

Representative Rich Cunningham proposes the following substitute bill:

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;



26 ▶ increases certain death benefits for an active member of the New Public Safety and
27 Firefighter Tier II Contributory Retirement system if the death is classified as a
28 line-of-duty death;

29 ▶ requires the Retirement and Independent Entities Interim Committee to study
30 additional revenue sources to fund benefit enhancements for a member covered
31 under certain Tier II retirement systems; and

32 ▶ make technical changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill provides a special effective date.

37 This bill provides revisor instructions.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **49-22-301**, as last amended by Laws of Utah 2011, Chapter 439

41 **49-22-303**, as last amended by Laws of Utah 2015, Chapter 315

42 **49-22-305**, as last amended by Laws of Utah 2011, Chapter 439

43 **49-22-310**, as enacted by Laws of Utah 2011, Chapter 439

44 **49-22-401**, as last amended by Laws of Utah 2015, Chapter 315

45 **49-23-301**, as last amended by Laws of Utah 2015, Chapter 166

46 **49-23-302**, as last amended by Laws of Utah 2011, Chapter 439

47 **49-23-304**, as last amended by Laws of Utah 2011, Chapter 439

48 **49-23-309**, as enacted by Laws of Utah 2011, Chapter 439

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

50 **49-23-503**, as last amended by Laws of Utah 2015, Chapters 166, 463, and 463

51 **Uncodified Material Affected:**

52 ENACTS UNCODIFIED MATERIAL



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

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

56 **49-22-301. Contributions.**

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

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

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

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

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

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

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

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

76 (5) (a) Each member is considered to consent to payroll deductions of member
77 contributions.

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

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

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

84 (b) may be decreased only in accordance with the provisions of Section [49-22-310](#).

85 (7) The Legislature authorizes an increase to the defined benefit provided to a member
86 covered under Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System, effective on July
87 1, 2017, as provided in this bill.

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

89 **49-22-303. Defined contribution benefit established -- Contribution by employer**
90 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
91 **plans.**

92 (1) (a) A participating employer shall make a nonelective contribution on behalf of
93 each regular full-time employee who is a member of this system in an amount equal to [~~10%~~
94 11% minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a)
95 of the member's compensation to a defined contribution plan qualified under Section 401(k) of
96 the Internal Revenue Code which:

97 (i) is sponsored by the board; and

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

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

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

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

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

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

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

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

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

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

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

121 (6) (a) Except as provided in Subsection (6)(b) and Section 49-22-205, if a member
122 terminates employment with a participating employer prior to the vesting period described in
123 Subsection (2)(a), all contributions, including associated investment gains and losses, made by
124 a participating employer on behalf of the member under Subsection (1)(a) are subject to
125 forfeiture.

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

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

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

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

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

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

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

145 **49-22-305. Defined benefit service retirement plans -- Calculation of retirement**
146 **allowance -- Social Security limitations.**

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

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

150 calculation.

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

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

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

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

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

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

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

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

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

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

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

179 (c) Option Four is a reduced allowance paid to and throughout the lifetime of the
180 retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance

181 is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

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

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

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

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

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

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

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

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

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

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

207 **49-22-310. Defined benefit adjustments -- Conditions -- Process -- Future years**
208 **accrual.**

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

212 (a) authorized under Subsection 49-22-301(7); or

213 (b) the member's contribution required under Subsection 49-22-301(2)(b) to the
214 certified contribution rate for the defined benefit portion of this system exceeds 2% of the
215 member's salary and:

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

218 ~~[(a)]~~ (B) the board recommends specific adjustments to the Legislature in accordance
219 with Subsection (2); or

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

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

225 ~~[(i)]~~ (B) that participating employers are liable for system costs above the contribution
226 rate established under Subsection 49-22-301(2)(a).

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

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

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

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

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

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

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

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

- 243 (ii) is critically underfunded; and
- 244 (iii) has become unstable and is in risk of collapse.
- 245 (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:
- 246 (i) conversion to a different type of retirement plan;
- 247 (ii) equitable distribution of system assets to retirees and members; and
- 248 (iii) a closure of the system.

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

250 **49-22-401. Contributions -- Rates.**

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

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

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

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

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

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

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

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

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

272 (c) Upon filing a written request for exemption with the office, an eligible employee is
273 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section

274 49-22-205.

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

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

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

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

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

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

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

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

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

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

304 (8) The office may request from any other qualified 401(k) plan under Subsection (2)

305 any relevant information pertaining to the maintenance of its tax qualification under the
306 Internal Revenue Code.

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

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

310 **49-23-301. Contributions.**

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

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

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

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

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

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

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

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

330 (5) (a) Each member is considered to consent to payroll deductions of member
331 contributions.

