier II DC plan except governors and legislators are only eligible for the Tier II DC



28 plan;

29 ▶ provides that the retirement benefits for Tier II hybrid system employees include:

- 30 • full retirement benefits after 35 years of service credit;
- 31 • 2.5% cost-of-living adjustments on the retirement allowance;
- 32 • a 1% multiplier for each year of service;
- 33 • a 401(k) employer contribution;
- 34 • a death benefit; and
- 35 • a disability benefit;

36 ▶ provides that the participating employer shall contribute for Tier II employees the  
37 percentage of employee's compensation equal to the corresponding Tier I system

38 amortization rate plus 8%;

39 ▶ provides that the total Tier II contribution credited specifically on behalf of a Tier II  
40 employee is 8% of the employee's salary;

41 ▶ closes for employees who initially enter employment beginning on or after July 1,  
42 2011, the:

- 43 • Public Employees' Contributory Retirement System;
- 44 • Public Employees' Noncontributory Retirement System;
- 45 • Public Safety Contributory Retirement System;
- 46 • Public Safety Noncontributory Retirement Act;
- 47 • Firefighters' Retirement System;
- 48 • Judges' Contributory Retirement System;
- 49 • Judges' Noncontributory Retirement System; and
- 50 • Utah Governors' and Legislators' Retirement System;

51 ▶ provides for certain exclusions from membership in the Tier II DC plan; and

52 ▶ makes technical changes.

53 **Monies Appropriated in this Bill:**

54 None

55 **Other Special Clauses:**

56 This bill takes effect on July 1, 2010.

57 **Utah Code Sections Affected:**

58 AMENDS:

- 59           **49-11-102**, as last amended by Laws of Utah 2009, Chapter 101
- 60           **49-11-401**, as last amended by Laws of Utah 2005, Chapter 116
- 61           **49-11-403**, as last amended by Laws of Utah 2006, Chapter 260
- 62           **49-11-404**, as last amended by Laws of Utah 2008, Chapter 252
- 63           **49-11-801**, as last amended by Laws of Utah 2008, Chapter 335
- 64           **49-11-1001**, as enacted by Laws of Utah 2006, Chapter 305
- 65           **49-12-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 66           **49-13-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 67           **49-14-201**, as last amended by Laws of Utah 2008, Chapter 382
- 68           **49-14-202**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 69           **49-15-201**, as last amended by Laws of Utah 2008, Chapter 382
- 70           **49-15-202**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 71           **49-16-201**, as last amended by Laws of Utah 2004, Chapter 118
- 72           **49-16-202**, as last amended by Laws of Utah 2009, Chapter 101
- 73           **49-17-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 74           **49-18-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 75           **49-19-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 76           **49-21-403**, as last amended by Laws of Utah 2008, Chapter 252
- 77           **53A-1a-512**, as last amended by Laws of Utah 2009, Chapter 165

78 ENACTS:

- 79           **49-22-101**, Utah Code Annotated 1953
- 80           **49-22-102**, Utah Code Annotated 1953
- 81           **49-22-103**, Utah Code Annotated 1953
- 82           **49-22-104**, Utah Code Annotated 1953
- 83           **49-22-201**, Utah Code Annotated 1953
- 84           **49-22-202**, Utah Code Annotated 1953
- 85           **49-22-203**, Utah Code Annotated 1953
- 86           **49-22-204**, Utah Code Annotated 1953
- 87           **49-22-301**, Utah Code Annotated 1953
- 88           **49-22-302**, Utah Code Annotated 1953
- 89           **49-22-303**, Utah Code Annotated 1953

- 90           **49-22-304**, Utah Code Annotated 1953
- 91           **49-22-305**, Utah Code Annotated 1953
- 92           **49-22-306**, Utah Code Annotated 1953
- 93           **49-22-307**, Utah Code Annotated 1953
- 94           **49-22-308**, Utah Code Annotated 1953
- 95           **49-22-309**, Utah Code Annotated 1953
- 96           **49-22-310**, Utah Code Annotated 1953
- 97           **49-22-401**, Utah Code Annotated 1953
- 98           **49-22-402**, Utah Code Annotated 1953
- 99           **49-22-501**, Utah Code Annotated 1953
- 100          **49-22-701**, Utah Code Annotated 1953



101  
102 *Be it enacted by the Legislature of the state of Utah:*

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

104           **49-11-102. Definitions.**

105           As used in this title:

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

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

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

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

114           (4) (a) "Agency" means:

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

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

118           (iii) a state college or university; or

119           (iv) any other participating employer.

120           (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a

121 subdivision of another entity listed under Subsection (4)(a).

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

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

126 (7) "Amortization rate" means the board certified percent of salary required to amortize  
127 the unfunded actuarial accrued liability in accordance with policies established by the board  
128 upon the advice of the actuary.

129 [~~7~~] (8) "Annuity" means monthly payments derived from member contributions.

130 [~~8~~] (9) "Appointive officer" means an employee appointed to a position for a definite  
131 and fixed term of office by official and duly recorded action of a participating employer whose  
132 appointed position is designated in the participating employer's charter, creation document, or  
133 similar document, and who earns during the first full month of the term of office \$500 or more,  
134 indexed as of January 1, 1990, as provided in Section 49-12-407.

135 [~~9~~] (10) (a) "At-will employee" means a person who is employed by a participating  
136 employer and:

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

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

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

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

147 [~~10~~] (11) "Beneficiary" means any person entitled to receive a payment under this  
148 title through a relationship with or designated by a member, participant, covered individual, or  
149 alternate payee of a defined contribution plan.

150 [~~11~~] (12) "Board" means the Utah State Retirement Board established under Section  
151 49-11-202.

152            [~~(12)~~] (13) "Board member" means a person serving on the Utah State Retirement  
153 Board as established under Section 49-11-202.

154            (14) "Certified contribution rate" means the board certified percent of salary paid on  
155 behalf of an active member to the office to maintain the system on a financially and actuarially  
156 sound basis.

157            [~~(13)~~] (15) "Contributions" means the total amount paid by the participating employer  
158 and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under  
159 Chapter 19, Utah Governors' and Legislators' Retirement Act.

160            [~~(14)~~] (16) "Council member" means a person serving on the Membership Council  
161 established under Section 49-11-202.

162            [~~(15)~~] (17) "Covered individual" means any individual covered under Chapter 20,  
163 Public Employees' Benefit and Insurance Program Act.

164            [~~(16)~~] (18) "Current service" means covered service as defined in Chapters 12, 13, 14,  
165 15, 16, 17, 18, and 19.

166            [~~(17)~~] (19) "Defined benefit" or "defined benefit plan" or "defined benefit system"  
167 means a system or plan offered under this title to provide a specified allowance to a retiree or a  
168 retiree's spouse after retirement that is based on a set formula involving one or more of the  
169 following factors:

- 170            (a) years of service;
- 171            (b) final average monthly salary; or
- 172            (c) a retirement multiplier.

173            [~~(18)~~] (20) "Defined contribution" or "defined contribution plan" means any defined  
174 contribution plan or deferred compensation plan authorized under the Internal Revenue Code  
175 and administered by the board.

176            [~~(19)~~] (21) "Educational institution" means a political subdivision or instrumentality of  
177 the state or a combination thereof primarily engaged in educational activities or the  
178 administration or servicing of educational activities, including:

- 179            (a) the State Board of Education and its instrumentalities;
- 180            (b) any institution of higher education and its branches;
- 181            (c) any school district and its instrumentalities;
- 182            (d) any vocational and technical school; and

183 (e) any entity arising out of a consolidation agreement between entities described under  
184 this Subsection [~~(19)~~] (21).

185 [~~(20)~~] (22) (a) "Employer" means any department, educational institution, or political  
186 subdivision of the state eligible to participate in a government-sponsored retirement system  
187 under federal law.

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

190 [~~(21)~~] (23) "Exempt employee" means an employee working for a participating  
191 employer:

192 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,  
193 49-14-203, 49-15-203, or 49-16-203; and

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

196 [~~(22)~~] (24) "Final average monthly salary" means the amount computed by dividing the  
197 compensation received during the final average salary period under each system by the number  
198 of months in the final average salary period.

199 [~~(23)~~] (25) "Fund" means any fund created under this title for the purpose of paying  
200 benefits or costs of administering a system, plan, or program.

201 [~~(24)~~] (26) (a) "Inactive member" means a member who has not been employed by a  
202 participating employer for a period of at least 120 days.

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

204 (27) (a) "Initially entering" means hired, appointed, or elected for the first time, in  
205 current service as a member with any participating employer.

206 (b) "Initially entering" does not include a person who has any prior service credit on  
207 file with the office.

208 [~~(25)~~] (28) (a) "Member" means a person, except a retiree, with contributions on  
209 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,  
210 Utah Governors' and Legislators' Retirement Act, or with a terminated system.

211 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)  
212 of the Internal Revenue Code, if the employees have contributions on deposit with the office.  
213 If leased employees constitute less than 20% of the participating employer's work force that is

214 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,  
215 "member" does not include leased employees covered by a plan described in Section 414(n)(5)  
216 of the federal Internal Revenue Code.

217 ~~[(26)]~~ (29) "Member contributions" means the sum of the contributions paid to a  
218 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if  
219 allowed by a system, and which are made by:

220 (a) the member; and

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

223 ~~[(27)]~~ (30) "Nonelective contribution" means an amount contributed by a participating  
224 employer into a participant's defined contribution account.

225 ~~[(28)]~~ (31) "Office" means the Utah State Retirement Office.

226 ~~[(29)]~~ (32) "Participant" means an individual with voluntary deferrals or nonelective  
227 contributions on deposit with the defined contribution plans administered under this title.

228 ~~[(30)]~~ (33) "Participating employer" means a participating employer, as defined by  
229 Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public  
230 funds which is participating in a system or plan as of January 1, 2002.

231 ~~[(31)]~~ (34) "Pension" means monthly payments derived from participating employer  
232 contributions.

233 ~~[(32)]~~ (35) "Plan" means the Utah Governors' and Legislators' Retirement Plan created  
234 by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees'  
235 Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution  
236 Plan, or the defined contribution plans created under Section 49-11-801.

237 ~~[(33)]~~ (36) (a) "Political subdivision" means any local government entity, including  
238 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is  
239 legally separate and distinct from the state and only if its employees are not by virtue of their  
240 relationship to the entity employees of the state.

