

PUBLIC SAFETY RETIREMENT FOR DISPATCHERS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill allows certified dispatchers to be covered in the public safety retirement systems.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ requires the state to cover its certified dispatchers under the public safety retirement systems;
- ▶ authorizes other participating employers to elect to cover their certified dispatchers under the public safety retirement systems; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

49-14-102, as last amended by Laws of Utah 2013, Chapter 40

49-14-201, as last amended by Laws of Utah 2014, Chapter 15

49-15-102, as last amended by Laws of Utah 2013, Chapter 40



28 [49-15-201](#), as last amended by Laws of Utah 2014, Chapter 15

29 [49-23-102](#), as last amended by Laws of Utah 2013, Chapter 40

30 [49-23-201](#), as last amended by Laws of Utah 2014, Chapter 15

31 [49-23-503](#), as last amended by Laws of Utah 2014, Chapter 15



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

34 Section 1. Section **49-14-102** is amended to read:

35 **49-14-102. Definitions.**

36 As used in this chapter:

37 (1) (a) "Compensation" means the total amount of payments that are includable in
38 gross income which are received by a public safety service employee as base income for the
39 regularly scheduled work period. The participating employer shall establish the regularly
40 scheduled work period. Base income shall be determined prior to the deduction of member
41 contributions or any amounts the public safety service employee authorizes to be deducted for
42 salary deferral or other benefits authorized by federal law.

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

45 (c) "Compensation" does not include:

46 (i) overtime;

47 (ii) sick pay incentives;

48 (iii) retirement pay incentives;

49 (iv) the monetary value of remuneration paid in kind, including a residence, use of
50 equipment or uniform, travel, or similar payments;

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

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

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

57 (2) "Dispatcher" means the same as that term is defined in Section [53-6-102](#).

58 [~~2~~] (3) "Final average salary" means the amount computed by averaging the highest

59 three years of annual compensation preceding retirement[;] subject to Subsections [~~(2)~~] (3)(a)
60 and (b).

61 (a) Except as provided in Subsection [~~(2)~~] (3)(b), the percentage increase in annual
62 compensation in any one of the years used may not exceed the previous year's compensation by
63 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
64 of the dollar during the previous year, as measured by a United States Bureau of Labor
65 Statistics Consumer Price Index average as determined by the board.

66 (b) In cases where the participating employer provides acceptable documentation to the
67 office, the limitation in Subsection [~~(2)~~] (3)(a) may be exceeded if:

68 (i) the public safety service employee has transferred from another agency; or

69 (ii) the public safety service employee has been promoted to a new position.

70 [~~(3)~~] (4) (a) "Line-of-duty death" means a death resulting from:

71 (i) external force, violence, or disease occasioned by an act of duty as a public safety
72 service employee; or

73 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
74 training or another strenuous activity required as an act of duty as a public safety service
75 employee.

76 (b) "Line-of-duty death" does not include a death that:

77 (i) occurs during an activity that is required as an act of duty as a public safety service
78 employee if the activity is not a strenuous activity, including an activity that is clerical,
79 administrative, or of a nonmanual nature;

80 (ii) occurs during the commission of a crime committed by the employee;

81 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
82 nonprescribed, contributes to the employee's death; or

83 (iv) occurs in a manner other than as described in Subsection [~~(3)~~] (4)(a).

84 [~~(4)~~] (5) "Participating employer" means an employer which meets the participation
85 requirements of Section 49-14-201.

86 [~~(5)~~] (6) (a) "Public safety service" means employment normally requiring an average
87 of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

88 (i) law enforcement officer in accordance with Section 53-13-103;

89 (ii) correctional officer in accordance with Section 53-13-104;

90 (iii) special function officer approved in accordance with Sections 49-14-201 and
91 53-13-105; [and]
92 (iv) dispatcher who is certified in accordance with Section 53-6-303; or
93 [(iv)] (v) full-time member of the Board of Pardons and Parole created under Section
94 77-27-2.

