

RETIREMENT SYSTEMS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Kraig Powell

LONG TITLE

Committee Note:

The Retirement and Independent Entities Interim Committee recommended this bill.

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending certain retirement provisions.

Highlighted Provisions:

This bill:

- ▶ clarifies retiree reporting provisions to the Utah State Retirement Office on the status of the reemployment;
- ▶ allows Utah Retirement Systems to make payments to a deceased member's beneficiaries 30 days instead of three months after the date of death;
- ▶ amends the definition of "final average salary" to specify that its basis is contract year for educational institutions, state fiscal year for judges, and calendar year for all other participating employers;
- ▶ clarifies that a public safety employee who is transferred or promoted to an administration position within the same department primarily to manage or supervise public safety service employees will continue to earn public safety service credit;
- ▶ addresses references to death or disability;
- ▶ provides that a person's retirement date is among the circumstances in which a



- 28 person qualified for a monthly disability benefit will no longer receive the benefit;
- 29 ▶ provides that for an elected official under Tier II retirement, the total amount
- 30 contributed by the participating employer and the total amount contributed by the
- 31 elected official vests immediately;
- 32 ▶ clarifies four-year vesting provisions for Tier II defined contribution benefits;
- 33 ▶ repeals provisions that require the Utah State Retirement Office to include accrued
- 34 earnings in Unused Sick Leave Retirement Program II; and
- 35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 49-11-505, as last amended by Laws of Utah 2015, Chapters 243 and 256
- 43 49-11-609, as last amended by Laws of Utah 2005, Chapter 116
- 44 49-12-102, as last amended by Laws of Utah 2015, Chapter 243
- 45 49-13-102, as last amended by Laws of Utah 2014, Chapter 15
- 46 49-14-102, as last amended by Laws of Utah 2015, Chapter 463
- 47 49-14-201, as last amended by Laws of Utah 2015, Chapters 100 and 463
- 48 49-15-102, as last amended by Laws of Utah 2015, Chapter 463
- 49 49-15-201, as last amended by Laws of Utah 2015, Chapters 100 and 463
- 50 49-16-102, as last amended by Laws of Utah 2015, Chapter 254
- 51 49-17-102, as last amended by Laws of Utah 2008, Chapter 3
- 52 49-18-102, as last amended by Laws of Utah 2008, Chapter 3
- 53 49-21-403, as last amended by Laws of Utah 2013, Chapter 316
- 54 49-22-102, as last amended by Laws of Utah 2013, Chapters 109 and 127
- 55 49-22-201, as last amended by Laws of Utah 2015, Chapter 315
- 56 49-22-205, as enacted by Laws of Utah 2015, Chapter 315
- 57 49-22-303, as last amended by Laws of Utah 2015, Chapter 315
- 58 49-22-401, as last amended by Laws of Utah 2015, Chapter 315

59 [49-23-102](#), as last amended by Laws of Utah 2015, Chapters 254 and 463

60 [49-23-302](#), as last amended by Laws of Utah 2011, Chapter 439

61 [49-23-401](#), as last amended by Laws of Utah 2015, Chapter 315

62 [67-19-14.4](#), as last amended by Laws of Utah 2013, Chapter 277



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

65 Section 1. Section [49-11-505](#) is amended to read:

66 **[49-11-505. Reemployment of a retiree -- Restrictions.](#)**

67 (1) (a) For purposes of this section, "retiree":

68 (i) means a person who:

69 (A) retired from a participating employer; and

70 (B) begins reemployment on or after July 1, 2010, with a participating employer;

71 (ii) does not include a person:

72 (A) who was reemployed by a participating employer before July 1, 2010; and

73 (B) whose participating employer that reemployed the person under Subsection

74 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

75 Section [49-11-621](#) after July 1, 2010; and

76 (iii) does not include a person who is reemployed as an active senior judge or an active

77 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by

78 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

79 (b) (i) This section does not apply to employment as an elected official if the elected

80 official's position is not full time as certified by the participating employer.

81 (ii) The provisions of this section apply to an elected official whose elected position is

82 full time as certified by the participating employer.

83 (c) (i) This section does not apply to employment as a part-time appointed board

84 member who does not receive any remuneration, stipend, or other benefit for the part-time

85 appointed board member's service.