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

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

245            [~~(34)~~] (37) "Program" means the Public Employees' Insurance Program created under  
246 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
247 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
248 Disability Act.

249            [~~(35)~~] (38) "Public funds" means those funds derived, either directly or indirectly, from  
250 public taxes or public revenue, dues or contributions paid or donated by the membership of the  
251 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,  
252 the governmental, educational, and social programs and systems of the state or its political  
253 subdivisions.

254            [~~(36)~~] (39) "Qualified defined contribution plan" means a defined contribution plan  
255 that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

256            [~~(37)~~] (40) "Refund interest" means the amount accrued on member contributions at a  
257 rate adopted by the board.

258            [~~(38)~~] (41) "Retiree" means an individual who has qualified for an allowance under this  
259 title.

260            [~~(39)~~] (42) "Retirement" means the status of an individual who has become eligible,  
261 applies for, and is entitled to receive an allowance under this title.

262            [~~(40)~~] (43) "Retirement date" means the date selected by the member on which the  
263 member's retirement becomes effective with the office.

264            [~~(41)~~] (44) "Service credit" means:

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

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

270            [~~(42)~~] (45) "System" means the individual retirement systems created by Chapter 12,  
271 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'  
272 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,  
273 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'  
274 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges'  
275 Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement

276 Act[-], and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter  
277 22, Part 3, Tier II Hybrid Retirement System.

278 (46) "Tier I" means a system or plan under this title for which an employee is eligible  
279 to participate if the employee initially enters regular full-time employment before July 1, 2011.

280 (47) (a) "Tier II" means a system or plan under this title provided in lieu of a Tier I  
281 system or plan for which an employee is eligible to participate, if the employee initially enters  
282 regular full-time employment on or after July 1, 2011.

283 (b) "Tier II" includes:

284 (i) Tier II hybrid system established under Title 49, Chapter 22, Part 3, Tier II Hybrid  
285 Retirement System; and

286 (ii) Tier II Defined Contribution Plan (Tier II DC Plan) established under Title 49,  
287 Chapter 22, Part 4, Tier II Defined Contribution Plan.

288 (48) "Unfunded actuarial accrued liability" or "UAAL":

289 (a) is determined by the system's actuary; and

290 (b) means the excess, if any, of the accrued liability of a retirement system over the  
291 actuarial value of its assets.

292 [~~(43)~~] (49) "Voluntary deferrals" means an amount contributed by a participant into  
293 that participant's defined contribution account.

294 Section 2. Section **49-11-401** is amended to read:

295 **49-11-401. Transfer of service credit -- Eligibility for service credit --**

296 **Computation of service credit -- Retirement from most recent system.**

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

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

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

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

304 (a) A person employed and compensated by a participating employer who meets the  
305 eligibility requirements for membership in a system or the Utah Governors' and Legislators'  
306 Retirement Plan shall receive service credit for the term of the employment provided that all

307 required contributions are paid to the office.

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

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

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

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

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

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

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

325 (6) (a) Under no circumstances may service credit earned by a member under Chapter  
326 22, New Public Employees' Tier II Contributory Retirement Act, be transferable to any other  
327 system or plan under this title.

328 (b) Under no circumstances may service credit earned by a member under one of the  
329 following systems be transferable to the system created under Chapter 22, New Public  
330 Employees' Tier II Contributory Retirement Act:

331 (i) Chapter 12, Public Employees' Contributory Retirement Act;

332 (ii) Chapter 13, Public Employees' Noncontributory Retirement Act;

333 (iii) Chapter 14, Public Safety Contributory Retirement Act;

334 (iv) Chapter 15, Public Safety Noncontributory Retirement Act;

335 (v) Chapter 16, Firefighters' Retirement Act;

336 (vi) Chapter 17, Judges' Contributory Retirement Act;

337 (vii) Chapter 18, Judges' Noncontributory Retirement Act; or

338 (viii) Chapter 19, Utah Governors' and Legislators' Retirement Act.

339 Section 3. Section **49-11-403** is amended to read:

340 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

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

344 (a) United States federal employment;

345 (b) employment in a private school based in the United States, if the member received  
346 an employer paid retirement benefit for the employment;

347 (c) public employment in another state or territory of the United States which qualifies  
348 the member for membership in the public plan or system covering the employment, but only if  
349 the member does not qualify for any retirement benefits based on the employment;

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

352 (e) full-time public service while on an approved leave of absence;

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

354 (i) the member was receiving:

355 (A) long-term disability benefits;

356 (B) short-term disability benefits; or

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

358 (ii) the member's employer had not entered into a benefit protection contract under

359 Section 49-11-404 during the period the member was disabled due to sickness or accident; or

360 (g) employment covered by a Teachers Insurance and Annuity Association of America

361 retirement plan if the member forfeits any retirement benefit from that retirement plan for the

362 period of employment to be purchased under this Subsection (1)(g).

363 (2) A member shall have:

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

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

368 (3) (a) To purchase credit under this section, the member, a participating employer, or a

369 member and a participating employer jointly shall make payment to the system under which the  
370 member is currently covered.

371 (b) The amount of the payment shall be determined by the office based on a formula  
372 that is:

373 (i) recommended by the actuary; and

374 (ii) adopted by the board.

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

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

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

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

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

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

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

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

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

393 (9) Account balances created under Section 49-22-303 or 49-22-401 may not be used  
394 to purchase service credit for a benefit under Sections 49-22-304 and 49-22-305.

395 Section 4. Section **49-11-404** is amended to read:

396 **49-11-404. Benefit protection contract authorized -- Annual report required.**

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

399 (b) If a salary protection program is established, a participating employer may enter

400 into benefit protection contracts with the office.

401 (c) A salary protection program shall:

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

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

406 (iii) comply with requirements adopted by the board.

407 (2) A benefit protection contract shall allow:

408 (a) the disabled member to be considered an active member in a system and continue to  
409 accrue service credit and salary credit based on the member's rate of pay in effect at the time  
410 disability commences;

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

413 (c) the disabled member to remain eligible during the contract period for any benefits  
414 provided by the system that covers the member; and

415 (d) the benefit for the disabled member to be improved by the annual cost-of-living  
416 increase factor applied to retired members of the system that covered the member on the date  
417 the member is eligible to receive benefits under a benefit protection contract.

418 (3) (a) The office shall establish the manner and times when employer contributions  
419 are paid.

420 (b) A failure to make the required payments is cause for the office to cancel a contract.

421 (c) Service credit and salary credit granted and accrued up to the time of cancellation  
422 may not be forfeited.

423 (4) For an employee covered under Chapter 22, New Public Employees' Tier II  
424 Contributory Retirement Act, a benefit protection contract shall allow:

425 (a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier  
426 II Hybrid Retirement System:

427 (i) the disabled member to be considered an active member in a system and continue to  
428 accrue service credit and salary credit based on the member's rate of pay in effect at the time  
429 disability commences;

430 (ii) the office to require participating employer contributions to be paid before granting

431 service credit and salary credit to the member;

432 (iii) the disabled member to remain eligible during the contract period for any benefits  
 433 provided by the system that covers the member; and

434 (iv) the benefit for the disabled member to be improved by the annual cost-of-living  
 435 increase factor applied to retired members of the system that covered the member on the date  
 436 the member is eligible to receive benefits under a benefit protection contract; and

437 (b) for the defined contribution portion for a member covered under Chapter 22, Part 3,  
 438 Tier II Hybrid Retirement System or for a participant covered under Chapter 22, Part 4, Tier II  
 439 Defined Contribution Plan, the office shall require participating employers to continue making  
 440 the nonelective contributions on behalf of the disabled member or participant in the amounts  
 441 specified in Subsection 49-22-303(1)(a) or 49-22-401(1).

442 ~~[(4)]~~ (5) A participating employer that has entered into a benefit protection contract  
 443 under this section shall submit an annual report to the office which identifies:

444 (a) the employees receiving long-term disability benefits under policies initiated by the  
 445 participating employer and approved under the benefit protection contract;

446 (b) the employees that have applied for long-term disability benefits and who are  
 447 waiting approval; and

448 (c) the insurance carriers that are actively providing long-term disability benefits.

449 ~~[(5)]~~ (6) If an employer fails to provide the annual report required under Subsection  
 450 ~~[(4)]~~ (5), the benefits that would have accrued under the benefit protection contract shall be  
 451 forfeited.

452 ~~[(6)]~~ (7) The board may adopt rules to implement and administer this section.

453 Section 5. Section **49-11-801** is amended to read:

454 **49-11-801. Defined contribution plans authorized -- Subject to federal and state**  
 455 **laws -- Rules to implement this provision -- Costs of administration -- Limitations on**  
 456 **eligibility -- Protection of tax status.**

457 (1) (a) The board shall establish and administer defined contribution plans established  
 458 under the Internal Revenue Code.

459 (b) Voluntary deferrals and nonelective contributions shall be permitted according to  
 460 the provisions of these plans as established by the board.

461 (c) ~~[The]~~ Except as provided in Subsections 49-22-303(2)(a) and 49-22-401(3)(a), the

462 defined contribution account balance is vested in the participant.

463 (2) (a) Voluntary deferrals and nonelective contributions shall be posted to the  
464 participant's account.

465 (b) [~~Participants~~] Except as provided in Subsections 49-22-303(3) and 49-22-401(4),  
466 participants may direct the investment of their account in the investment options established by  
467 the board and in accordance with federal and state law.

468 (3) (a) The board may make rules and create plan documents to implement and  
469 administer this section.

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

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

474 (d) Costs of administration shall be paid as established by the board.

475 (4) Voluntary deferrals and nonelective contributions may be invested separately or in  
476 conjunction with the Utah State Retirement Investment Fund.

477 (5) The board or office may take actions necessary to protect the tax qualified status of  
478 the systems, plans, and programs under its control, including the movement of individuals from  
479 defined contribution plans to defined benefit systems or the creation of excess benefit plans  
480 authorized by federal law.

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

483 Section 6. Section **49-11-1001** is amended to read:

484 **49-11-1001. Partial lump-sum payment option.**

485 (1) [~~At~~] Except as provided in Subsection (5), at the time of application for retirement,  
486 a member may elect to receive a lump-sum payment of a portion of the member's retirement  
487 allowance equal to 12 or 24 months of the member's allowance to be paid upon retirement.

