

TIER II RETIREMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the New Public Employees' Tier II Contributory Retirement Act and the New Public Safety and Firefighter Tier II Contributory Retirement Act by amending retirement benefits.

Highlighted Provisions:

This bill:

- ▶ increases the maximum contribution a participating employer pays toward retirement benefits for a Tier II public employee, public safety service employee, and firefighter;
- ▶ authorizes an increase to the defined benefit provided to a Tier II Hybrid Retirement System public employee, public safety service employee, or firefighter;
- ▶ increases the retirement multiplier for years of service credit accrued on and after July 1, 2017, for the Tier II Hybrid Retirement System for a public employee, public safety service employee, or firefighter;
- ▶ caps the number of years of service credit that may be accrued for a Tier II Hybrid Retirement System public employee at 35 years;
- ▶ caps the number of years of service credit that may be accrued for a Tier II Hybrid Retirement System public safety service employee or firefighter at 25 years; and
- ▶ make technical changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 This bill provides revisor instructions.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **49-22-301**, as last amended by Laws of Utah 2011, Chapter 439

35 **49-22-303**, as last amended by Laws of Utah 2015, Chapter 315

36 **49-22-305**, as last amended by Laws of Utah 2011, Chapter 439

37 **49-22-310**, as enacted by Laws of Utah 2011, Chapter 439

38 **49-22-401**, as last amended by Laws of Utah 2015, Chapter 315

39 **49-23-301**, as last amended by Laws of Utah 2015, Chapter 166

40 **49-23-302**, as last amended by Laws of Utah 2011, Chapter 439

41 **49-23-304**, as last amended by Laws of Utah 2011, Chapter 439

42 **49-23-309**, as enacted by Laws of Utah 2011, Chapter 439

43 **49-23-401**, as last amended by Laws of Utah 2015, Chapter 315



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

46 Section 1. Section **49-22-301** is amended to read:

47 **49-22-301. Contributions.**

48 (1) Participating employers and members shall pay the certified contribution rates to
49 the office to maintain the defined benefit portion of this system on a financially and actuarially
50 sound basis.

51 (2) (a) A participating employer shall pay up to [~~10%~~] 11% of compensation toward
52 the certified contribution rate to the office for the defined benefit portion of this system.

53 (b) A member shall only pay to the office the amount, if any, of the certified
54 contribution rate for the defined benefit portion of this system that exceeds the percent of
55 compensation paid by the participating employer under Subsection (2)(a).

56 (c) In addition to the percent specified under Subsection (2)(a), the participating
57 employer shall pay the corresponding Tier I system amortization rate of the employee's
58 compensation to the office to be applied to the employer's corresponding Tier I system liability.

59 (3) A participating employer may not elect to pay all or part of the required member
60 contributions under Subsection (2)(b), in addition to the required participating employer
61 contributions.

62 (4) (a) A member contribution is credited by the office to the account of the individual
63 member.

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

66 (c) A member contribution is vested and nonforfeitable.

67 (5) (a) Each member is considered to consent to payroll deductions of member
68 contributions.

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

71 (6) Benefits provided under the defined benefit portion of the Tier II Hybrid
72 Retirement System created under this part:

73 (a) except as provided under Subsection (7), may not be increased unless the actuarial
74 funded ratios of all systems under this title reach 100%; and

75 (b) may be decreased only in accordance with the provisions of Section 49-22-310.

76 (7) The Legislature authorizes an increase to the defined benefit provided to a member
77 covered under Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System, effective on July
78 1, 2017, as provided in this bill.

79 Section 2. Section 49-22-303 is amended to read:

80 **49-22-303. Defined contribution benefit established -- Contribution by employer**
81 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
82 **plans.**

83 (1) (a) A participating employer shall make a nonelective contribution on behalf of
84 each regular full-time employee who is a member of this system in an amount equal to [~~10%~~]
85 11% minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a)
86 of the member's compensation to a defined contribution plan qualified under Section 401(k) of
87 the Internal Revenue Code which:

88 (i) is sponsored by the board; and

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

90 (b) The member may make voluntary deferrals to:

91 (i) the qualified 401(k) plan which receives the employer contribution described in this
92 Subsection (1); or

93 (ii) at the member's option, another defined contribution plan established by the
94 participating employer.