95 (b) Except as provided under [~~Subsection (5)~~] Subsections (6)(a)(iv) and (v), "public
96 safety service" also requires that in the course of employment the employee's life or personal
97 safety is at risk.

98 (c) Except for the minimum hour requirement, Subsections[~~(5)~~] (6)(a) and (b) do not
99 apply to any person who was eligible for service credit in this system before January 1, 1984.

100 [(6)] (7) "Public safety service employee" means an employee of a participating
101 employer who performs public safety service under this chapter.

102 [(7)] (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
103 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
104 physical law enforcement, prison security, disaster relief, or other emergency response activity.

105 (b) "Strenuous activity" includes participating in a participating employer sanctioned
106 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

107 [(8)] (9) "System" means the Public Safety Contributory Retirement System created
108 under this chapter.

109 [(9)] (10) "Years of service credit" means the number of periods, each to consist of 12
110 full months as determined by the board, whether consecutive or not, during which a public
111 safety service employee was employed by a participating employer, including time the public
112 safety service employee was absent in the service of the United States government on military
113 duty.

114 Section 2. Section 49-14-201 is amended to read:

115 **49-14-201. System membership -- Eligibility.**

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

119 (a) July 1, 1969, if the public safety service employee was employed by the
120 participating employer on July 1, 1969, and the participating employer was participating in this

121 system on that date;

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

124 (c) the date the public safety service employee is employed by the participating
125 employer and is eligible to perform public safety service, except that a public safety service
126 employee initially entering employment with a participating employer on or after July 1, 2011,
127 who does not have service credit accrued before July 1, 2011, in a Tier I system or plan
128 administered by the board, may not participate in this system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

175 (i) except for a dispatcher, place the employee's life or personal safety at risk; and

176 (ii) complete training as provided in Section [53-13-103](#), [53-13-104](#), [~~or~~] [53-13-105](#), or
177 [53-6-303](#).

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

181 (i) perform duties that consist primarily of actively preventing or detecting crime and
182 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

183 (ii) perform duties that consist primarily of providing community protection; and
184 (iii) respond to situations involving threats to public safety and make emergency
185 decisions affecting the lives and health of others.

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

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

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

197 (13) (a) A public safety service employee employed by an airport police department,
198 which elects to cover its public safety service employees under the Public Safety
199 Noncontributory Retirement System under Subsection (12), may elect to remain in the public
200 safety service employee's current retirement system.

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

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

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

206 (iii) is irrevocable.

207 (14) (a) Subject to Subsection (15), beginning July 1, 2015, a public safety service
208 employee who is a dispatcher employed by:

209 (i) the state shall be eligible for service credit in this system; and

210 (ii) a participating employer other than the state shall be eligible for service credit in
211 this system if the dispatcher's participating employer elects to cover its dispatchers under this
212 system.

213 (b) A participating employer's election to cover its dispatchers under this system under

214 Subsection (14)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the
215 governing body of the participating employer in accordance with rules made by the office.

216 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
217 of a participating employer under Subsection (14)(b), is not eligible for service credit in this
218 system.

219 ~~[(14)]~~ (15) Notwithstanding any other provision of this section, a person initially
220 entering employment with a participating employer on or after July 1, 2011, who does not have
221 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,
222 may not participate in this system.

223 Section 3. Section **49-15-102** is amended to read:

224 **49-15-102. Definitions.**

225 As used in this chapter:

226 (1) (a) "Compensation" means the total amount of payments that are includable in
227 gross income received by a public safety service employee as base income for the regularly
228 scheduled work period. The participating employer shall establish the regularly scheduled
229 work period. Base income shall be determined prior to the deduction of any amounts the
230 public safety service employee authorizes to be deducted for salary deferral or other benefits
231 authorized by federal law.

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

234 (c) "Compensation" does not include:

235 (i) overtime;

236 (ii) sick pay incentives;

237 (iii) retirement pay incentives;

238 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
239 equipment or uniform, travel, or similar payments;

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

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

244 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed

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

246 ~~(2)~~ (3) "Dispatcher" means the same as that term is defined in Section [53-6-102](#).