488 (2) The member's allowance shall be reduced to reflect the actuarial value of the  
489 lump-sum received under Subsection (1).

490 (3) A member who has received a lump-sum payment under this section is not eligible  
491 for another lump-sum payment under this section.

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

493 (5) A member or participant of a system or plan under Chapter 22, New Public  
494 Employees' Tier II Contributory Retirement Act, is not eligible to make an election under this  
495 section.

496 Section 7. Section **49-12-201** is amended to read:

497 **49-12-201. System membership -- Eligibility.**

498 (1) A regular full-time employee of a participating employer is eligible for service  
499 credit in this system upon the later of:

500 (a) the date on which the participating employer began participating in this system; or

501 (b) the effective date of employment of the regular full-time employee with the  
502 participating employer.

503 (2) Beginning July 1, 1986, a person entering employment with the state and its  
504 educational institutions may not participate in this system.

505 (3) Notwithstanding the provisions of Subsection (1), a person initially entering  
506 employment with a participating employer on or after July 1, 2011, may not participate in this  
507 system.

508 Section 8. Section **49-13-201** is amended to read:

509 **49-13-201. System membership -- Eligibility.**

510 (1) Beginning July 1, 1986, the state and its educational institutions shall participate in  
511 this system.

512 (a) A person entering regular full-time employment with the state or its educational  
513 institutions after July 1, 1986, but before July 1, 2011, is eligible for service credit in this  
514 system.

515 (b) A regular full-time employee of the state or its educational institutions prior to July  
516 1, 1986, may either become eligible for service credit in this system or remain eligible for  
517 service in the system established under Chapter 12, Public Employees' Contributory Retirement  
518 Act, by following the procedures established by the board in accordance with this chapter.

519 (2) An employer, other than the state and its educational institutions, may participate in  
520 this system except that once an employer elects to participate in this system, that election is  
521 irrevocable and the election must be made before July 1, 2011.

522 (a) [~~A~~] Until June 30, 2011, a person initially entering regular full-time employment  
523 with a participating employer which elects to participate in this system is eligible for service

524 credit in this system.

525 (b) A person in regular full-time employment with a participating employer prior to  
526 the participating employer's election to participate in this system may either become eligible for  
527 service credit in this system or remain eligible for service in the system established under  
528 Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures  
529 established by the board in accordance with this chapter.

530 (3) Notwithstanding the provisions of Subsections (1) and (2), a person initially  
531 entering employment with a participating employer on or after July 1, 2011, may not participate  
532 in this system.

533 Section 9. Section **49-14-201** is amended to read:

534 **49-14-201. System membership -- Eligibility.**

535 (1) Except as provided in Section 49-15-201, a public safety service employee of a  
536 participating employer participating in this system is eligible for service credit in this system at  
537 the earliest of:

538 (a) July 1, 1969, if the public safety service employee was employed by the  
539 participating employer on July 1, 1969, and the participating employer was participating in this  
540 system on that date;

541 (b) the date the participating employer begins participating in this system if the public  
542 safety service employee was employed by the participating employer on that date; or

543 (c) the date the public safety service employee is employed by the participating  
544 employer and is eligible to perform public safety service, except that a public safety service  
545 employee initially entering employment with a participating employer on or after July 1, 2011,  
546 may not participate in this system.

547 (2) (a) (i) A participating employer that has public safety service and firefighter service  
548 employees that require cross-training and duty shall enroll those dual purpose employees in the  
549 system in which the greatest amount of time is actually worked.

550 (ii) The employees shall either be full-time public safety service or full-time firefighter  
551 service employees of the participating employer.

552 (b) (i) Prior to transferring a dual purpose employee from one system to another, the  
553 participating employer shall receive written permission from the office.

554 (ii) The office may request documentation to verify the appropriateness of the transfer.

555 (3) The board may combine or segregate the actuarial experience of participating  
556 employers in this system for the purpose of setting contribution rates.

557 (4) (a) (i) Each participating employer participating in this system shall annually  
558 submit to the office a schedule indicating the positions to be covered under this system in  
559 accordance with this chapter.

560 (ii) The office may require documentation to justify the inclusion of any position under  
561 this system.

562 (b) If there is a dispute between the office and a participating employer or employee  
563 over any position to be covered, the disputed position shall be submitted to the Peace Officer  
564 Standards and Training Council established under Section 53-6-106 for determination.

565 (c) (i) The Peace Officer Standards and Training Council's authority to decide  
566 eligibility for public safety service credit is limited to claims for coverage under this system for  
567 time periods after July 1, 1989.

568 (ii) A decision of the Peace Officer Standards and Training Council may not be applied  
569 to service credit earned in another system prior to July 1, 1989.

570 (iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer  
571 Standards and Training Council granting a position coverage under this system may only be  
572 applied prospectively from the date of that decision.

573 (iv) A decision of the Peace Officer Standards and Training Council granting a position  
574 coverage under this system may be applied retroactively only if:

575 (A) the participating employer covered other similarly situated positions under this  
576 system during the time period in question; and

577 (B) the position otherwise meets all eligibility requirements for receiving service credit  
578 in this system during the period for which service credit is to be granted.

579 (5) The Peace Officer Standards and Training Council may use a subcommittee to  
580 provide a recommendation to the council in determining disputes between the office and a  
581 participating employer or employee over a position to be covered under this system.

582 (6) The Peace Officer Standards and Training Council shall comply with Title 63G,  
583 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

584 (7) A public safety employee who is transferred or promoted to an administration  
585 position not covered by this system shall continue to earn public safety service credit in this

586 system as long as the employee remains employed in the same department.

587 (8) Any employee who is reassigned to the Department of Technology Services or to  
588 the Department of Human Resource Management, and who was a member of this system, shall  
589 be entitled to remain a member of this system.

590 (9) (a) To determine that a position is covered under this system, the office and, if a  
591 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the  
592 position requires the employee to:

- 593 (i) place the employee's life or personal safety at risk; and
- 594 (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

595 (b) If a position satisfies the requirements of Subsection (9)(a), the office and the Peace  
596 Officer Standards and Training Council shall consider whether or not the position requires the  
597 employee to:

- 598 (i) perform duties that consist primarily of actively preventing or detecting crime and  
599 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
- 600 (ii) perform duties that consist primarily of providing community protection; and
- 601 (iii) respond to situations involving threats to public safety and make emergency  
602 decisions affecting the lives and health of others.

603 (10) If a subcommittee is used to recommend the determination of disputes to the  
604 Peace Officer Standards and Training Council, the subcommittee shall comply with the  
605 requirements of Subsection (9) in making its recommendation.

606 (11) A final order of the Peace Officer Standards and Training Council regarding a  
607 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative  
608 Procedures Act.

609 (12) Except as provided under Subsection (13), if a participating employer's public  
610 safety service employees are not covered by this system or under Chapter 15, Public Safety  
611 Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees  
612 who may otherwise qualify for membership in this system shall, at the discretion of the  
613 participating employer, remain in their current retirement system.

614 (13) (a) A public safety service employee employed by an airport police department,  
615 which elects to cover its public safety service employees under the Public Safety  
616 Noncontributory Retirement System under Subsection (12), may elect to remain in the public

617 safety service employee's current retirement system.

618 (b) The public safety service employee's election to remain in the current retirement  
619 system under Subsection (13)(a):

620 (i) shall be made at the time the employer elects to move its public safety service  
621 employees to a public safety retirement system;

622 (ii) documented by written notice to the participating employer; and

623 (iii) is irrevocable.

624 (14) Notwithstanding any other provision of this section, a person initially entering  
625 employment with a participating employer on or after July 1, 2011, may not participate in this  
626 system.

627 Section 10. Section **49-14-202** is amended to read:

628 **49-14-202. Participation of employers -- Requirements -- Supplemental programs**  
629 **-- Full participation in system.**

630 (1) An employer that employs public safety service employees and is required by  
631 Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees'  
632 Contributory Retirement System or the Public Employees' Noncontributory Retirement System  
633 shall cover all its public safety service employees under one of the following systems or plans:

634 (a) Chapter 12, Public Employees' Contributory Retirement Act;

635 (b) Chapter 13, Public Employees' Noncontributory Retirement Act;

636 (c) Chapter 14, Public Safety Contributory Retirement Act; ~~[or]~~

637 (d) Chapter 15, Public Safety Noncontributory Retirement Act~~[-];~~ or

638 (e) Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

639 (2) An employer that covers its public safety service employees under Subsection  
640 (1)(c) is a participating employer in this system.

641 (3) If a participating employer under Subsection (1) covers any of its public safety  
642 service employees under the Public Safety Contributory Retirement System or the Public  
643 Safety Noncontributory Retirement System, that participating employer shall cover all of its  
644 public safety service employees under one of those systems, except for a public safety service  
645 employee initially entering employment with a participating employer on or after July 1, 2011.

646 (4) A participating employer may not withdraw from this system.

647 (5) In addition to their participation in the system, participating employers may provide

648 or participate in any additional public or private retirement, supplemental or defined  
649 contribution plan, either directly or indirectly, for their employees.

650 (6) An employer may not elect to participate in this system after July 1, 1989.

651 Section 11. Section **49-15-201** is amended to read:

652 **49-15-201. System membership -- Eligibility.**

653 (1) (a) A public safety service employee employed by the state after July 1, 1989, but  
654 before July 1, 2011, is eligible for service credit in this system.

655 (b) A public safety service employee employed by the state prior to July 1, 1989, may  
656 either elect to receive service credit in this system or continue to receive service credit under  
657 the system established under Chapter 14, Public Safety Contributory Retirement Act, by  
658 following the procedures established by the board under this chapter.

659 (2) (a) Public safety service employees of a participating employer other than the state  
660 that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement  
661 System shall be eligible only for service credit in that system.

662 (b) (i) A participating employer other than the state that elected on or before July 1,  
663 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety  
664 service employee to elect to participate in either this system or the Public Safety Contributory  
665 Retirement System.

666 (ii) Except as expressly allowed by this title, the election of the public safety service  
667 employee is final and may not be changed.

668 (c) A public safety service employee hired by a participating employer other than the  
669 state after July 1, 1989, but before July 1, 2011, shall become a member in this system.