86 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does

87 not include receipt of per diem and travel expenses up to the amounts established by the

88 Division of Finance in:

89 (A) Section [63A-3-106](#);

90 (B) Section 63A-3-107; and

91 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
92 63A-3-107.

93 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
94 means a person who is employed by a participating employer and who performs emergency
95 services for another participating employer that is a different agency in which the person:

96 (A) has been trained in techniques and skills required for the service the person
97 provides to the participating employer;

98 (B) continues to receive regular training required for the service;

99 (C) is on the rolls as a trained affiliated emergency services worker of the participating
100 employer; and

101 (D) provides ongoing service for a participating employer, which service may include
102 service as a volunteer firefighter, reserve law enforcement officer, search and rescue personnel,
103 emergency medical technician, ambulance personnel, park ranger, or public utilities worker.

104 (ii) A person who performs work or service but does not meet the requirements of
105 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
106 Subsection (1)(d).

107 (iii) The office may not cancel the retirement allowance of a retiree who is employed as
108 an affiliated emergency services worker within one year of the retiree's retirement date if the
109 affiliated emergency services worker does not receive any compensation, except for:

110 (A) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money
111 or cash equivalent payment not tied to productivity and paid periodically for services;

112 (B) a length-of-service award;

113 (C) insurance policy premiums paid by the participating employer in the event of death
114 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

115 (D) reimbursement of expenses incurred in the performance of duties.

116 (iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any
117 discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

118 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
119 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year
120 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as

121 determined by the board.

122 (vi) The office shall cancel the retirement allowance of a retiree for the remainder of
123 the calendar year if employment as an affiliated emergency services worker with a participating
124 employer exceeds the limitation under Subsection (1)(d)(iv).

125 (vii) If a retiree is employed as an affiliated emergency services worker under the
126 provisions of Subsection (1)(d), the termination date of the employment as an affiliated
127 emergency services worker, as confirmed in writing by the participating employer, is
128 considered the retiree's retirement date for the purpose of calculating the separation
129 requirement under Subsection (3)(a).

130 (2) A retiree may not for the same period of reemployment:

131 (a) (i) earn additional service credit; or

132 (ii) receive any retirement related contribution from a participating employer; and

133 (b) receive a retirement allowance.

134 (3) (a) Except as provided under Subsection (3)(b) or (10), the office shall cancel the
135 retirement allowance of a retiree if the reemployment with a participating employer begins
136 within one year of the retiree's retirement date.

137 (b) The office may not cancel the retirement allowance of a retiree who is reemployed
138 with a participating employer within one year of the retiree's retirement date if:

139 (i) the retiree is not reemployed by a participating employer for a period of at least 60
140 days from the retiree's retirement date;

141 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree
142 does not receive any employer provided benefits, including:

143 (A) medical benefits;

144 (B) dental benefits;

145 (C) other insurance benefits except for workers' compensation as provided under Title
146 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
147 for Social Security, Medicare, and unemployment insurance; or

148 (D) paid time off, including sick, annual, or other type of leave; and

149 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in
150 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the
151 retiree's retirement allowance is based; or

- 152 (B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).
- 153 (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection
154 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar
155 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average
156 as determined by the board.
- 157 (d) The office shall cancel the retirement allowance of a retiree for the remainder of the
158 calendar year if the reemployment with a participating employer exceeds the limitation under
159 Subsection (3)(b)(iii)(A).
- 160 (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination
161 date of the reemployment, as confirmed in writing by the participating employer, is considered
162 the retiree's retirement date for the purpose of calculating the separation requirement under
163 Subsection (3)(a).
- 164 (f) If a retiree received a retirement allowance in error, due to reemployment in
165 violation of this section:
- 166 (i) the office shall cancel the retiree's retirement allowance; and
 - 167 (ii) if the retiree applies for a future benefit, the office shall recover any overpayment in
168 accordance with the provisions of Section [49-11-607](#).
- 169 (4) If a reemployed retiree has completed the one-year separation from employment
170 with a participating employer required under Subsection (3)(a), the retiree may elect to:
- 171 (a) earn additional service credit in accordance with this title and cancel the retiree's
172 retirement allowance; or
 - 173 (b) continue to receive the retiree's retirement allowance and forfeit any retirement
174 related contribution from the participating employer who reemployed the retiree.
- 175 (5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate,
176 as defined in Section [49-11-102](#), to be applied to the system that would have covered the retiree
177 if the retiree's reemployed position were deemed to be an eligible, full-time position within that
178 system.
- 179 (b) A participating employer who reemploys a retiree shall contribute to the office the
180 amortization rate if the reemployed retiree:
- 181 (i) has completed the one-year separation from employment with a participating
182 employer required under Subsection (3)(a); and

183 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
184 allowance while reemployed.

