

**Representative Daniel McCay** proposes the following substitute bill:

**TIER II RETIREMENT AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rich Cunningham**

Senate Sponsor: \_\_\_\_\_

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**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:

- ▶ requires that certain costs shall be included in the final contribution rates adopted and certified by the board;
- ▶ 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;



- 26           ▶ caps the number of years of service credit that may be accrued for a Tier II Hybrid
- 27 Retirement System public safety service employee or firefighter at 25 years;
- 28           ▶ increases certain death benefits for an active member of the New Public Safety and
- 29 Firefighter Tier II Contributory Retirement system if the death is classified as a
- 30 line-of-duty death;
- 31           ▶ requires the Retirement and Independent Entities Interim Committee to study
- 32 additional revenue sources to fund benefit enhancements for a member covered
- 33 under certain Tier II retirement systems; and
- 34           ▶ make technical changes.

35 **Money Appropriated in this Bill:**

36           None

37 **Other Special Clauses:**

38           This bill provides a special effective date.  
39           This bill provides revisor instructions.

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42           **49-11-301**, as last amended by Laws of Utah 2004, Chapter 322
- 43           **49-22-301**, as last amended by Laws of Utah 2011, Chapter 439
- 44           **49-22-303**, as last amended by Laws of Utah 2015, Chapter 315
- 45           **49-22-305**, as last amended by Laws of Utah 2011, Chapter 439
- 46           **49-22-310**, as enacted by Laws of Utah 2011, Chapter 439
- 47           **49-22-401**, as last amended by Laws of Utah 2015, Chapter 315
- 48           **49-23-301**, as last amended by Laws of Utah 2015, Chapter 166
- 49           **49-23-302**, as last amended by Laws of Utah 2011, Chapter 439
- 50           **49-23-304**, as last amended by Laws of Utah 2011, Chapter 439
- 51           **49-23-309**, as enacted by Laws of Utah 2011, Chapter 439
- 52           **49-23-401**, as last amended by Laws of Utah 2015, Chapter 315
- 53           **49-23-503**, as last amended by Laws of Utah 2015, Chapters 166, 463, and 463

54 **Uncodified Material Affected:**

55 ENACTS UNCODIFIED MATERIAL

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

58 Section 1. Section **49-11-301** is amended to read:

59 **49-11-301. Creation -- Board to act as trustees of the fund -- Commingling and**  
60 **pooling of funds -- Interest earnings -- Funded ratio.**

61 (1) There is created a common trust fund known as the "Utah State Retirement  
62 Investment Fund" for the purpose of enlarging the investment base and simplifying investment  
63 procedures and functions.

64 (2) (a) The board shall act as trustees of the Utah State Retirement Investment Fund  
65 and, through the executive director, may commingle and pool the funds and investments of any  
66 system, plan, or program into the Utah State Retirement Investment Fund, if the principal  
67 amounts of the participating funds do not lose their individual identity and are maintained as  
68 separate trust funds on the books of the office.

69 (b) (i) In combining the investments of any fund, each of the participating funds shall  
70 be credited initially with its share of the total assets transferred to the Utah State Retirement  
71 Investment Fund.

72 (ii) The value of the transferred assets shall be calculated in accordance with generally  
73 accepted accounting principles.

74 (c) Subsequent transfers of additional capital from participating funds shall be credited  
75 similarly to its respective trust account.

76 (d) The income or principal or equity credit belonging to one participating fund may  
77 not be transferred to another, except for the purpose of:

78 (i) actuarially recommended transfers in order to adjust employer contribution rates for  
79 an employer that participates in both contributory and noncontributory systems; or

80 (ii) transfers which reflect the value of service credit accrued in different systems  
81 during a member's career.

82 (3) The assets of the funds are for the exclusive benefit of the members, participants,  
83 and covered individuals and may not be diverted or appropriated for any purpose other than  
84 that permitted by this title.

85 (4) (a) Interest and other earnings shall be credited to each participating fund on a pro  
86 rata equity position basis.

87 (b) (i) A portion of the interest and other earnings of the common trust fund may be

88 credited to a reserve account within the Utah State Retirement Investment Fund to meet  
89 adverse experiences arising from investments or other contingencies.

90 (ii) Each participating fund shall retain its proportionate equity in the reserve account.

91 (5) (a) The actuarial funded ratio of the systems may reach and be maintained at 110%,  
92 as determined by the board's actuary using assumptions adopted by the board, before the board  
93 is required to certify a decrease in contribution rates.

94 (b) ~~[The]~~ Except as provided in Subsection (6), the board may not increase  
95 contribution rates to attain an actuarial funded ratio greater than 100%.

96 (6) (a) The cost of any amendment to this title shall be included in the final  
97 contribution rates adopted and certified by the board in accordance with Subsections  
98 49-11-102(14) and 49-11-203(1)(l).

99 (b) If a preliminary certified contribution rate approved by the board prior to an annual  
100 General Session or Special Session of the Legislature was maintained at a previous year's level  
101 that is higher than the contribution rate calculated by the board's actuary for that year in  
102 accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum  
103 of the actuarially determined costs from any amendment to this title during the General Session  
104 or Special Session and the preliminary certified contribution rate.