670 (d) A public safety service employee of a participating employer other than the state  
671 who began participation in this system after July 1, 1989, but before July 1, 2011, is only  
672 eligible for service credit in this system.

673 (e) A person initially entering employment with a participating employer on or after  
674 July 1, 2011, may not participate in this system.

675 (3) (a) (i) A participating employer that has public safety service and firefighter service  
676 employees that require cross-training and duty shall enroll those dual purpose employees in the  
677 system in which the greatest amount of time is actually worked.

678 (ii) The employees shall either be full-time public safety service or full-time firefighter

679 service employees of the participating employer.

680 (b) (i) Prior to transferring a dual purpose employee from one system to another, the  
681 participating employer shall receive written permission from the office.

682 (ii) The office may request documentation to verify the appropriateness of the transfer.

683 (4) The board may combine or segregate the actuarial experience of participating  
684 employers in this system for the purpose of setting contribution rates.

685 (5) (a) (i) Each participating employer participating in this system shall annually  
686 submit to the office a schedule indicating the positions to be covered under this system in  
687 accordance with this chapter.

688 (ii) The office may require documentation to justify the inclusion of any position under  
689 this system.

690 (b) If there is a dispute between the office and a participating employer or employee  
691 over any position to be covered, the disputed position shall be submitted to the Peace Officer  
692 Standards and Training Council established under Section 53-6-106 for determination.

693 (c) (i) The Peace Officer Standards and Training Council's authority to decide  
694 eligibility for public safety service credit is limited to claims for coverage under this system for  
695 time periods after July 1, 1989.

696 (ii) A decision of the Peace Officer Standards and Training Council may not be applied  
697 to service credit earned in another system prior to July 1, 1989.

698 (iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer  
699 Standards and Training Council granting a position coverage under this system may only be  
700 applied prospectively from the date of that decision.

701 (iv) A decision of the Peace Officer Standards and Training Council granting a position  
702 coverage under this system may be applied retroactively only if:

703 (A) the participating employer covered other similarly situated positions under this  
704 system during the time period in question; and

705 (B) the position otherwise meets all eligibility requirements for receiving service credit  
706 in this system during the period for which service credit is to be granted.

707 (6) The Peace Officer Standards and Training Council may use a subcommittee to  
708 provide a recommendation to the council in determining disputes between the office and a  
709 participating employer or employee over a position to be covered under this system.

710 (7) The Peace Officer Standards and Training Council shall comply with Title 63G,  
711 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

712 (8) A public safety service employee who is transferred or promoted to an  
713 administration position not covered by this system shall continue to earn public safety service  
714 credit in this system as long as the employee remains employed in the same department.

715 (9) Any employee who is reassigned to the Department of Technology Services or to  
716 the Department of Human Resource Management, and who was a member in this system, shall  
717 be entitled to remain a member in this system.

718 (10) (a) To determine that a position is covered under this system, the office and, if a  
719 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the  
720 position requires the employee to:

- 721 (i) place the employee's life or personal safety at risk; and
- 722 (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

723 (b) If a position satisfies the requirements of Subsection (10)(a), the office and Peace  
724 Officer Standards and Training Council shall consider whether the position requires the  
725 employee to:

- 726 (i) perform duties that consist primarily of actively preventing or detecting crime and  
727 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
- 728 (ii) perform duties that consist primarily of providing community protection; and
- 729 (iii) respond to situations involving threats to public safety and make emergency  
730 decisions affecting the lives and health of others.

731 (11) If a subcommittee is used to recommend the determination of disputes to the  
732 Peace Officer Standards and Training Council, the subcommittee shall comply with the  
733 requirements of Subsection (10) in making its recommendation.

734 (12) A final order of the Peace Officer Standards and Training Council regarding a  
735 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative  
736 Procedures Act.

737 (13) Except as provided under Subsection (14), if a participating employer's public  
738 safety service employees are not covered by this system under Chapter 14, Public Safety  
739 Contributory Retirement Act, as of January 1, 1998, those public safety service employees who  
740 may otherwise qualify for membership in this system shall, at the discretion of the participating

741 employer, remain in their current retirement system.

742 (14) (a) A public safety service employee employed by an airport police department,  
743 which elects to cover its public safety service employees under the Public Safety  
744 Noncontributory Retirement System under Subsection (13), may elect to remain in the public  
745 safety service employee's current retirement system.

746 (b) The public safety service employee's election to remain in the current retirement  
747 system under Subsection (14)(a):

748 (i) shall be made at the time the employer elects to move its public safety service  
749 employees to a public safety retirement system;

750 (ii) documented by written notice to the participating employer; and

751 (iii) is irrevocable.

752 (15) Notwithstanding any other provision of this section, a person initially entering  
753 employment with a participating employer on or after July 1, 2011, may not participate in this  
754 system.

755 Section 12. Section **49-15-202** is amended to read:

756 **49-15-202. Participation of employers -- Requirements -- Admission -- Full**  
757 **participation in system -- Supplemental programs authorized.**

758 (1) An employer that employs public safety service employees and is required by  
759 Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees'  
760 Contributory Retirement System or the Public Employees' Noncontributory Retirement System  
761 shall cover all its public safety service employees under one of the following systems or plans:

762 (a) Chapter 12, Public Employees' Contributory Retirement Act;

763 (b) Chapter 13, Public Employees' Noncontributory Retirement Act;

764 (c) Chapter 14, Public Safety Contributory Retirement Act; ~~[or]~~

765 (d) Chapter 15, Public Safety Noncontributory Retirement Act~~[-];~~ or

766 (e) Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

767 (2) An employer that covers its public safety employees under Subsection (1)(d) is a  
768 participating employer in this system.

769 (3) If a participating employer under Subsection (1) covers any of its public safety  
770 service employees under the Public Safety Contributory Retirement System or the Public  
771 Safety Noncontributory Retirement System, that participating employer shall cover all of its

772 public safety service employees under one of those systems, except for a public safety service  
773 employee initially entering employment with a participating employer beginning on or after  
774 July 1, 2011.

775 (4) (a) [~~Am~~] Until June 30, 2011, an employer that is not participating in this system  
776 may by resolution of its governing body apply for coverage of its public safety service  
777 employees by this system.

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

780 (5) If a participating employer purchases service credit on behalf of employees for  
781 service rendered prior to the participating employer's admission to this system, the service  
782 credit must be purchased in a nondiscriminatory manner on behalf of all current and former  
783 employees who were eligible for service credit at the time service was rendered.

784 (6) A participating employer may not withdraw from this system.

785 (7) In addition to their participation in the system, participating employers may provide  
786 or participate in any additional public or private retirement, supplemental or defined  
787 contribution plan, either directly or indirectly, for their employees.

788 Section 13. Section **49-16-201** is amended to read:

789 **49-16-201. System membership -- Eligibility.**

790 (1) A firefighter service employee who performs firefighter service for an employer  
791 participating in this system is eligible for service credit in this system upon the earliest of:

792 (a) July 1, 1971, if the firefighter service employee was employed by the participating  
793 employer on July 1, 1971, and the participating employer was participating in this system on  
794 that date;

795 (b) the date the participating employer begins participating in this system if the  
796 firefighter service employee was employed by the participating employer on that date; or

797 (c) the date the firefighter service employee is hired to perform firefighter services for a  
798 participating employer, if the firefighter initially enters employment before July 1, 2011.

799 (2) (a) (i) A participating employer that has public safety service and firefighter service  
800 employees that require cross-training and duty shall enroll the dual purpose employees in the  
801 system in which the greatest amount of time is actually worked.

802 (ii) The employees shall either be full-time public safety service or full-time firefighter

803 service employees of the participating employer.

804 (b) (i) Prior to transferring a dual purpose employee from one system to another, the  
805 participating employer shall receive written permission from the office.

806 (ii) The office may request documentation to verify the appropriateness of the transfer.

807 (3) (a) A person hired by a regularly constituted fire department on or after July 1,  
808 1971, who does not perform firefighter service is not eligible for service credit in this system.

809 (b) The nonfirefighter service employee shall become a member of the system for  
810 which the nonfirefighter service employee qualifies for service credit.

811 (c) The service credit exclusion under this Subsection (3) may not be interpreted to  
812 prohibit the assignment of a disabled or partially disabled firefighter to a nonfirefighter service  
813 position.

814 (d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for  
815 service credit in this system.

816 (4) An allowance or other benefit may not be granted under this system that is based  
817 upon the same service for benefits received under some other system.

818 (5) Service as a volunteer firefighter is not eligible for service credit in this system.

819 (6) An employer that maintains a regularly constituted fire department is eligible to  
820 participate in this system.

821 (7) Beginning July 1, 2011, a person initially entering employment with a participating  
822 employer may not participate in this system.

823 Section 14. Section **49-16-202** is amended to read:

824 **49-16-202. Participation of employers -- Full participation in system --**

825 **Supplemental programs authorized.**

826 (1) An employer that employs firefighter service employees and is required by Section  
827 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory  
828 Retirement System or the Public Employees' Noncontributory Retirement System shall cover  
829 all of its firefighter service employees under one of the following systems or plans:

830 (a) Chapter 12, Public Employees' Contributory Retirement Act;

831 (b) Chapter 13, Public Employees' Noncontributory Retirement Act; [~~or~~]

832 (c) Chapter 16, Firefighters' Retirement Act[~~;~~]; or

833 (d) Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

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

836 (3) If a participating employer under Subsection (1) covers any of its firefighter service  
837 employees under the Firefighters' Retirement System, that participating employer shall cover  
838 all of its firefighter service employees under that system, except for a firefighter service  
839 employee initially entering employment with a participating employer on or after July 1, 2011.

840 (4) (a) ~~An~~ Until June 30, 2011, an employer that is not participating in this system  
841 may, by resolution of its governing body submitted to the board, apply for coverage of its  
842 firefighter service employees by this system.

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

845 (5) A participating employer may not withdraw from this system.

846 (6) In addition to their participation in the system, participating employers may provide  
847 or participate in any additional public or private retirement, supplemental or defined  
848 contribution plan, either directly or indirectly, for their firefighter service employees.

849 Section 15. Section **49-17-201** is amended to read:

850 **49-17-201. System membership -- Eligibility.**

851 (1) Except as provided in Subsection (2) and Section 49-18-201, judges are members  
852 of and are eligible for service credit in this system.