185 (6) (a) A participating employer shall immediately notify the office:

186 (i) if the participating employer reemploys a retiree;

187 (ii) whether the reemployment is subject to Subsection (3)(b) or (4) of this section; and

188 (iii) of any election by the retiree under Subsection (4).

189 (b) A participating employer shall certify to the office whether the position of an
190 elected official is or is not full time.

191 (c) A participating employer is liable to the office for a payment or failure to make a
192 payment in violation of this section.

193 (d) If a participating employer fails to notify the office in accordance with this section,
194 the participating employer is immediately subject to a compliance audit by the office.

195 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
196 accordance with Subsection (7)(b) if the office receives notice or learns of:

197 (i) the reemployment of a retiree in violation of Subsection (3); or

198 (ii) the election of a reemployed retiree under Subsection (4)(a).

199 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
200 office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the
201 retiree to active member status on the first day of the month following the date of:

202 (i) reemployment if the retiree is subject to Subsection (3); or

203 (ii) an election by an employee under Subsection (4)(a).

204 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
205 position:

206 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

207 (ii) the participating employer shall pay the amortization rate to the office on behalf of
208 the retiree.

209 (8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date
210 of reemployment:

211 (i) is not entitled to a recalculated retirement benefit; and

212 (ii) will resume the allowance that was being paid at the time of cancellation.

213 (b) Subject to Subsection (2), a retiree who is reinstated to active membership under

214 Subsection (7) and who retires two or more years after the date of reinstatement to active
215 membership shall:

- 216 (i) resume receiving the allowance that was being paid at the time of cancellation; and
- 217 (ii) receive an additional allowance based on the formula in effect at the date of the
218 subsequent retirement for all service credit accrued between the first and subsequent retirement
219 dates.

220 (9) (a) A retiree subject to this section shall report to the office the status of the
221 reemployment under Subsection (1)(d), (3), or (4).

222 (b) If the retiree fails to inform the office of an election under Subsection (4), the office
223 shall withhold one month's benefit for each month the retiree fails to inform the office under
224 Subsection (9)(a).

225 (10) A retiree shall be considered as having completed the one-year separation from
226 employment with a participating employer required under Subsection (3)(a), if the retiree:

- 227 (a) before retiring:
 - 228 (i) was employed with a participating employer as a public safety service employee as
229 defined in Section 49-14-102, 49-15-102, or 49-23-102;

230 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury
231 resulting from external force or violence while performing the duties of the employment, and
232 for which injury the retiree would have been approved for total disability in accordance with
233 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
234 years of service are not considered;

235 (iii) had less than 30 years of service credit but had sufficient service credit to retire,
236 with an unreduced allowance making the public safety service employee ineligible for
237 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term
238 Disability Act, or a substantially similar long-term disability program; and

239 (iv) does not receive any long-term disability benefits from any participating employer;
240 and

241 (b) is reemployed by a different participating employer.

242 (11) The board may make rules to implement this section.

243 Section 2. Section 49-11-609 is amended to read:

244 **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**

245 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**
246 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**
247 **expenses.**

248 (1) As used in this section, "member" includes a member, retiree, participant, covered
249 individual, a spouse of a retiree participating in the insurance benefits created by Sections
250 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a
251 defined contribution account.

252 (2) The most recent beneficiary designations signed by the member and filed with the
253 office, including electronic records, at the time of the member's death are binding in the
254 payment of any benefits due under this title.

255 (3) (a) Except where an optional continuing benefit is chosen, or the law makes a
256 specific benefit designation to a dependent spouse, a member may revoke a beneficiary
257 designation at any time and may execute and file a different beneficiary designation with the
258 office.

259 (b) A change of beneficiary designation shall be completed on forms provided by the
260 office.