95 (2) (a) The total amount contributed by the participating employer under Subsection
96 (1)(a), including associated investment gains and losses, vests to the member upon accruing
97 four years of service credit under this title.

98 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
99 member's benefit immediately and is nonforfeitable.

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

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

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

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

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

112 (6) (a) Except as provided in Subsection (6)(b) and Section [49-22-205](#), if a member
113 terminates employment with a participating employer prior to the vesting period described in
114 Subsection (2)(a), all contributions, including associated investment gains and losses, made by
115 a participating employer on behalf of the member under Subsection (1)(a) are subject to
116 forfeiture.

117 (b) If a member who terminates employment with a participating employer prior to the
118 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
119 another participating employer within 10 years of the termination date of the previous
120 employment:

121 (i) all contributions made by the previous participating employer on behalf of the
122 member, including associated investment gains and losses, shall be reinstated upon
123 employment as a regular full-time employee; and

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

127 (c) The office shall establish a forfeiture account and shall specify the uses of the
128 forfeiture account, which may include an offset against administrative costs or employer
129 contributions made under this section.

130 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
131 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
132 Internal Revenue Code.

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

135 Section 3. Section **49-22-305** is amended to read:

136 **49-22-305. Defined benefit service retirement plans -- Calculation of retirement**
137 **allowance -- Social Security limitations.**

138 (1) (a) The retirees of this system may choose from the six retirement options described
139 in this section.

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

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

143 (a) If the retiree is at least 65 years of age or has accrued at least 35 years of service
144 credit, the allowance is an amount equal to:

145 (i) 1.5% of the retiree's final average salary multiplied by the number of years of
146 service credit accrued on and after July 1, 2011[-], and before July 1, 2017; plus

147 (ii) 1.72% of the retiree's final average salary multiplied by the number of years of
148 service credit accrued on and after July 1, 2017, up to a maximum of 35 years of service credit
149 accrued under this Subsection (2)(a)(ii).

150 (b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full
151 actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35

152 or more years of accrued credit in which event no reduction is made to the allowance.

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

155 (ii) At the time of retirement, if a retiree's combined years of actual, not purchased,
156 service credit is within one-tenth of one year of the total years of service credit required for
157 retirement, the retiree shall be considered to have the total years of service credit required for
158 retirement.

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

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

163 (a) Option Two is a reduced allowance paid to and throughout the lifetime of the
164 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's
165 member contributions, the remaining balance of the retiree's member contributions shall be
166 paid in accordance with Sections [49-11-609](#) and [49-11-610](#).

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

170 (c) Option Four is a reduced allowance paid to and throughout the lifetime of the
171 retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance
172 is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

173 (d) Option Five is a modification of Option Three so that if the lawful spouse at the
174 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the
175 time of initial retirement under Option One shall be paid to the retiree for the remainder of the
176 retiree's life, beginning on the first day of the month:

177 (i) following the month in which the spouse died, if the application is received by the
178 office within 90 days of the spouse's death; or

179 (ii) following the month in which the application is received by the office, if the
180 application is received by the office more than 90 days after the spouse's death.

181 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time
182 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time

183 of initial retirement under Option One shall be paid to the retiree for the remainder of the
 184 retiree's life, beginning on the first day of the month:

185 (i) following the month in which the spouse died, if the application is received by the
 186 office within 90 days of the spouse's death; or

187 (ii) following the month in which the application is received by the office, if the
 188 application is received by the office more than 90 days after the spouse's death.

189 (4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement
 190 date, the retirement is canceled and the death shall be considered as that of a member before
 191 retirement.