853 (2) A judge initially entering employment with a participating employer on or after July  
854 1, 2011, may not participate in this system.

855 Section 16. Section **49-18-201** is amended to read:

856 **49-18-201. System membership -- Eligibility.**

857 (1) Judges appointed after July 1, 1997, but before July 1, 2011, are members of and  
858 are eligible for service credit in this system.

859 (2) (a) Any judge appointed prior to July 1, 1997, may either become a member of the  
860 Judges' Noncontributory Retirement System or remain a member of the Judges' Contributory  
861 Retirement System established under Chapter 17, Judges' Contributory Retirement Act, by  
862 following the procedures established by the board ~~[pursuant to]~~ under this chapter.

863 (b) Judges may only elect to participate in this system under this Subsection (2) prior to  
864 January 1, 1998.

865           (3) A judge initially entering employment on or after July 1, 2011, may not participate  
866 in this system.

867           Section 17. Section **49-19-201** is amended to read:

868           **49-19-201. Plan participation -- Eligibility.**

869           (1) Governors and legislators who enter office before July 1, 2011, are eligible for  
870 service credit in this plan during their term of service in their elected position.

871           (2) A governor or legislator initially entering office on or after July 1, 2011:

872           (a) may not participate in this system;

873           (b) is only eligible to participate in the Tier II Defined Contribution Plan established  
874 under Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan; and

875           (c) is not eligible to participate in the Tier II hybrid retirement system established under  
876 Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System.

877           Section 18. Section **49-21-403** is amended to read:

878           **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

879           (1) An eligible employee covered by this chapter and eligible for service credit under a  
880 system, or a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4,  
881 Tier II Defined Contribution Plan, including an eligible employee who relinquishes rights to  
882 retirement benefits under Section 49-11-619, who applies and is qualified for a monthly  
883 disability benefit shall receive a monthly disability benefit until the earlier of:

884           (a) the date the eligible employee is no longer disabled;

885           (b) the date the eligible employee has accumulated:

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

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

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

894           (iv) 35 years of service credit if the eligible employee is covered by the defined benefit  
895 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System; or

896 (c) the date the eligible employee has received a monthly disability benefit for the  
897 following applicable time periods:

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

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

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

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

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

908 (vi) if the eligible employee is 69 years of age or older on the date of disability, the  
909 monthly disability benefit is payable for one year.

910 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible  
911 for service credit under a system may retire under the requirements of the system which  
912 covered the eligible employee on the date of disability.

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

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

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

926 (5) A monthly disability benefit payable to an eligible employee who is not eligible for

927 service credit under a system shall terminate at the earliest of:

- 928 (a) the date the eligible employee would be eligible for an unreduced allowance;
- 929 (b) the date the eligible employee has received a monthly disability benefit for the
- 930 applicable time period as set forth in Subsection (1)(b); or
- 931 (c) the date the eligible employee receives a reduced allowance.

932 Section 19. Section **49-22-101** is enacted to read:

933 **CHAPTER 22. NEW PUBLIC EMPLOYEES' TIER II CONTRIBUTORY**  
 934 **RETIREMENT ACT**

935 **Part 1. General Provisions**

936 **49-22-101. Title.**

937 This chapter is known as the "New Public Employees' Tier II Contributory Retirement  
938 Act."

939 Section 20. Section **49-22-102** is enacted to read:

940 **49-22-102. Definitions.**

941 As used in this chapter:

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

945 (i) bonuses;

946 (ii) cost-of-living adjustments;

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

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

952 (v) member contributions.

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

955 (c) "Compensation" does not include:

956 (i) the monetary value of remuneration paid in kind, including a residence or use of  
957 equipment;

958 (ii) the cost of any employment benefits paid for by the participating employer;  
959 (iii) compensation paid to a temporary employee, an exempt employee, or an employee  
960 otherwise ineligible for service credit;  
961 (iv) any payments upon termination, including accumulated vacation, sick leave  
962 payments, severance payments, compensatory time payments, or any other special payments; or  
963 (v) any allowances or payments to a member for costs or expenses paid by the  
964 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
965 housing costs, insurance costs, equipment costs, and dependent care costs.  
966 (d) The executive director may determine if a payment not listed under this Subsection  
967 (1) falls within the definition of compensation.  
968 (2) "Corresponding Tier I system" means the system or plan that would have covered  
969 the member if the member had initially entered employment before July 1, 2011.  
970 (3) "Final average salary" means the amount computed by averaging the highest five  
971 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and  
972 (d).  
973 (a) Except as provided in Subsection (3)(b), the percentage increase in annual  
974 compensation in any one of the years used may not exceed the previous year's compensation by  
975 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
976 of the dollar during the previous year, as measured by a United States Bureau of Labor  
977 Statistics Consumer Price Index average as determined by the board.  
978 (b) In cases where the participating employer provides acceptable documentation to the  
979 office, the limitation in Subsection (3)(a) may be exceeded if:  
980 (i) the member has transferred from another agency; or  
981 (ii) the member has been promoted to a new position.  
982 (c) If the member retires more than six months from the date of termination of  
983 employment, the member is considered to have been in service at the member's last rate of pay  
984 from the date of the termination of employment to the effective date of retirement for purposes  
985 of computing the member's final average salary only.  
986 (d) If the member has less than five years of service credit in this system, final average  
987 salary means the average annual compensation paid to the member during the full period of  
988 service credit.

989           (4) "Participating employer" means an employer which meets the participation  
990 requirements of:

991           (a) Sections 49-12-201 and 49-12-202;

992           (b) Sections 49-13-201 and 49-13-202;

993           (c) Sections 49-14-201 and 49-14-202;

994           (d) Sections 49-15-201 and 49-15-202;

995           (e) Sections 49-16-201 and 49-16-202;

996           (f) Section 49-17-201;

997           (g) Section 49-18-201; or

998           (h) Section 49-19-201.

999           (5) (a) "Regular full-time employee" means an employee whose term of employment  
1000 for a participating employer contemplates continued employment during a fiscal or calendar  
1001 year and whose employment normally requires an average of 20 hours or more per week,  
1002 except as modified by the board, and who receives benefits normally provided by the  
1003 participating employer.

1004           (b) "Regular full-time employee" includes:

1005           (i) a teacher whose term of employment for a participating employer contemplates  
1006 continued employment during a school year and who teaches half-time or more;

1007           (ii) a classified school employee whose employment normally requires an average of  
1008 20 hours per week or more for a participating employer, regardless of benefits provided;

1009           (iii) an officer, elective or appointive, who earns during the first full month of the term  
1010 of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-22-309;

1011           (iv) a faculty member or employee of an institution of higher education who is  
1012 considered full-time by that institution of higher education; and

1013           (v) an individual who otherwise meets the definition of this Subsection (5) who  
1014 performs services for a participating employer through a professional employer organization or  
1015 similar arrangement.

1016           (6) "System" means the New Public Employees' Tier II Contributory Retirement  
1017 System created under this chapter.

1018           (7) "Years of service credit" means:

1019           (a) a period, consisting of 12 full months as determined by the board;

1020 (b) a period determined by the board, whether consecutive or not, during which a  
 1021 regular full-time employee performed services for a participating employer, including any time  
 1022 the regular full-time employee was absent on a paid leave of absence granted by a participating  
 1023 employer or was absent in the service of the United States government on military duty as  
 1024 provided by this chapter; or

1025 (c) the regular school year consisting of not less than eight months of full-time service  
 1026 for a regular full-time employee of an educational institution.

1027 Section 21. Section **49-22-103** is enacted to read:

1028 **49-22-103. Creation of system.**

1029 (1) There is created for members employed by a participating employer the "New  
 1030 Public Employees' Tier II Contributory Retirement System."

1031 (2) The New Public Employees' Tier II Contributory Retirement System includes:

1032 (a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement  
 1033 System; and

1034 (b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution  
 1035 Plan.

1036 Section 22. Section **49-22-104** is enacted to read:

1037 **49-22-104. Creation of trust fund.**

1038 (1) There is created the "New Public Employees' Tier II Contributory Retirement Trust  
 1039 Fund" for the purpose of paying the benefits and costs of administering the defined benefit  
 1040 portion of this system.

1041 (2) The fund shall consist of all money paid into it, including interest, in accordance  
 1042 with this chapter, whether in the form of cash, securities, or other assets, and of all money  
 1043 received from any other source.

1044 (3) Custody, management, and investment of the fund shall be governed by Chapter 11,  
 1045 Utah State Retirement Systems Administration.

1046 Section 23. Section **49-22-201** is enacted to read:

1047 **Part 2. Membership Eligibility**

1048 **49-22-201. System membership -- Eligibility.**

1049 (1) Beginning July 1, 2011, a participating employer shall participate in this system.

1050 (2) (a) A person entering regular full-time employment with a participating employer

1051 on or after July 1, 2011, is eligible:

1052 (i) as a member for service credit and defined contributions under the Tier II hybrid  
1053 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1054 (ii) as a participant for defined contributions under the Tier II defined contributions  
1055 plan established by Part 4, Tier II Defined Contribution Plan.

1056 (b) A person entering full-time employment with a participating employer on or after  
1057 July 1, 2011, shall:

1058 (i) make an election to participate in the system created under this chapter within 30  
1059 days from the date of employment:

1060 (A) as a member for service credit and defined contributions under the Tier II Hybrid  
1061 Retirement System established by Part 3, Tier II Hybrid Retirement System: or

1062 (B) as a participant for defined contributions under the Tier II defined contributions  
1063 plan established by Part 4, Tier II Defined Contribution Plan; and

1064 (ii) submit to the office notification of the member's election under Subsection (2)(b) in  
1065 a manner approved by the office.

1066 (c) An election made by a person entering full-time employment with a participating  
1067 employer under this Subsection (2) is irrevocable.

1068 (d) If no election is made under Subsection (2)(b), the person shall become a member  
1069 eligible for service credit and defined contributions under the Tier II Hybrid Retirement System  
1070 established by Part 3, Tier II Hybrid Retirement System.

1071 (3) Notwithstanding the provisions of this section, a governor or legislator initially  
1072 entering office on or after July 1, 2011:

1073 (a) is only eligible to participate in the Tier II defined contribution plan established  
1074 under Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan; and

1075 (b) is not eligible to participate in the Tier II hybrid retirement system established  
1076 under Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System.