261 (4) (a) All benefits payable by the office may be paid or applied to the benefit of the
262 surviving next of kin of the deceased in the order of precedence established under Title 75,
263 Chapter 2, Intestate Succession and Wills, if:

264 (i) no beneficiary is designated or if all designated beneficiaries have predeceased the
265 member;

266 (ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by
267 the office within 12 months of the date a reasonable attempt is made by the office to locate the
268 beneficiaries; or

269 (iii) the beneficiary has not completed the forms necessary to pay the benefits within
270 six months of the date that beneficiary forms are sent to the beneficiary's last-known address.

271 (b) (i) A payment may not be made to a person included in any of the groups referred
272 to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups
273 preceding it.

274 (ii) Payment to a person in any group based upon receipt from the person of an
275 affidavit in a form satisfactory to the office that:

- 276 (A) there are no living individuals in the group preceding it;
- 277 (B) the probate of the estate of the deceased has not been commenced; and
- 278 (C) more than [~~three months~~] 30 days have elapsed since the date of death of the
- 279 decedent.

- 280 (5) Benefits paid under this section shall be:
- 281 (a) a full satisfaction and discharge of all claims for benefits under this title; and
- 282 (b) payable by reason of the death of the decedent.

283 Section 3. Section **49-12-102** is amended to read:

284 **49-12-102. Definitions.**

285 As used in this chapter:

286 (1) "Benefits normally provided":

287 (a) means a benefit offered by an employer, including:

288 (i) a leave benefit of any kind;

289 (ii) insurance coverage of any kind if the employer pays some or all of the premium for

290 the coverage;

291 (iii) employer contributions to a health savings account, health reimbursement account,

292 health reimbursement arrangement, or medical expense reimbursement plan; and

293 (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the

294 benefit; and

295 (b) does not include:

296 (i) a payment for Social Security;

297 (ii) workers' compensation insurance;

298 (iii) unemployment insurance;

299 (iv) a payment for Medicare;

300 (v) a payment or insurance required by federal or state law that is similar to a payment

301 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

302 (vi) any other benefit that state or federal law requires an employer to provide an

303 employee who would not otherwise be eligible to receive the benefit; or

304 (vii) any benefit that an employer provides an employee in order to avoid a penalty or

305 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health

306 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal

307 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

308 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
309 amount of payments made by a participating employer to a member of this system for services
310 rendered to the participating employer, including:

311 (i) bonuses;

312 (ii) cost-of-living adjustments;

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

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

318 (v) member contributions.

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

321 (c) "Compensation" does not include:

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

324 (ii) the cost of any employment benefits paid for by the participating employer;

325 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
326 otherwise ineligible for service credit;

327 (iv) any payments upon termination, including accumulated vacation, sick leave
328 payments, severance payments, compensatory time payments, or any other special payments; or

329 (v) any allowances or payments to a member for costs or expenses paid by the
330 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
331 housing costs, insurance costs, equipment costs, and dependent care costs.

332 (d) The executive director may determine if a payment not listed under this Subsection
333 (2) falls within the definition of compensation.

334 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
335 highest five years of annual compensation preceding retirement subject to Subsections (3)(a),
336 (b), (c), [~~and~~] (d), and (e).

337 (a) Except as provided in Subsection (3)(b), the percentage increase in annual

338 compensation in any one of the years used may not exceed the previous year's compensation by
339 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
340 of the dollar during the previous year, as measured by a United States Bureau of Labor
341 Statistics Consumer Price Index average as determined by the board.

342 (b) In cases where the participating employer provides acceptable documentation to the
343 office, the limitation in Subsection (3)(a) may be exceeded if:

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

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

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

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

353 (e) The annual compensation used to calculate final average salary shall be based on:

354 (i) a calendar year for a member employed by a participating employer that is not an
355 educational institution; or

356 (ii) a contract year for a member employed by an educational institution.

357 (4) "Participating employer" means an employer which meets the participation
358 requirements of Sections [49-12-201](#) and [49-12-202](#).

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

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

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

367 (ii) a classified school employee:

368 (A) who is hired before July 1, 2013; and

369 (B) whose employment normally requires an average of 20 hours per week or more for
370 a participating employer, regardless of benefits provided;

371 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
372 of January 1, 1990, as provided in Section 49-12-407;

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

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

378 (c) "Regular full-time employee" does not include a classified school employee:

379 (i) (A) who is hired on or after July 1, 2013; and

380 (B) who does not receive benefits normally provided by the participating employer
381 even if the employment normally requires an average of 20 hours per week or more for a
382 participating employer; or

383 (ii) (A) who is hired before July 1, 2013;

384 (B) who did not qualify as a regular full-time employee before July 1, 2013;

385 (C) who does not receive benefits normally provided by the participating employer;

386 and

387 (D) whose employment hours are increased on or after July 1, 2013, to require an
388 average of 20 hours per week or more for a participating employer.