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

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

197 Section 4. Section **49-22-310** is amended to read:

198 **49-22-310. Defined benefit adjustments -- Conditions -- Process -- Future years**
 199 **accrual.**

200 (1) In accordance with this section, the Legislature may make adjustments to the
 201 benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System
 202 created under this part if:

203 (a) authorized under Subsection [49-22-301\(7\)](#); or

204 (b) the member's contribution required under Subsection [49-22-301\(2\)\(b\)](#) to the
 205 certified contribution rate for the defined benefit portion of this system exceeds 2% of the
 206 member's salary and:

207 ~~[(a)]~~ (i) ~~(A)~~ the membership council created under Section [49-11-202](#) recommends an
 208 adjustment to the board in accordance with Subsection (2); and

209 ~~[(ii)]~~ (B) the board recommends specific adjustments to the Legislature in accordance
 210 with Subsection (2); or

211 ~~[(b)]~~ (ii) an actuarial study that conforms with generally accepted actuarial principles
 212 and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards
 213 Board and requested or commissioned by the board or the Legislature concludes:

214 [(i)] (A) there is a significant likelihood that contribution rates will continue to rise;
215 and

216 [(ii)] (B) that participating employers are liable for system costs above the contribution
217 rate established under Subsection 49-22-301(2)(a).

218 (2) If the conditions under Subsection (1)[(a) or (b)] are met, the Legislature may
219 adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued
220 or applied for future years of service including:

221 (a) the final average salary calculation provided under Section 49-22-102;

222 (b) the years of service required to be eligible to receive a retirement allowance under
223 Section 49-22-304;

224 (c) the years of service credit multiplier established under Subsection 49-22-305(2)(a);

225 (d) the annual cost-of-living adjustment under Section 49-22-308; or

226 (e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement
227 System.

228 (3) (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may
229 make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid
230 Retirement System created under this part if an actuarial study described under Subsection
231 (1)(b)(ii) concludes, due to current and projected economic conditions, member participation
232 levels, and system structure, that the system:

233 (i) cannot reasonably be sustained under its current provisions;

234 (ii) is critically underfunded; and

235 (iii) has become unstable and is in risk of collapse.

236 (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:

237 (i) conversion to a different type of retirement plan;

238 (ii) equitable distribution of system assets to retirees and members; and

239 (iii) a closure of the system.

240 Section 5. Section 49-22-401 is amended to read:

241 **49-22-401. Contributions -- Rates.**

242 (1) Up to the amount allowed by federal law, the participating employer shall make a
243 nonelective contribution of [~~10%~~] 11% of the participant's compensation to a defined
244 contribution plan.

245 (2) (a) The participating employer shall contribute the [10%] nonelective contribution
246 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
247 Internal Revenue Code which:

248 (i) is sponsored by the board; and

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

250 (b) The member may make voluntary deferrals to:

251 (i) the qualified 401(k) plan which receives the employer contribution described in this
252 Subsection (2); or

253 (ii) at the member's option, another defined contribution plan established by the
254 participating employer.

255 (c) In addition to the percent specified under Subsection [~~(2)(a)~~] (1), the participating
256 employer shall pay the corresponding Tier I system amortization rate of the employee's
257 compensation to the office to be applied to the employer's corresponding Tier I system liability.

258 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
259 participating employer under Subsection [~~(2)(a)~~] (1) vests to the member upon accruing four
260 years employment as a regular full-time employee under this title.

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

263 (c) Upon filing a written request for exemption with the office, an eligible employee is
264 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
265 [49-22-205](#).

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

269 (b) A member may direct the investment of contributions including associated
270 investment gains and losses made by a participating employer under Subsection (2)(a) only
271 after the contributions have vested in accordance with Subsection (3)(a).