247 ~~[(2)]~~ (3) "Final average salary" means the amount computed by averaging the highest
248 three years of annual compensation preceding retirement subject to Subsections ~~[(2)]~~ (3)(a) and
249 (b).

250 (a) Except as provided in Subsection ~~[(2)]~~ (3)(b), the percentage increase in annual
251 compensation in any one of the years used may not exceed the previous year's compensation by
252 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
253 of the dollar during the previous year, as measured by a United States Bureau of Labor
254 Statistics Consumer Price Index average as determined by the board.

255 (b) In cases where the participating employer provides acceptable documentation to the
256 office, the limitation in Subsection ~~[(2)]~~ (3)(a) may be exceeded if:

- 257 (i) the public safety service employee has transferred from another agency; or
258 (ii) the public safety service employee has been promoted to a new position.

259 ~~[(3)]~~ (4) (a) "Line-of-duty death" means a death resulting from:

- 260 (i) external force, violence, or disease occasioned by an act of duty as a public safety
261 service employee; or
262 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
263 training or another strenuous activity required as an act of duty as a public safety service
264 employee.

265 (b) "Line-of-duty death" does not include a death that:

- 266 (i) occurs during an activity that is required as an act of duty as a public safety service
267 employee if the activity is not a strenuous activity, including an activity that is clerical,
268 administrative, or of a nonmanual nature;
269 (ii) occurs during the commission of a crime committed by the employee;
270 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
271 nonprescribed, contributes to the employee's death; or
272 (iv) occurs in a manner other than as described in Subsection ~~[(3)]~~ (4)(a).

273 ~~[(4)]~~ (5) "Participating employer" means an employer which meets the participation
274 requirements of Section [49-15-201](#).

275 ~~[(5)]~~ (6) (a) "Public safety service" means employment normally requiring an average

276 of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

- 277 (i) law enforcement officer in accordance with Section 53-13-103;
- 278 (ii) correctional officer in accordance with Section 53-13-104;
- 279 (iii) special function officer approved in accordance with Sections 49-15-201 and
- 280 53-13-105; [~~and~~]
- 281 (iv) dispatcher who is certified in accordance with Section 53-6-303; or
- 282 [~~(iv)~~] (v) full-time member of the Board of Pardons and Parole created under Section
- 283 77-27-2.

284 (b) Except as provided under [~~Subsection (5)~~] Subsections (6)(a)(iv) and (v), "public
285 safety service" also requires that in the course of employment the employee's life or personal
286 safety is at risk.

287 [~~(6)~~] (7) "Public safety service employee" means an employee of a participating
288 employer who performs public safety service under this chapter.

289 [~~(7)~~] (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
290 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
291 physical law enforcement, prison security, disaster relief, or other emergency response activity.

292 (b) "Strenuous activity" includes participating in a participating employer sanctioned
293 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

294 [~~(8)~~] (9) "System" means the Public Safety Noncontributory Retirement System created
295 under this chapter.

296 [~~(9)~~] (10) "Years of service credit" means the number of periods, each to consist of 12
297 full months as determined by the board, whether consecutive or not, during which a public
298 safety service employee was employed by a participating employer, including time the public
299 safety service employee was absent in the service of the United States government on military
300 duty.

301 Section 4. Section 49-15-201 is amended to read:

302 **49-15-201. System membership -- Eligibility.**

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

305 (b) A public safety service employee employed by the state prior to July 1, 1989, may
306 either elect to receive service credit in this system or continue to receive service credit under

307 the system established under Chapter 14, Public Safety Contributory Retirement Act, by
308 following the procedures established by the board under this chapter.

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

312 (b) (i) A participating employer other than the state that elected on or before July 1,
313 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety
314 service employee to elect to participate in either this system or the Public Safety Contributory
315 Retirement System.