389 (6) "System" means the Public Employees' Contributory Retirement System created
390 under this chapter.

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

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

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

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

400 Section 4. Section **49-13-102** is amended to read:

401 **49-13-102. Definitions.**

402 As used in this chapter:

403 (1) "Benefits normally provided" has the same meaning as defined in Section

404 [49-12-102](#).

405 (2) (a) Except as provided in Subsection (2)(c), "compensation" means the total
406 amount of payments made by a participating employer to a member of this system for services
407 rendered to the participating employer, including:

408 (i) bonuses;

409 (ii) cost-of-living adjustments;

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

413 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
414 or other benefits authorized by federal law.

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

417 (c) "Compensation" does not include:

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

420 (ii) the cost of any employment benefits paid for by the participating employer;

421 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
422 otherwise ineligible for service credit;

423 (iv) any payments upon termination, including accumulated vacation, sick leave
424 payments, severance payments, compensatory time payments, or any other special payments; or

425 (v) any allowances or payments to a member for costs or expenses paid by the
426 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
427 housing costs, insurance costs, equipment costs, and dependent care costs.

428 (d) The executive director may determine if a payment not listed under this Subsection
429 (2) falls within the definition of compensation.

430 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the

431 highest three years of annual compensation preceding retirement subject to ~~[the following:]~~
432 Subsections (3)(a), (b), (c), and (d).

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

438 (b) In cases where the participating employer provides acceptable documentation to the
439 office, the limitation in Subsection (3)(a) may be exceeded if:

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

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

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

446 (d) The annual compensation used to calculate final average salary shall be based on:

447 (i) a calendar year for a member employed by a participating employer that is not an
448 educational institution; or

449 (ii) a contract year for a member employed by an educational institution.

450 (4) "Participating employer" means an employer which meets the participation
451 requirements of Sections [49-13-201](#) and [49-13-202](#).

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

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

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

460 (ii) a classified school employee:

461 (A) who is hired before July 1, 2013; and

462 (B) whose employment normally requires an average of 20 hours per week or more for
463 a participating employer, regardless of benefits provided;

464 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
465 of January 1, 1990, as provided in Section 49-13-407;

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

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

471 (c) "Regular full-time employee" does not include a classified school employee:

472 (i) (A) who is hired on or after July 1, 2013; and

473 (B) who does not receive benefits normally provided by the participating employer
474 even if the employment normally requires an average of 20 hours per week or more for a
475 participating employer; or

476 (ii) (A) who is hired before July 1, 2013;

477 (B) who did not qualify as a regular full-time employee before July 1, 2013;

478 (C) who does not receive benefits normally provided by the participating employer;

479 and

480 (D) whose employment hours are increased on or after July 1, 2013, to require an
481 average of 20 hours per week or more for a participating employer.

482 (6) "System" means the Public Employees' Noncontributory Retirement System.

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

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

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

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

492 Section 5. Section 49-14-102 is amended to read:

493 **49-14-102. Definitions.**

494 As used in this chapter:

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

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

503 (c) "Compensation" does not include:

504 (i) overtime;

505 (ii) sick pay incentives;

506 (iii) retirement pay incentives;

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

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

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

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

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

516 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
517 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
518 [~~and~~], (b), and (c).

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

524 (b) In cases where the participating employer provides acceptable documentation to the
525 office, the limitation in Subsection (3)(a) may be exceeded if:

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

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

528 (c) The annual compensation used to calculate final average salary shall be based on:

529 (i) a calendar year for a member employed by a participating employer that is not an
530 educational institution; or

531 (ii) a contract year for a member employed by an educational institution.

532 (4) (a) "Line-of-duty death" means a death resulting from:

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

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

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

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

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

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

545 (iv) occurs in a manner other than as described in Subsection (4)(a).

546 (5) "Participating employer" means an employer which meets the participation
547 requirements of Section [49-14-201](#).