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

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

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

278 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
279 with a participating employer prior to the vesting period described in Subsection (3)(a), all
280 contributions made by a participating employer on behalf of the member including associated
281 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

282 (b) If a member who terminates employment with a participating employer prior to the
283 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
284 another participating employer within 10 years of the termination date of the previous
285 employment:

286 (i) all contributions made by the previous participating employer on behalf of the
287 member including associated investment gains and losses shall be reinstated upon the member's
288 employment as a regular full-time employee; and

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

292 (c) The office shall establish a forfeiture account and shall specify the uses of the
293 forfeiture account, which may include an offset against administrative costs or employer
294 contributions made under this section.

295 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
296 any relevant information pertaining to the maintenance of its tax qualification under the
297 Internal Revenue Code.

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

300 Section 6. Section **49-23-301** is amended to read:

301 **49-23-301. Contributions.**

302 (1) Participating employers and members shall pay the certified contribution rates to
303 the office to maintain the defined benefit portion of this system on a financially and actuarially
304 sound basis in accordance with Subsection (2).

305 (2) (a) A participating employer shall pay up to [~~12%~~] 14% of compensation toward
306 the certified contribution rate to the office for the defined benefit portion of this system.

307 (b) A member shall only pay to the office the amount, if any, of the certified
308 contribution rate for the defined benefit portion of this system that exceeds the percent of
309 compensation paid by the participating employer under Subsection (2)(a).

310 (c) In addition to the percent specified under Subsection (2)(a), the participating
311 employer shall pay the corresponding Tier I system amortization rate of the employee's
312 compensation to the office to be applied to the employer's corresponding Tier I system liability.

313 (3) A participating employer may not elect to pay all or part of the required member
314 contributions under Subsection (2)(b), in addition to the required participating employer
315 contributions.

316 (4) (a) A member contribution is credited by the office to the account of the individual
317 member.

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

320 (c) A member contribution is vested and nonforfeitable.

321 (5) (a) Each member is considered to consent to payroll deductions of member
322 contributions.

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

325 (6) Except as provided under [~~Subsection~~] Subsections (7) and (8), benefits provided
326 under the defined benefit portion of the Tier II hybrid retirement system created under this part:

327 (a) may not be increased unless the actuarial funded ratios of all systems under this title
328 reach 100%; and

329 (b) may be decreased only in accordance with the provisions of Section [49-23-309](#).

330 (7) The Legislature authorizes an increase to the death benefit provided to a Tier II
331 public safety service employee or firefighter member's surviving spouse at the time of death
332 effective on May 12, 2015, as provided in Section [49-23-503](#).

333 (8) The Legislature authorizes an increase to the defined benefit provided to a member
334 covered under Title 49, Chapter 23, Part 3, Tier II Hybrid Retirement System, effective on July
335 1, 2017, as provided in this bill.

336 Section 7. Section [49-23-302](#) is amended to read:

337 **49-23-302. Defined contribution benefit established -- Contribution by employer**

338 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
339 **plans.**

340 (1) (a) A participating employer shall make a nonelective contribution on behalf of
341 each public safety service employee or firefighter service employee who is a member of this
342 system in an amount equal to [~~12%~~ 14%] minus the contribution rate paid by the employer
343 pursuant to Subsection 49-23-301(2)(a) of the member's compensation to a defined
344 contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

345 (i) is sponsored by the board; and

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

347 (b) The member may make voluntary deferrals to:

348 (i) the qualified 401(k) plan which receives the employer contribution described in this
349 Subsection (1); or

350 (ii) at the member's option, another defined contribution plan established by the
351 participating employer.

352 (2) (a) The total amount contributed by the participating employer under Subsection
353 (1)(a), including associated investment gains and losses, vests to the member upon accruing
354 four years of service credit under this title.

355 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
356 member's benefit immediately and is nonforfeitable.

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

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

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

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

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

369 (6) (a) Except as provided in Subsection (6)(b), if a member terminates employment
370 with a participating employer prior to the vesting period described in Subsection (2)(a), all
371 contributions, including associated investment gains and losses, made by a participating
372 employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

373 (b) If a member who terminates employment with a participating employer prior to the
374 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
375 another participating employer within 10 years of the termination date of the previous
376 employment:

377 (i) all contributions made by the previous participating employer on behalf of the
378 member, including associated investment gains and losses, shall be reinstated upon the
379 member's employment as a regular full-time employee; and

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

383 (c) The office shall establish a forfeiture account and shall specify the uses of the
384 forfeiture account, which may include an offset against administrative costs or employer
385 contributions made under this section.