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

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

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

323 (e) A person initially entering employment with a participating employer on or after
324 July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system
325 or plan administered by the board, may not participate in this system.

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

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

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

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

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

336 (5) (a) (i) Each participating employer participating in this system shall annually
337 submit to the office a schedule indicating the positions to be covered under this system in

338 accordance with this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

372 (i) except for a dispatcher, place the employee's life or personal safety at risk; and
373 (ii) complete training as provided in Section [53-13-103](#), [53-13-104](#), [~~or~~] [53-13-105](#), or
374 [53-6-303](#).

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

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

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

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

389 (13) Except as provided under Subsection (14), if a participating employer's public
390 safety service employees are not covered by this system or under Chapter 14, Public Safety
391 Contributory Retirement Act, as of January 1, 1998, those public safety service employees who
392 may otherwise qualify for membership in this system shall, at the discretion of the participating
393 employer, remain in their current retirement system.

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

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

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

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

403 (iii) is irrevocable.

404 (15) (a) Subject to Subsection (16), beginning July 1, 2015, a public safety service
405 employee who is a dispatcher employed by:

406 (i) the state shall be eligible for service credit in this system; and

407 (ii) a participating employer other than the state shall be eligible for service credit in
408 this system if the dispatcher's participating employer elects to cover its dispatchers under this
409 system.

410 (b) A participating employer's election to cover its dispatchers under this system under
411 Subsection (15)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the
412 governing body of the participating employer in accordance with rules made by the office.

413 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
414 of a participating employer under Subsection (15)(b), is not eligible for service credit in this
415 system.

416 ~~[(15)]~~ (16) Notwithstanding any other provision of this section, a person initially
417 entering employment with a participating employer on or after July 1, 2011, who does not have
418 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,
419 may not participate in this system.

420 Section 5. Section **49-23-102** is amended to read:

421 **49-23-102. Definitions.**

422 As used in this chapter:

423 (1) (a) "Compensation" means the total amount of payments that are includable in
424 gross income received by a public safety service employee or a firefighter service employee as
425 base income for the regularly scheduled work period. The participating employer shall
426 establish the regularly scheduled work period. Base income shall be determined prior to the
427 deduction of any amounts the public safety service employee or firefighter service employee
428 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

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

431 (c) "Compensation" does not include:

432 (i) overtime;

433 (ii) sick pay incentives;

434 (iii) retirement pay incentives;

435 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
436 equipment or uniform, travel, or similar payments;

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

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

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

443 (2) "Corresponding Tier I system" means the system or plan that would have covered
444 the member if the member had initially entered employment before July 1, 2011.

445 (3) "Dispatcher" means the same as that term is defined in Section [53-6-102](#).

446 ~~[(3)]~~ (4) "Final average salary" means the amount computed by averaging the highest
447 five years of annual compensation preceding retirement subject to Subsections ~~[(3)]~~ (4)(a), (b),
448 (c), and (d).

449 (a) Except as provided in Subsection ~~[(3)]~~ (4)(b), the percentage increase in annual
450 compensation in any one of the years used may not exceed the previous year's compensation by
451 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
452 of the dollar during the previous year, as measured by a United States Bureau of Labor
453 Statistics Consumer Price Index average as determined by the board.

454 (b) In cases where the participating employer provides acceptable documentation to the
455 office, the limitation in Subsection ~~[(3)]~~ (4)(a) may be exceeded if:

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

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

458 (c) If the member retires more than six months from the date of termination of
459 employment, the member is considered to have been in service at the member's last rate of pay
460 from the date of the termination of employment to the effective date of retirement for purposes
461 of computing the member's final average salary only.

462 (d) If the member has less than five years of service credit in this system, final average
463 salary means the average annual compensation paid to the member during the full period of
464 service credit.

465 ~~[(4)]~~ (5) "Firefighter service" means employment normally requiring an average of
466 2,080 hours of regularly scheduled employment per year rendered by a member who is a
467 firefighter service employee trained in firefighter techniques and assigned to a position of
468 hazardous duty with a regularly constituted fire department, but does not include secretarial
469 staff or other similar employees.