548 (6) (a) "Public safety service" means employment normally requiring an average of
549 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

550 (i) law enforcement officer in accordance with Section [53-13-103](#);

551 (ii) correctional officer in accordance with Section [53-13-104](#);

552 (iii) special function officer approved in accordance with Sections [49-14-201](#) and
553 [53-13-105](#);

554 (iv) dispatcher who is certified in accordance with Section [53-6-303](#); or

555 (v) full-time member of the Board of Pardons and Parole created under Section
556 77-27-2.

557 (b) Except as provided under Subsections (6)(a)(iv) and (v), "public safety service"
558 also requires that in the course of employment the employee's life or personal safety is at risk.

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

561 (7) "Public safety service employee" means an employee of a participating employer
562 who performs public safety service under this chapter.

563 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
564 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
565 physical law enforcement, prison security, disaster relief, or other emergency response activity.

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

568 (9) "System" means the Public Safety Contributory Retirement System created under
569 this chapter.

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

574 Section 6. Section **49-14-201** is amended to read:

575 **49-14-201. System membership -- Eligibility.**

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

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

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

584 (c) the date the public safety service employee is employed by the participating
585 employer and is eligible to perform public safety service, except that a public safety service

586 employee initially entering employment with a participating employer on or after July 1, 2011,
587 who does not have service credit accrued before July 1, 2011, in a Tier I system or plan
588 administered by the board, may not participate in this system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

626 (7) A public safety employee who is transferred or promoted to an administration
627 position [~~not covered by this system~~] requiring the performance of duties that consist primarily
628 of management or supervision of public safety service employees shall continue to earn public
629 safety service credit in this system as long as the employee remains employed in the same
630 department.

631 (8) An employee of the Department of Corrections shall continue to earn public safety
632 service credit in this system if:

633 (a) the employee's position is no longer covered under this system for new employees
634 hired on or after July 1, 2015; and

635 (b) the employee:

636 (i) remains employed by the Department of Corrections;

637 (ii) meets the eligibility requirements of this system;

638 (iii) was hired into a position covered by this system prior to July 1, 2015; and

639 (iv) has not had a break in service on or after July 1, 2015.

640 (9) An employee who is reassigned to the Department of Technology Services or to the
641 Department of Human Resource Management, and who was a member of this system, is
642 entitled to remain a member of this system.

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

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

647 (ii) complete training as provided in Section [53-6-303](#), [53-13-103](#), [53-13-104](#), or

648 53-13-105.

649 (b) If a position satisfies the requirements of Subsection (10)(a), the office and the
650 Peace Officer Standards and Training Council shall consider whether or not the position
651 requires the employee to:

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

654 (ii) perform duties that consist primarily of providing community protection; and

655 (iii) respond to situations involving threats to public safety and make emergency
656 decisions affecting the lives and health of others.

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

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

663 (13) Except as provided under Subsection (14), if a participating employer's public
664 safety service employees are not covered by this system or under Chapter 15, Public Safety
665 Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees
666 who may otherwise qualify for membership in this system shall, at the discretion of the
667 participating employer, remain in their current retirement system.

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

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

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

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

677 (iii) is irrevocable.

678 (15) (a) Subject to Subsection (16), beginning July 1, 2015, a public safety service

679 employee who is a dispatcher employed by:

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

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

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

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

690 (16) Notwithstanding any other provision of this section, a person initially entering
691 employment with a participating employer on or after July 1, 2011, who does not have service
692 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
693 not participate in this system.

694 Section 7. Section **49-15-102** is amended to read:

695 **49-15-102. Definitions.**

696 As used in this chapter:

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

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

705 (c) "Compensation" does not include:

706 (i) overtime;

707 (ii) sick pay incentives;

708 (iii) retirement pay incentives;

709 (iv) the monetary value of remuneration paid in kind, as in a residence, use of

710 equipment or uniform, travel, or similar payments;

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

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

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

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

718 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
719 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
720 [~~and~~], (b), and (c).

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

726 (b) In cases where the participating employer provides acceptable documentation to the
727 office, the limitation in Subsection (3)(a) may be exceeded if:

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

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

730 (c) The annual compensation used to calculate final average salary shall be based on:

731 (i) a calendar year for a member employed by a participating employer that is not an
732 educational institution; or

733 (ii) a contract year for a member employed by an educational institution.

734 (4) (a) "Line-of-duty death" means a death resulting from:

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

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

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

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

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

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

747 (iv) occurs in a manner other than as described in Subsection (4)(a).