386 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
387 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
388 Internal Revenue Code.

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

391 Section 8. Section **49-23-304** is amended to read:

392 **49-23-304. Defined benefit service retirement plans -- Calculation of retirement**
393 **allowance -- Social Security limitations.**

394 (1) (a) The retirees of this system may choose from the six retirement options described
395 in this section.

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

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

399 (a) If the retiree is at least 65 years of age or has accrued at least 25 years of service

400 credit, the allowance is an amount equal to:

401 (i) 1.5% of the retiree's final average salary multiplied by the number of years of
402 service credit accrued on and after July 1, 2011[-], and before July 1, 2017; plus

403 (ii) 2% of the retiree's final average salary multiplied by the number of years of service
404 credit accrued on and after July 1, 2017, up to a maximum of 25 years of service credit accrued
405 under this Subsection (2)(a)(ii).

406 (b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full
407 actuarial amount for each year of retirement from age 60 to age 65, unless the member has 25
408 or more years of accrued credit in which event no reduction is made to the allowance.

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

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

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

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

419 (a) Option Two is a reduced allowance paid to and throughout the lifetime of the
420 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's
421 member contributions, the remaining balance of the retiree's member contributions shall be
422 paid in accordance with Sections [49-11-609](#) and [49-11-610](#).

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

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

429 (d) Option Five is a modification of Option Three so that if the lawful spouse at the
430 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the

431 time of initial retirement under Option One shall be paid to the retiree for the remainder of the
432 retiree's life, beginning on the first day of the month:

433 (i) following the month in which the spouse died, if the application is received by the
434 office within 90 days of the spouse's death; or

435 (ii) following the month in which the application is received by the office, if the
436 application is received by the office more than 90 days after the spouse's death.

437 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time
438 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time
439 of initial retirement under Option One shall be paid to the retiree for the remainder of the
440 retiree's life, beginning on the first day of the month:

441 (i) following the month in which the spouse died, if the application is received by the
442 office within 90 days of the spouse's death; or

443 (ii) following the month in which the application is received by the office, if the
444 application is received by the office more than 90 days after the spouse's death.

445 (4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement
446 date, the retirement is canceled and the death shall be considered as that of a member before
447 retirement.

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

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

453 Section 9. Section **49-23-309** is amended to read:

454 **49-23-309. Defined benefit adjustments -- Conditions -- Process -- Future years**
455 **accrual.**

456 (1) In accordance with this section, the Legislature may make adjustments to the
457 benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System
458 created under this part if:

459 (a) authorized under Subsection [49-23-301\(8\)](#); or

460 (b) the member's contribution required under Subsection [49-23-301\(2\)\(b\)](#) to the
461 certified contribution rate for the defined benefit portion of this system exceeds 2% of the

462 member's salary and:

463 ~~[(a)]~~ (i) (A) the membership council created under Section 49-11-202 recommends an
464 adjustment to the board in accordance with Subsection (2); and

465 ~~[(i)]~~ (B) the board recommends specific adjustments to the Legislature in accordance
466 with Subsection (2); or

467 ~~[(b)]~~ (ii) an actuarial study that conforms with generally accepted actuarial principles
468 and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards
469 Board and requested or commissioned by the board or the Legislature concludes:

470 ~~[(i)]~~ (A) there is a significant likelihood that contribution rates will continue to rise;
471 and

472 ~~[(i)]~~ (B) that participating employers are liable for system costs above the contribution
473 rate established under Subsection 49-23-301(2)(a).