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

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

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

338 (b) may be decreased only in accordance with the provisions of Section 49-23-309.

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

342 (8) The Legislature authorizes an increase to the defined benefit provided to a member
343 covered under Title 49, Chapter 23, Part 3, Tier II Hybrid Retirement System, effective on July
344 1, 2017, as provided in this bill.

345 Section 7. Section 49-23-302 is amended to read:

346 **49-23-302. Defined contribution benefit established -- Contribution by employer**
347 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
348 **plans.**

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

354 (i) is sponsored by the board; and

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

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

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

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

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

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

366 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be

367 invested in a default option selected by the board until the member is vested in accordance with
368 Subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

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

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

401 **49-23-304. Defined benefit service retirement plans -- Calculation of retirement**
402 **allowance -- Social Security limitations.**

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

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

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

408 (a) If the retiree is at least 65 years of age or has accrued at least 25 years of service
409 credit, the allowance is an amount equal to:

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

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

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

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

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

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

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

428 (a) Option Two is a reduced allowance paid to and throughout the lifetime of the

429 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's
430 member contributions, the remaining balance of the retiree's member contributions shall be
431 paid in accordance with Sections 49-11-609 and 49-11-610.

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

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

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

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

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

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

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

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

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

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

459 (5) If a retiree retires under either Option Five or Six and subsequently divorces, the

460 retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there
461 is no court order filed in the matter.

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

463 **49-23-309. Defined benefit adjustments -- Conditions -- Process -- Future years**
464 **accrual.**

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

468 (a) authorized under Subsection 49-23-301(8); or

469 (b) the member's contribution required under Subsection 49-23-301(2)(b) to the
470 certified contribution rate for the defined benefit portion of this system exceeds 2% of the
471 member's salary and:

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

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

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

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

481 [(ii)] (B) that participating employers are liable for system costs above the contribution
482 rate established under Subsection 49-23-301(2)(a).

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

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

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

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

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

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

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

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

499 (ii) is critically underfunded; and

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

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

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

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

504 (iii) a closure of the system.

505 Section 10. Section ~~49-23-401~~ is amended to read:

506 **49-23-401. Contributions -- Rates.**

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

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

513 (i) is sponsored by the board; and

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

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

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

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

520 (c) In addition to the percent specified under Subsection [~~(2)(a)~~] (1), the participating
521 employer shall pay the corresponding Tier I system amortization rate of the employee's

522 compensation to the office to be applied to the employer's corresponding Tier I system liability.

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

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

528 (c) Upon filing a written request for exemption with the office, an eligible employee is
529 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
530 [49-23-203](#).

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

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

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

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

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

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

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

551 (i) all contributions made by the previous participating employer on behalf of the
552 member, including associated investment gains and losses, shall be reinstated upon the

553 member's employment as a regular full-time employee; and

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

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

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

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

565 Section 11. Section **49-23-503** is amended to read:

566 **49-23-503. Death of active member in line of duty -- Payment of benefits.**

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

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

570 (a) If the member has accrued less than 20 years of public safety service or firefighter
571 service credit, the spouse at the time of death shall receive a lump sum equal to six months of
572 the active member's final average salary and an allowance equal to [~~30%~~] 40% of the member's
573 final average monthly salary.

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

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

581 (b) The lowest monthly compensation of firefighters of a city of the first class in this
582 state at the time of death shall be considered to be the final average monthly salary of a
583 volunteer firefighter for purposes of computing these benefits.

584 (c) Each volunteer fire department shall maintain a current roll of all volunteer
585 firefighters which meet the requirements of Subsection 49-23-102(13) to determine the
586 eligibility for this benefit.

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

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

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

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

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

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

600 Section 12. **Study.**

601 During the 2016 interim, the Retirement and Independent Entities Interim Committee of
602 the Legislature shall study additional revenue sources to fund benefit enhancements for a
603 member covered under Title 49, Chapter 22, New Public Employees' Tier II Contributory
604 Retirement Act, or Title 49, Chapter 23, New Public Safety and Firefighter Tier II Contributory
605 Retirement Act.

606 Section 13. **Effective date.**

607 This bill takes effect on July 1, 2017, except that uncodified Section 12, Study, takes
608 effect on May 10, 2016.

609 Section 14. **Revisor instructions.**

610 It is the intent of the Legislature that, in preparing the Utah Code database for
611 publication, the Office of Legislative Research and General Counsel shall replace the language
612 "this bill" in Subsections 49-22-301(7) and 49-23-301(8) to the bill's designated chapter and
613 section number in the Laws of Utah.