1077 Section 24. Section **49-22-202** is enacted to read:

1078 **49-22-202. Participation of employers -- Limitations -- Exclusions -- Admission**  
1079 **requirements.**

1080 (1) (a) Unless excluded under Subsection (2), an employer is a participating employer  
1081 and may not withdraw from participation in this system.

1082 (b) In addition to their participation in this system, a participating employer may not  
1083 provide or participate in any additional public or private retirement, supplemental or defined  
1084 contribution plan, either directly or indirectly, for their employees unless the actuarial funded  
1085 ratio of all the systems under this title reach 100%.

1086 (2) An employer that is a charter school sponsored by the State Board of Education or a  
1087 school district may be excluded from participation in this system if the charter school makes an  
1088 election of nonparticipation in accordance with Section 53A-1a-512 unless the charter school  
1089 makes a one-time, irrevocable retraction of the election of nonparticipation in accordance with  
1090 Subsection 53A-1a-512(9).

1091 (3) (a) An employer may, by resolution of its governing body, apply for admission to  
1092 this system.

1093 (b) Upon approval of the resolution by the board, the employer is a participating  
1094 employer in this system and is subject to this title.

1095 (4) If a participating employer purchases service credit on behalf of regular full-time  
1096 employees for service rendered prior to the participating employer's admission to this system,  
1097 the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and  
1098 former regular full-time employees who were eligible for service credit at the time service was  
1099 rendered.

1100 Section 25. Section **49-22-203** is enacted to read:

1101 **49-22-203. Exclusions from membership in system.**

1102 (1) The following employees are not eligible for service credit in this system:

1103 (a) An employee whose employment status is temporary in nature due to the nature or  
1104 the type of work to be performed, provided that:

1105 (i) if the term of employment exceeds six months and the employee otherwise qualifies  
1106 for service credit in this system, the participating employer shall report and certify to the office  
1107 that the employee is a regular full-time employee effective the beginning of the seventh month  
1108 of employment; and

1109 (ii) if an employee, previously terminated prior to becoming eligible for service credit  
1110 in this system, is reemployed within three months of termination by the same participating  
1111 employer, the participating employer shall report and certify to the office that the member is a  
1112 regular full-time employee when the total of the periods of employment equals six months and

1113 the employee otherwise qualifies for service credit in this system.

1114 (b) (i) A current or future employee of a two-year or four-year college or university  
1115 who holds, or is entitled to hold, under Section 49-22-204, a retirement annuity contract with  
1116 the Teachers' Insurance and Annuity Association of America or with any other public or private  
1117 system, organization, or company during any period in which required contributions based on  
1118 compensation have been paid on behalf of the employee by the employer.

1119 (ii) The employee, upon cessation of the participating employer contributions, shall  
1120 immediately become eligible for service credit in this system.

1121 (c) An employee serving as an exchange employee from outside the state.

1122 (d) An executive department head of the state or a legislative director, senior executive  
1123 employed by the governor's office, a member of the State Tax Commission, a member of the  
1124 Public Service Commission, and a member of a full-time or part-time board or commission  
1125 who files a formal request for exemption.

1126 (e) An employee of the Department of Workforce Services who is covered under  
1127 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

1128 Section 26. Section **49-22-204** is enacted to read:

1129 **49-22-204. Higher education employees' eligibility requirements -- Election**  
1130 **between different retirement plans -- Classification requirements -- Transfer between**  
1131 **systems.**

1132 (1) (a) Regular full-time employees of institutions of higher education who are eligible  
1133 to participate in either this system or in a retirement annuity contract with the Teachers'  
1134 Insurance and Annuity Association of America or with any other public or private system,  
1135 organization, or company, designated by the Board of Regents, shall, not later than January 1,  
1136 1979, elect to participate exclusively in this system or in an annuity contract allowed under this  
1137 Subsection (1)(a).

1138 (b) The election is final, and no right exists to make any further election.

1139 (2) (a) A regular full-time employee hired by an institution of higher education after  
1140 January 1, 1979, may participate only in the retirement plan which attaches to the person's  
1141 employment classification.

1142 (b) Each institution of higher education shall prepare or amend existing employment  
1143 classifications, under the direction of the Board of Regents, so that each classification is

1144 assigned with either:

1145 (i) this system;

1146 (ii) the Teachers' Insurance and Annuity Association of America; or

1147 (iii) another public or private system, organization, or company designated by the

1148 Board of Regents.

1149 (3) A regular full-time employee hired by an institution of higher education on or after

1150 July 1, 2011, whose employment classification requires participation in this system may elect

1151 to continue participation in this system upon change to an employment classification which

1152 requires participation in:

1153 (a) an annuity plan with the Teachers' Insurance and Annuity Association of America;

1154 or

1155 (b) another public or private system, organization, or company designated by the Board

1156 of Regents.

1157 (4) A regular full-time employee hired by an institution of higher education on or after

1158 July 1, 2011, whose employment classification requires participation in this system shall

1159 participate in this system.

1160 Section 27. Section **49-22-301** is enacted to read:

1161 **Part 3. Tier II Hybrid Retirement System**

1162 **49-22-301. Contributions.**

1163 (1) Participating employers and members shall jointly pay the certified contribution

1164 rates to the office to maintain the defined benefit portion of this system on a financially and

1165 actuarially sound basis.

1166 (2) (a) A participating employer shall pay up to 8% of compensation toward the

1167 certified contribution rate to the office for the defined benefit portion of this system.

1168 (b) A member shall pay the amount, if any, of the certified contribution rate for the

1169 defined benefit portion of this system that exceeds 8% to the office.

1170 (c) In addition to the percent specified under Subsection (2)(a), the participating

1171 employer shall pay the corresponding Tier I system amortization rate of the employee's

1172 compensation to the office.

1173 (3) A participating employer may not elect to pay all or part of the required member

1174 contributions under Subsection (2)(b), in addition to the required participating employer

1175 contributions.

1176 (4) (a) All member contributions are credited by the office to the account of the  
1177 individual member.

1178 (b) This amount, together with refund interest, is held in trust for the payment of  
1179 benefits to the member or the member's beneficiaries.

1180 (c) All member contributions are vested and nonforfeitable.

1181 (5) (a) Each member is considered to consent to payroll deductions of member  
1182 contributions.

1183 (b) The payment of compensation less these payroll deductions is considered full  
1184 payment for services rendered by the member.

1185 Section 28. Section **49-22-302** is enacted to read:

1186 **49-22-302. Purchase of service credit.**

1187 Any member who works 20 or more hours per week for a participating employer  
1188 participating in this system, but does not meet other eligibility requirements for service credit,  
1189 may purchase such service credit in accordance with Section 49-11-403.

1190 Section 29. Section **49-22-303** is enacted to read:

1191 **49-22-303. Defined contribution benefit established -- Contribution by employer**  
1192 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**  
1193 **plans.**

1194 (1) (a) Participating employers shall make a nonelective contribution on behalf of each  
1195 of its regular full-time employees who are members of this system in an amount equal to 8%  
1196 minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a) of the  
1197 member's compensation to a defined contribution plan qualified under Section 401(k) of the  
1198 Internal Revenue Code which:

1199 (i) is sponsored by the board; and

1200 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1201 (b) The member may make additional payments to the qualified 401(k) plan which  
1202 receives the employer contribution described in this Subsection (1).

1203 (2) (a) The total amount contributed by the participating employer under Subsection  
1204 (1)(a) vests to the member's benefit four years from the date of employment.

1205 (b) The total amount contributed by the member under Subsection (1)(b) vests to the

1206 member's benefit immediately and is nonforfeitable.

1207 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be  
1208 invested in a default option selected by the board until the member is vested in accordance with  
1209 Subsection (2)(a).

1210 (b) A member may direct the investment of contributions made by a participating  
1211 employer under Subsection (1)(a) only after the contributions have vested in accordance with  
1212 Subsection (2)(a).

1213 (c) A member may direct the investment of contributions made by the member under  
1214 Subsection (1)(b).

1215 (4) No loans shall be available from contributions made by a participating employer  
1216 under Subsection (1)(a).

1217 (5) No hardship distributions shall be available from contributions made by a  
1218 participating employer under Subsection (1)(a).

1219 (6) (a) Except as provided in Subsection (6)(b), if a member terminates employment  
1220 with a participating employer prior to the vesting period described in Subsection (2)(a), all  
1221 contributions made by a participating employer on behalf of the member under Subsection  
1222 (1)(a) are subject to forfeiture.

1223 (b) If a member who terminates employment with a participating employer prior to the  
1224 vesting period described in Subsection (2)(a) subsequently enters employment with the same or  
1225 another participating employer within five years of the termination date of the previous  
1226 employment:

1227 (i) all contributions made by the previous participating employer on behalf of the  
1228 member shall be reinstated upon the member's completion of the vesting period under  
1229 Subsection (2)(a); and

1230 (ii) the length of time that the member worked with the previous employer shall be  
1231 included in determining whether the member has completed the vesting period under  
1232 Subsection (2)(a).

1233 (c) The board shall establish a forfeiture account and shall specify the uses of the  
1234 forfeiture account, which may include an offset against employer contributions made under this  
1235 section.

1236 (7) The board may request from any other qualified 401(k) plan under Subsection (1)

1237 or (2) any relevant information pertaining to the maintenance of its tax qualification under the  
1238 Internal Revenue Code.

1239 (8) The board may take any action which in its judgment is necessary to maintain the  
1240 tax-qualified status of its 401(k) defined contribution plan under federal law.

1241 Section 30. Section **49-22-304** is enacted to read:

1242 **49-22-304. Defined benefit eligibility for an allowance -- Date of retirement --**  
1243 **Qualifications.**

1244 (1) A member is qualified to receive an allowance from this system when:

1245 (a) the member ceases actual work for a participating employer in this system before  
1246 the member's retirement date and provides evidence of the termination;

1247 (b) the member has submitted to the office a notarized retirement application form that  
1248 states the member's proposed retirement date; and

1249 (c) one of the following conditions is met as of the member's retirement date:

1250 (i) the member has accrued at least four years of service credit and has attained an age  
1251 of 65 years;

1252 (ii) the member has accrued at least 10 years of service credit and has attained an age  
1253 of 62 years;

1254 (iii) the member has accrued at least 20 years of service credit and has attained an age  
1255 of 60 years; or

1256 (iv) the member has accrued at least 35 years of service credit.