474 (2) If the conditions under Subsection (1)~~[(a) or (b)]~~ are met, the Legislature may
475 adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued
476 or applied for future years of service including:

477 (a) the final average salary calculation provided under Section 49-23-102;

478 (b) the years of service required to be eligible to receive a retirement allowance under
479 Section 49-23-303;

480 (c) the years of service credit multiplier established under Subsection 49-23-304(2)(a);

481 (d) the annual cost-of-living adjustment under Section 49-23-307; or

482 (e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement
483 System.

484 (3) (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may
485 make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid
486 Retirement System created under this part if an actuarial study described under Subsection
487 (1)(b)(ii) concludes, due to current and projected economic conditions, member participation
488 levels, and system structure, that the system:

489 (i) cannot reasonably be sustained under its current provisions;

490 (ii) is critically underfunded; and

491 (iii) has become unstable and is in risk of collapse.

492 (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:

- 493 (i) conversion to a different type of retirement plan;
494 (ii) equitable distribution of system assets to retirees and members; and
495 (iii) a closure of the system.

496 Section 10. Section **49-23-401** is amended to read:

497 **49-23-401. Contributions -- Rates.**

498 (1) Up to the amount allowed by federal law, the participating employer shall make a
499 nonelective contribution of [~~12%~~] 14% of the participant's compensation to a defined
500 contribution plan.

501 (2) (a) The participating employer shall contribute the [~~12%~~] nonelective contribution
502 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
503 Internal Revenue Code which:

- 504 (i) is sponsored by the board; and
505 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

506 (b) The member may make voluntary deferrals to:

507 (i) the qualified 401(k) plan which receives the employer contribution described in this
508 Subsection (2); or

509 (ii) at the member's option, another defined contribution plan established by the
510 participating employer.

511 (c) In addition to the percent specified under Subsection [~~(2)(a)~~] (1), the participating
512 employer shall pay the corresponding Tier I system amortization rate of the employee's
513 compensation to the office to be applied to the employer's corresponding Tier I system liability.

514 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
515 participating employer under Subsection [~~(2)(a)~~] (1) vests to the member upon accruing four
516 years of service credit under this title.

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

519 (c) Upon filing a written request for exemption with the office, an eligible employee is
520 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
521 49-23-203.

522 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
523 invested in a default option selected by the board until the member is vested in accordance with

524 Subsection (3)(a).

525 (b) A member may direct the investment of contributions, including associated
526 investment gains and losses, made by a participating employer under Subsection (2)(a) only
527 after the contributions have vested in accordance with Subsection (3)(a).

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

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

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

534 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
535 with a participating employer prior to the vesting period described in Subsection (3)(a), all
536 contributions made by a participating employer on behalf of the member under Subsection
537 (2)(a), including associated investment gains and losses are subject to forfeiture.

538 (b) If a member who terminates employment with a participating employer prior to the
539 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
540 another participating employer within 10 years of the termination date of the previous
541 employment:

542 (i) all contributions made by the previous participating employer on behalf of the
543 member, including associated investment gains and losses, shall be reinstated upon the
544 member's employment as a regular full-time employee; and

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

548 (c) The office shall establish a forfeiture account and shall specify the uses of the
549 forfeiture account, which may include an offset against administrative costs of employer
550 contributions made under this section.

551 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
552 any relevant information pertaining to the maintenance of its tax qualification under the
553 Internal Revenue Code.

554 (9) The office may take any action which in its judgment is necessary to maintain the

555 tax-qualified status of its 401(k) defined contribution plan under federal law.

556 Section 11. **Effective date.**

557 This bill takes effect on July 1, 2017.

558 Section 12. **Revisor instructions.**

559 It is the intent of the Legislature that, in preparing the Utah Code database for
560 publication, the Office of Legislative Research and General Counsel shall replace the language
561 "this bill" in Subsections [49-22-301\(7\)](#) and [49-23-301\(8\)](#) to the bill's designated chapter and
562 section number in the Laws of Utah.

Legislative Review Note
Office of Legislative Research and General Counsel