105 Section 2. Section **49-22-301** is amended to read:

106 **49-22-301. Contributions.**

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

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

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

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

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

119 contributions under Subsection (2)(b), in addition to the required participating employer  
120 contributions.

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

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

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

126 (5) (a) Each member is considered to consent to payroll deductions of member  
127 contributions.

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

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

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

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

135 (7) The Legislature authorizes an increase to the defined benefit provided to a member  
136 covered under Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System, effective on July  
137 1, 2017, as provided in this bill.

138 Section 3. Section 49-22-303 is amended to read:

139 **49-22-303. Defined contribution benefit established -- Contribution by employer**  
140 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**  
141 **plans.**

142 (1) (a) A participating employer shall make a nonelective contribution on behalf of  
143 each regular full-time employee who is a member of this system in an amount equal to [~~10%~~  
144 11% minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a)  
145 of the member's compensation to a defined contribution plan qualified under Section 401(k) of  
146 the Internal Revenue Code which:

147 (i) is sponsored by the board; and

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (i) all contributions made by the previous participating employer on behalf of the

181 member, including associated investment gains and losses, shall be reinstated upon  
182 employment as a regular full-time employee; and

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

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

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

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

194 Section 4. Section **49-22-305** is amended to read:

195 **49-22-305. Defined benefit service retirement plans -- Calculation of retirement**  
196 **allowance -- Social Security limitations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

240 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time  
241 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time  
242 of initial retirement under Option One shall be paid to the retiree for the remainder of the

243 retiree's life, beginning on the first day of the month:

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

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

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

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

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

256 Section 5. Section **49-22-310** is amended to read:

257 **49-22-310. Defined benefit adjustments -- Conditions -- Process -- Future years**  
258 **accrual.**

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

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

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

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

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

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

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

274 and

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

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

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

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

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

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

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

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

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

293 (ii) is critically underfunded; and

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

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

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

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

298 (iii) a closure of the system.

299 Section 6. Section 49-22-401 is amended to read:

300 **49-22-401. Contributions -- Rates.**

301 (1) Up to the amount allowed by federal law, the participating employer shall make a  
302 nonelective contribution of ~~[+0%]~~ 11% of the participant's compensation to a defined  
303 contribution plan.

304 (2) (a) The participating employer shall contribute the ~~[+0%]~~ nonelective contribution

305 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
306 Internal Revenue Code which:

307 (i) is sponsored by the board; and

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

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

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

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

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

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

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

322 (c) Upon filing a written request for exemption with the office, an eligible employee is  
323 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section  
324 [49-22-205](#).

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

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

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

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

335 (6) No hardship distributions shall be available from contributions made by a

336 participating employer under Subsection (2)(a).

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

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

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

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

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

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

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

359 Section 7. Section **49-23-301** is amended to read:

360 **49-23-301. Contributions.**

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

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

366 (b) A member shall only pay to the office the amount, if any, of the certified

367 contribution rate for the defined benefit portion of this system that exceeds the percent of  
368 compensation paid by the participating employer under Subsection (2)(a).

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

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

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

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

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

380 (5) (a) Each member is considered to consent to payroll deductions of member  
381 contributions.

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

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

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

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

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

392 (8) The Legislature authorizes an increase to the defined benefit provided to a member  
393 covered under Title 49, Chapter 23, Part 3, Tier II Hybrid Retirement System, effective on July  
394 1, 2017, as provided in this bill.

395 Section 8. Section 49-23-302 is amended to read:

396 **49-23-302. Defined contribution benefit established -- Contribution by employer**  
397 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**

398 **plans.**

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

404 (i) is sponsored by the board; and

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

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

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

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

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

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

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

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

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

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

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

428 (6) (a) Except as provided in Subsection (6)(b), if a member terminates employment

429 with a participating employer prior to the vesting period described in Subsection (2)(a), all  
430 contributions, including associated investment gains and losses, made by a participating  
431 employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

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

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

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

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

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

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

450 Section 9. Section **49-23-304** is amended to read:

451 **49-23-304. Defined benefit service retirement plans -- Calculation of retirement**  
452 **allowance -- Social Security limitations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

488 (d) Option Five is a modification of Option Three so that if the lawful spouse at the  
489 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the  
490 time of initial retirement under Option One shall be paid to the retiree for the remainder of the

491 retiree's life, beginning on the first day of the month:

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

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

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

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

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

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

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

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

512 Section 10. Section **49-23-309** is amended to read:

513 **49-23-309. Defined benefit adjustments -- Conditions -- Process -- Future years**  
514 **accrual.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

549           (ii) is critically underfunded; and

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

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

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

- 553 (ii) equitable distribution of system assets to retirees and members; and
- 554 (iii) a closure of the system.

555 Section 11. Section **49-23-401** is amended to read:

556 **49-23-401. Contributions -- Rates.**

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

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

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

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

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

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

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

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

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

578 (c) Upon filing a written request for exemption with the office, an eligible employee is  
579 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section  
580 [49-23-203](#).

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

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

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

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

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

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

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

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

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

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

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

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

615 Section 12. Section **49-23-503** is amended to read:

616 **49-23-503. Death of active member in line of duty -- Payment of benefits.**

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

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

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

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

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

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

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

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

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

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

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

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

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

650 Section 13. **Study.**

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

656 Section 14. **Effective date.**

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

659 Section 15. **Revisor instructions.**

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