1257 (2) (a) The member's retirement date:

1258 (i) shall be the 1st or the 16th day of the month, as selected by the member;

1259 (ii) shall be on or after the date of termination; and

1260 (iii) may not be more than 90 days before or after the date the application is received by  
1261 the office.

1262 (b) A member may not be employed by a participating employer in the system  
1263 established by this chapter on the retirement date selected under Subsection (2)(a)(i).

1264 Section 31. Section **49-22-305** is enacted to read:

1265 **49-22-305. Defined benefit service retirement plans -- Calculation of retirement**  
1266 **allowance -- Social Security limitations.**

1267 (1) (a) The retirees of this system may choose from the six retirement options described

1268 in this section.

1269 (b) Options Two, Three, Four, Five, and Six are modifications of the Option One  
1270 calculation.

1271 (2) The Option One benefit is an annual allowance calculated as follows:

1272 (a) If the retiree is at least 65 years of age or has accrued at least 35 years of service  
1273 credit, the allowance is an amount equal to 1% of the retiree's final average salary multiplied by  
1274 the number of years of service credit accrued on and after July 1, 2011.

1275 (b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full  
1276 actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35  
1277 or more years of accrued credit in which event no reduction is made to the allowance.

1278 (c) (i) Years of service includes any fractions of years of service to which the retiree  
1279 may be entitled.

1280 (ii) At the time of retirement, if a retiree's combined years of actual, not purchased,  
1281 service credit is within 1/10 of one year of the total years of service credit required for  
1282 retirement, the retiree shall be considered to have the total years of service credit required for  
1283 retirement.

1284 (d) An Option One allowance is only payable to the member during the member's  
1285 lifetime.

1286 (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated  
1287 by reducing an Option One benefit based on actuarial computations to provide the following:

1288 (a) Option Two is a reduced allowance paid to and throughout the lifetime of the  
1289 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's  
1290 member contributions, the remaining balance of the retiree's member contributions shall be  
1291 paid in accordance with Sections 49-11-609 and 49-11-610.

1292 (b) Option Three is a reduced allowance paid to and throughout the lifetime of the  
1293 retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout  
1294 the lifetime of the retiree's lawful spouse at the time of retirement.

1295 (c) Option Four is a reduced allowance paid to and throughout the lifetime of the  
1296 retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid  
1297 to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

1298 (d) Option Five is a modification of Option Three so that if the lawful spouse at the

1299 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the  
1300 time of initial retirement under Option One shall be paid to the retiree for the remainder of the  
1301 retiree's life, beginning on the last day of the month following the month in which the lawful  
1302 spouse dies.

1303 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time  
1304 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time  
1305 of initial retirement under Option One shall be paid to the retiree for the remainder of the  
1306 retiree's life, beginning on the last day of the month following the month in which the lawful  
1307 spouse dies.

1308 (4) Periods of employment which are exempt from this system under Subsection  
1309 49-22-203(1)(b), may be purchased by the member for the purpose of retirement only if all  
1310 benefits from the Teachers' Insurance and Annuity Association of America or any other public  
1311 or private system or organization based on this period of employment are forfeited.

1312 (5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement  
1313 date, the retirement is canceled and the death shall be considered as that of a member before  
1314 retirement.

1315 (b) Any payments made to the retiree shall be deducted from the amounts due to the  
1316 beneficiary.

1317 (6) If a retiree retires under either Option Five or Six and subsequently divorces, the  
1318 retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there  
1319 is no court order filed in the matter.

1320 Section 32. Section **49-22-306** is enacted to read:

1321 **49-22-306. Allowance payable by lump-sum payment.**

1322 (1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the  
1323 allowance may be settled by the office by making a lump-sum payment of an amount  
1324 actuarially equivalent to the allowance.

1325 (2) A payment made under this section constitutes a full and complete settlement of the  
1326 retiree's claim against this system.

1327 Section 33. Section **49-22-307** is enacted to read:

1328 **49-22-307. Lump-sum death benefit for retiree and spouse.**

1329 (1) (a) Upon retirement, a retiree may elect to have the office deduct an actuarially

1330 determined amount from the retiree's allowance to provide a lump-sum benefit payable to a  
1331 beneficiary upon the death of the retiree.

1332 (b) Upon retirement, a retiree may also elect to have an actuarially determined amount  
1333 deducted from the retiree's allowance to provide a lump-sum death benefit payable to a  
1334 beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

1335 (c) The board may make rules for the administration of this lump-sum death benefit.

1336 (2) (a) For a retiree who pays for a lump-sum death benefit under this section through a  
1337 reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and  
1338 49-11-610.

1339 (b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death  
1340 benefit is payable after the death of the retiree, the allowance shall be restored to its original  
1341 amount.

1342 (3) (a) A retiree may elect to cancel the lump-sum death benefit under this section.

1343 (b) The cancellation under this Subsection (3) is irrevocable.

1344 (c) Upon cancellation, the allowance shall be restored to its original amount and  
1345 benefits under this section may not be paid.

1346 Section 34. Section **49-22-308** is enacted to read:

1347 **49-22-308. Death of married members -- Service retirement benefits to surviving**  
1348 **spouse.**

1349 (1) As used in this section, "member's full allowance" means an Option Three  
1350 allowance calculated under Section 49-22-305 without an actuarial reduction.

1351 (2) Upon the request of a deceased member's lawful spouse at the time of the member's  
1352 death, the deceased member is considered to have retired under Option Three on the first day of  
1353 the month following the month in which the member died if the following requirements are  
1354 met:

1355 (a) the member has:

1356 (i) 15 or more years of service credit;

1357 (ii) attained age 62 with 10 or more years of service credit; or

1358 (iii) attained age 65 with four or more years of service credit; and

1359 (b) the member dies leaving a spouse to whom the member has been married at least  
1360 six months immediately prior to the death date.

1361 (3) The spouse who requests a benefit under this section shall apply in writing to the  
1362 office. The allowance shall begin on the first day of the month:

1363 (a) following the month in which the member died, if the application is received by the  
1364 office within 90 days of the member's death; or

1365 (b) in which the application is received by the office.

1366 (4) The allowance payable to a surviving spouse under Subsection (2) is:

1367 (a) if the member has 25 or more years of service credit at the time of death, the  
1368 surviving spouse shall receive the member's full allowance;

1369 (b) if the member has between 20-24 years of service credit and is not age 60 or older  
1370 at the time of death, the surviving spouse shall receive 2/3 of the member's full allowance;

1371 (c) if the member has between 15-19 years of service credit and is not age 62 or older  
1372 at the time of death, the surviving spouse shall receive 1/3 of the member's full allowance; or

1373 (d) if the member is age 60 or older with 20 or more years of service credit, age 62 or  
1374 older with 10 or more years of service credit, or age 65 or older with four or more years of  
1375 service credit at the time of death, the surviving spouse shall receive an Option Three benefit  
1376 with actuarial reductions.

1377 (5) Except for a return of member contributions, benefits payable under this section are  
1378 retirement benefits and shall be paid in addition to any other payments made under Section  
1379 49-22-501 and shall constitute a full and final settlement of the claim of the spouse or any other  
1380 beneficiary filing a claim for benefits under Section 49-22-501.

1381 Section 35. Section **49-22-309** is enacted to read:

1382 **49-22-309. Defined benefit annual cost-of-living adjustment.**

1383 (1) The office shall make an annual cost-of-living adjustment to:

1384 (a) an original allowance paid under Section 49-22-305, if the allowance has been paid  
1385 for at least one year; and

1386 (b) an original payment made to an alternate payee under a domestic relations order, if  
1387 the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

1388 (2) (a) The original allowance shall be increased by the annual increase in the  
1389 Consumer Price Index up to a maximum of 2.5%.

1390 (b) Annual increases in the Consumer Price Index in excess of 2.5% shall be  
1391 accumulated and used in subsequent adjustments when the annual increase in the Consumer

1392 Price Index is less than 2.5%.

1393 (3) The Consumer Price Index used in calculating adjustments shall be a United States  
1394 Bureau of Labor Statistics Consumer Price Index average as determined by the board.

1395 (4) The cost-of-living adjustment made under this section may not decrease the  
1396 allowance.

1397 Section 36. Section **49-22-310** is enacted to read:

1398 **49-22-310. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination**  
1399 **policy.**

1400 (1) (a) A member may purchase or a member and a participating employer may jointly  
1401 purchase a maximum of five years of service credit which cannot otherwise be purchased under  
1402 this title.

1403 (b) At a minimum, the years of service credit purchased shall be sufficient to allow the  
1404 member to meet the retirement eligibility requirements of this system with no actuarial  
1405 reduction.

1406 (c) The member's retirement date shall be immediately after the purchase of years of  
1407 service credit.

1408 (d) The member shall pay at least 5% of the cost of the purchase.

1409 (e) To qualify for a purchase of service credit under this section, the member shall:

1410 (i) have at least five years of service credit; and

1411 (ii) otherwise meet federal eligibility requirements.

1412 (2) The purchase price for the years of service credit shall be calculated and paid for as  
1413 provided in Section 49-11-403.

1414 (3) Prior to making any purchase of years of service credit under this section, a  
1415 participating employer shall adopt a purchase policy that includes nondiscriminatory  
1416 participation standards for all regular full-time employees.

1417 (4) Only members retiring from this system may purchase service credit under this  
1418 section.

1419 Section 37. Section **49-22-401** is enacted to read:

1420 **Part 4. Tier II Defined Contribution Plan**

1421 **49-22-401. Contributions -- Rates.**

1422 (1) Up to the amount allowed by federal law, the participating employer shall

1423 contribute 8% of the participant's compensation to a defined contribution plan.

1424 (2) (a) The participating employer shall contribute the 8% nonelective contribution  
1425 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
1426 Internal Revenue Code which:

1427 (i) is sponsored by the board; and

1428 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1429 (b) The member may make additional payments to the qualified 401(k) plan which  
1430 receives the employer contribution described in this Subsection (2).

1431 (c) In addition to the percent specified under Subsection (2)(a), the participating  
1432 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1433 compensation to the office.

1434 (3) (a) The total amount contributed by the participating employer under Subsection  
1435 (2)(a) vests to the member's benefit four years from the date of employment.