470 ~~[(5)]~~ (6) "Firefighter service employee" means an employee of a participating employer
471 who provides firefighter service under this chapter. An employee of a regularly constituted fire
472 department who does not perform firefighter service is not a firefighter service employee.

473 ~~[(6)]~~ (7) (a) "Line-of-duty death" means a death resulting from:

474 (i) external force, violence, or disease occasioned by an act of duty as a public safety
475 service or firefighter service employee; or

476 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
477 training or another strenuous activity required as an act of duty as a public safety service or
478 firefighter service employee.

479 (b) "Line-of-duty death" does not include a death that:

480 (i) occurs during an activity that is required as an act of duty as a public safety service
481 or firefighter service employee if the activity is not a strenuous activity, including an activity
482 that is clerical, administrative, or of a nonmanual nature;

483 (ii) occurs during the commission of a crime committed by the employee;

484 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
485 nonprescribed, contributes to the employee's death; or

486 (iv) occurs in a manner other than as described in Subsection ~~[(6)]~~ (7)(a).

487 ~~[(7)]~~ (8) "Participating employer" means an employer which meets the participation
488 requirements of:

489 (a) Sections 49-14-201 and 49-14-202;

490 (b) Sections 49-15-201 and 49-15-202;

491 (c) Sections 49-16-201 and 49-16-202; or

492 (d) Sections 49-23-201 and 49-23-202.

493 ~~[(8)]~~ (9) (a) "Public safety service" means employment normally requiring an average
494 of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

- 495 (i) law enforcement officer in accordance with Section [53-13-103](#);
496 (ii) correctional officer in accordance with Section [53-13-104](#);
497 (iii) special function officer approved in accordance with Sections [49-15-201](#) and
498 [53-13-105](#); ~~[and]~~

499 (iv) dispatcher who is certified in accordance with Section [53-6-303](#); and
500 ~~[(iv)]~~ (v) full-time member of the Board of Pardons and Parole created under Section
501 [77-27-2](#).

502 (b) Except as provided under Subsection ~~[(8)]~~ (9)(a)(iv) and (v), "public safety service"
503 also requires that in the course of employment the employee's life or personal safety is at risk.

504 ~~[(9)]~~ (10) "Public safety service employee" means an employee of a participating
505 employer who performs public safety service under this chapter.

506 ~~[(10)]~~ (11) (a) "Strenuous activity" means engagement involving a difficult, stressful,
507 or vigorous fire suppression, rescue, hazardous material response, emergency medical service,
508 physical law enforcement, prison security, disaster relief, or other emergency response activity.

509 (b) "Strenuous activity" includes participating in a participating employer sanctioned
510 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

511 ~~[(11)]~~ (12) "System" means the New Public Safety and Firefighter Tier II Contributory
512 Retirement System created under this chapter.

513 ~~[(12)]~~ (13) (a) "Volunteer firefighter" means any individual that is not regularly
514 employed as a firefighter service employee, but who:

- 515 (i) has been trained in firefighter techniques and skills;
516 (ii) continues to receive regular firefighter training; and
517 (iii) is on the rolls of a legally organized volunteer fire department which provides
518 ongoing training and serves a political subdivision of the state.

519 (b) An individual that volunteers assistance but does not meet the requirements of
520 Subsection ~~[(12)]~~ (13)(a) is not a volunteer firefighter for purposes of this chapter.

521 ~~[(13)]~~ (14) "Years of service credit" means:

- 522 (a) a period, consisting of 12 full months as determined by the board; or
523 (b) a period determined by the board, whether consecutive or not, during which a

524 regular full-time employee performed services for a participating employer, including any time
525 the regular full-time employee was absent on a paid leave of absence granted by a participating
526 employer or was absent in the service of the United States government on military duty as
527 provided by this chapter.