1436 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
1437 member's benefit immediately and is nonforfeitable.

1438 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
1439 invested in a default option selected by the board until the member is vested in accordance with  
1440 Subsection (3)(a).

1441 (b) A member may direct the investment of contributions made by a participating  
1442 employer under Subsection (2)(a) only after the contributions have vested in accordance with  
1443 Subsection (3)(a).

1444 (c) A member may direct the investment of contributions made by the member under  
1445 Subsection (3)(b).

1446 (5) No loans shall be available from contributions made by a participating employer  
1447 under Subsection (2)(a).

1448 (6) No hardship distributions shall be available from contributions made by a  
1449 participating employer under Subsection (2)(a).

1450 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1451 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
1452 contributions made by a participating employer on behalf of the member under Subsection  
1453 (2)(a) are subject to forfeiture.

1454 (b) If a member who terminates employment with a participating employer prior to the  
1455 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
1456 another participating employer within five years of the termination date of the previous  
1457 employment:

1458 (i) all contributions made by the previous participating employer on behalf of the  
1459 member shall be reinstated upon the member's completion of the vesting period under  
1460 Subsection (3)(a); and

1461 (ii) the length of time that the member worked with the previous employer shall be  
1462 included in determining whether the member has completed the vesting period under  
1463 Subsection (3)(a).

1464 (c) The board shall establish a forfeiture account and shall specify the uses of the  
1465 forfeiture account, which may include an offset against employer contributions made under this  
1466 section.

1467 (8) The board may request from any other qualified 401(k) plan under Subsection (2)  
1468 any relevant information pertaining to the maintenance of its tax qualification under the  
1469 Internal Revenue Code.

1470 (9) The board may take any action which in its judgment is necessary to maintain the  
1471 tax-qualified status of its 401(k) defined contribution plan under federal law.

1472 Section 38. Section **49-22-402** is enacted to read:

1473 **49-22-402. Defined contribution distributions for disabled members.**

1474 For a person who is disabled and receives contributions under Subsection  
1475 49-11-404(4)(b), the disabled member may begin receiving distributions from the defined  
1476 contributions made by the participating employer on behalf of the disabled member when the  
1477 person would have been eligible to retire if the person was covered by the defined benefit  
1478 portion of the Tier II Hybrid Retirement System under Part 3, Tier II Hybrid Retirement  
1479 System.

1480 Section 39. Section **49-22-501** is enacted to read:

1481 **Part 5. Death Benefit**

1482 **49-22-501. Death benefit by means of group insurance policy -- Eligibility for**  
1483 **death benefit -- Benefit calculation -- Payment of claim.**

1484 (1) The office shall provide a death benefit through the purchase of a group insurance

1485 policy for members of this system.

1486 (2) The board shall make rules to administer the death benefit provided by this section  
1487 and may, in accordance with federal law, establish:

1488 (a) benefit levels;

1489 (b) classes of members; and

1490 (c) a living benefit option.

1491 (3) This death benefit is payable when:

1492 (a) the member dies prior to the member's retirement date or dies under circumstances  
1493 which Section 49-22-304 requires to be treated as the death of a member before retirement;

1494 (b) the office receives acceptable proof of death; and

1495 (c) benefits are not payable under Section 49-22-306.

1496 (4) The death benefit payable to the beneficiary under this section is a lump-sum  
1497 payment consisting of:

1498 (a) the return of any member contributions under this chapter; plus

1499 (b) a percentage of the final average salary of the member to be determined by the  
1500 board.

1501 (5) Any amount of a living benefit option paid to the member prior to death shall be  
1502 deducted from the benefit payable to the beneficiary.

1503 (6) The cost of the death benefit shall be paid by the participating employer in addition  
1504 to the contribution rate established under Section 49-22-301 or 49-22-401.

1505 (7) The portion of the death benefit provided under Subsection (4)(b), may not be paid  
1506 to the beneficiary of an inactive member unless the death of the member occurs either:

1507 (a) within a period of 120 days after the last day of work for which the person received  
1508 compensation; or

1509 (b) while the member is still physically or mentally incapacitated from performance of  
1510 duties, if the incapacity has been continuous since the last day of work for which compensation  
1511 was received.

1512 (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance  
1513 with Sections 49-11-609 and 49-11-610.

1514 (9) The death benefit paid to the beneficiary of an inactive member, except as  
1515 otherwise provided under Subsection (7), is a lump-sum return of the member's member

1516 contributions.

1517 (10) Payment of the death benefit by the office constitutes a full settlement of any  
1518 beneficiary's claim against the office and the office is not liable for any further or additional  
1519 claims or assessments on behalf of the member.

1520 (11) Unless otherwise specified in a written document filed with the office, death  
1521 benefits payable to beneficiaries shall be in accordance with the order of precedence  
1522 established under Title 75, Chapter 2, Intestate Succession and Wills.

1523 (12) A death benefit under this section may not be paid on behalf of a retiree under this  
1524 system.

1525 Section 40. Section **49-22-701** is enacted to read:

**Part 7. Early Retirement Incentives**

1527 **49-22-701. Judges' mandatory retirement age.**

1528 A judge shall retire upon attaining the age of 75 years.

1529 Section 41. Section **53A-1a-512** is amended to read:

1530 **53A-1a-512. Employees of charter schools.**

1531 (1) A charter school shall select its own employees.

1532 (2) The school's governing body shall determine the level of compensation and all  
1533 terms and conditions of employment, except as otherwise provided in Subsections (7) and (8)  
1534 and under this part.

1535 (3) The following statutes governing public employees and officers do not apply to  
1536 charter schools:

1537 (a) Chapter 8, Utah Orderly School Termination Procedures Act;

1538 (b) Chapter 10, Educator Evaluation; and

1539 (c) Title 52, Chapter 3, Prohibiting Employment of Relatives.

1540 (4) (a) To accommodate differentiated staffing and better meet student needs, a charter  
1541 school, under rules adopted by the State Board of Education, shall employ teachers who:

1542 (i) are licensed; or

1543 (ii) on the basis of demonstrated competency, would qualify to teach under alternative  
1544 certification or authorization programs.

1545 (b) The school's governing body shall disclose the qualifications of its teachers to the  
1546 parents of its students.

1547 (5) State Board of Education rules governing the licensing or certification of  
1548 administrative and supervisory personnel do not apply to charter schools.

1549 (6) (a) An employee of a school district may request a leave of absence in order to  
1550 work in a charter school upon approval of the local school board.

1551 (b) While on leave, the employee may retain seniority accrued in the school district and  
1552 may continue to be covered by the benefit program of the district if the charter school and the  
1553 locally elected school board mutually agree.

1554 (7) Except as provided under Subsection (8), an employee of a charter school shall be a  
1555 member of a retirement system or plan under Title 49, Utah State Retirement and Insurance  
1556 Benefit Act.

1557 (8) (a) At the time of application for a charter school, whether the chartering entity is  
1558 the State Charter School Board or a school district, a proposed charter school may make an  
1559 election of nonparticipation as an employer for retirement programs under:

- 1560 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act [~~and under~~];
- 1561 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act[-]; and
- 1562 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

1563 (b) A charter school that was approved prior to July 1, 2004 may make an election of  
1564 nonparticipation prior to December 31, 2004.

1565 (c) An election provided under this Subsection (8):

1566 (i) shall be made at the time specified under Subsection (8)(a) or (b);

1567 (ii) shall be documented by a resolution adopted by the governing body of the charter  
1568 school;

1569 (iii) is in effect unless the charter school makes an irrevocable retraction of the election  
1570 of nonparticipation in accordance with Subsection (9); and

1571 (iv) applies to the charter school as the employer and to all employees of the charter  
1572 school.

1573 (d) The governing body of a charter school may offer employee benefit plans for its  
1574 employees:

1575 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

1576 or

1577 (ii) under any other program.

1578 (9) (a) A charter school that made an election of nonparticipation as an employer for  
1579 ~~the following retirement programs [under Title 49, Chapter 12, Public Employees' Contributory~~  
1580 ~~Retirement Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement~~  
1581 ~~Act,]~~ may subsequently make an irrevocable retraction of the election of nonparticipation[=]:

- 1582 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act;
- 1583 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or
- 1584 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

1585 (b) A retraction provided under this Subsection (9):

1586 (i) shall be documented by a resolution adopted by the governing body of the charter  
1587 school;

1588 (ii) is a one-time election;

1589 (iii) is irrevocable; and

1590 (iv) applies to the charter school as the employer and to all employees of the charter  
1591 school.

1592 (10) The governing body of a charter school shall ensure that, prior to the beginning of  
1593 each school year, each of its employees signs a document acknowledging that the employee:

1594 (a) has received:

1595 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates  
1596 in the Risk Management Fund; or

1597 (ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if  
1598 the charter school does not participate in the Risk Management Fund; and

1599 (b) understands the legal liability protection provided to the employee and what is not  
1600 covered, as explained in the disclosure.

1601 **Section 42. Effective date.**

1602 This bill takes effect on July 1, 2010.

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**Legislative Review Note**  
as of 2-4-10 10:29 AM

**Office of Legislative Research and General Counsel**

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**S.B. 63 - New Public Employees' Tier II Contributory Retirement Act**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

This bill will result in a net savings of 3.72 percent for the non-contributory retirement plan, and a net increase of 3.97 percent for the contributory retirement system beginning in FY 2012. Additionally, the bill will result in a net reduction of 2.65 percent in the contribution rates for employees covered by the Public Safety Contributory system and 14.63 percent for employees covered by the Public Safety Noncontributory system.

Because the effective date for new hires joining the Tier II system is July 1, 2011 the proposed legislation will not have a fiscal impact on FY 2011. The state will avoid future cost increases beginning in FY 2012 and have to contribute less under the new Tier II system than they would otherwise have had to under the current benefit structure.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for business.

Enactment of this bill will affect local governments, whose retirement rates would see a net decrease by 3.72 percentage points for the non-contributory retirement system. The contributory rate will increase by 3.97 percentage points. Additionally, local governments will experience a net increase contribution rates for Firefighters Retirement System between 6.92 and 8.00 percentage points. Public Safety Contributory and Noncontributory systems would experience a net decrease of rates between 2.08 and 14.34 percentage points.

Individuals will be impacted by the proposed change in statute.