528 Section 6. Section **49-23-201** is amended to read:

529 **49-23-201. System membership -- Eligibility.**

530 (1) Beginning July 1, 2011, a participating employer that employs public safety service
531 employees or firefighter service employees shall participate in this system.

532 (2) (a) A public safety service employee or a firefighter service employee initially
533 entering employment with a participating employer on or after July 1, 2011, who does not have
534 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,
535 is eligible:

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

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

540 (b) A public safety service employee or a firefighter service employee initially entering
541 employment with a participating employer on or after July 1, 2011, shall:

542 (i) make an election to participate in the system created under this chapter within 30
543 days from the date of eligibility for accrual of benefits:

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

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

548 (ii) electronically submit to the office notification of the member's election under
549 Subsection (2)(b)(i) in a manner approved by the office.

550 (c) An election made by a public safety service employee or firefighter service
551 employee initially entering employment with a participating employer under this Subsection (2)
552 is irrevocable beginning one year from the date of eligibility for accrual of benefits.

553 (d) If no election is made under Subsection (2)(b)(i), the public safety service employee
554 or firefighter service employee shall become a member eligible for service credit and defined

555 contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid
556 Retirement System.

557 (3) (a) Beginning July 1, 2015, a public safety service employee who is a dispatcher
558 employed by:

559 (i) the state shall be eligible for service credit in this system; and

560 (ii) a participating employer other than the state shall be eligible for service credit in
561 this system if the dispatcher's participating employer elects to cover its dispatchers under this
562 system.

563 (b) A participating employer's election to cover its dispatchers under this system under
564 Subsection (3)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the
565 governing body of the participating employer in accordance with rules made by the office.

566 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
567 of a participating employer under Subsection (3)(b), is not eligible for service credit in this
568 system.

569 Section 7. Section **49-23-503** is amended to read:

570 **49-23-503. Death of active member in line of duty -- Payment of benefits.**

571 If an active member of this system dies, benefits are payable as follows:

572 (1) If the death is classified by the office as a line-of-duty death, benefits are payable as
573 follows:

574 (a) If the member has accrued less than 20 years of public safety service or firefighter
575 service credit, the spouse at the time of death shall receive a lump sum of \$1,000 and an
576 allowance equal to 30% of the member's final average monthly salary.

577 (b) If the member has accrued 20 or more years of public safety service or firefighter
578 service credit, the member shall be considered to have retired with an Option One allowance
579 calculated without an actuarial reduction under Section **49-23-304** and the spouse at the time of
580 death shall receive the allowance that would have been payable to the member.

581 (2) (a) A volunteer firefighter is eligible for a line-of-duty death benefit under this
582 section if the death results from external force, violence, or disease directly resulting from
583 firefighter service.

584 (b) The lowest monthly compensation of firefighters of a city of the first class in this
585 state at the time of death shall be considered to be the final average monthly salary of a

586 volunteer firefighter for purposes of computing these benefits.

587 (c) Each volunteer fire department shall maintain a current roll of all volunteer
588 firefighters which meet the requirements of Subsection 49-23-102~~[(12)]~~(13) to determine the
589 eligibility for this benefit.

590 (3) (a) If the death is classified as a line-of-duty death by the office, death benefits are
591 payable under this section and the spouse at the time of death is not eligible for benefits under
592 Section 49-23-502.

593 (b) If the death is not classified as a line-of-duty death by the office, benefits are
594 payable in accordance with Section 49-23-502.

595 (4) (a) A spouse who qualifies for a monthly benefit under this section shall apply in
596 writing to the office.

597 (b) The allowance shall begin on the first day of the month following the month in
598 which the:

599 (i) member or participant died, if the application is received by the office within 90
600 days of the date of death of the member or participant; or

601 (ii) application is received by the office, if the application is received by the office
602 more than 90 days after the date of death of the member or participant.

603 Section 8. **Effective date.**

604 This bill takes effect on July 1, 2015.

Legislative Review Note
as of 1-9-15 5:28 PM

Office of Legislative Research and General Counsel