748 (5) "Participating employer" means an employer which meets the participation
749 requirements of Section 49-15-201.

750 (6) (a) "Public safety service" means employment normally requiring an average of
751 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

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

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

754 (iii) special function officer approved in accordance with Sections 49-15-201 and
755 53-13-105;

756 (iv) dispatcher who is certified in accordance with Section 53-6-303; or

757 (v) full-time member of the Board of Pardons and Parole created under Section
758 77-27-2.

759 (b) Except as provided under Subsections (6)(a)(iv) and (v), "public safety service"
760 also requires that in the course of employment the employee's life or personal safety is at risk.

761 (7) "Public safety service employee" means an employee of a participating employer
762 who performs public safety service under this chapter.

763 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
764 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
765 physical law enforcement, prison security, disaster relief, or other emergency response activity.

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

768 (9) "System" means the Public Safety Noncontributory Retirement System created
769 under this chapter.

770 (10) "Years of service credit" means the number of periods, each to consist of 12 full
771 months as determined by the board, whether consecutive or not, during which a public safety

772 service employee was employed by a participating employer, including time the public safety
773 service employee was absent in the service of the United States government on military duty.

774 Section 8. Section **49-15-201** is amended to read:

775 **49-15-201. System membership -- Eligibility.**

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

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

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

785 (b) (i) A participating employer other than the state that elected on or before July 1,
786 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety
787 service employee to elect to participate in either this system or the Public Safety Contributory
788 Retirement System.

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

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

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

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

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

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

803 service employees of the participating employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

836 (8) A public safety service employee who is transferred or promoted to an
837 administration position [~~not covered by this system~~] requiring the performance of duties that
838 consist primarily of management or supervision of public safety service employees shall
839 continue to earn public safety service credit in this system as long as the employee remains
840 employed in the same department.

841 (9) An employee of the Department of Corrections shall continue to earn public safety
842 service credit in this system if:

843 (a) the employee's position is no longer covered under this system for new employees
844 hired on or after July 1, 2015; and

845 (b) the employee:

846 (i) remains employed by the Department of Corrections;

847 (ii) meets the eligibility requirements of this system;

848 (iii) was hired into a position covered by this system prior to July 1, 2015; and

849 (iv) has not had a break in service on or after July 1, 2015.

850 (10) Any employee who is reassigned to the Department of Technology Services or to
851 the Department of Human Resource Management, and who was a member in this system, shall
852 be entitled to remain a member in this system.

853 (11) (a) To determine that a position is covered under this system, the office and, if a
854 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
855 position requires the employee to:

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

857 (ii) complete training as provided in Section [53-6-303](#), [53-13-103](#), [53-13-104](#), or
858 [53-13-105](#).

859 (b) If a position satisfies the requirements of Subsection (11)(a), the office and Peace
860 Officer Standards and Training Council shall consider whether the position requires the
861 employee to:

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

864 (ii) perform duties that consist primarily of providing community protection; and

865 (iii) respond to situations involving threats to public safety and make emergency
866 decisions affecting the lives and health of others.

867 (12) If a subcommittee is used to recommend the determination of disputes to the
868 Peace Officer Standards and Training Council, the subcommittee shall comply with the
869 requirements of Subsection (11) in making its recommendation.

870 (13) A final order of the Peace Officer Standards and Training Council regarding a
871 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative
872 Procedures Act.

873 (14) Except as provided under Subsection (15), if a participating employer's public
874 safety service employees are not covered by this system or under Chapter 14, Public Safety
875 Contributory Retirement Act, as of January 1, 1998, those public safety service employees who
876 may otherwise qualify for membership in this system shall, at the discretion of the participating
877 employer, remain in their current retirement system.

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

882 (b) The public safety service employee's election to remain in the current retirement
883 system under Subsection (15)(a):

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

886 (ii) shall be documented by written notice to the participating employer; and

887 (iii) is irrevocable.

888 (16) (a) Subject to Subsection (17), beginning July 1, 2015, a public safety service
889 employee who is a dispatcher employed by:

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

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

894 (b) A participating employer's election to cover its dispatchers under this system under
895 Subsection (16)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the

896 governing body of the participating employer in accordance with rules made by the office.

897 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
898 of a participating employer under Subsection (16)(b), is not eligible for service credit in this
899 system.

900 (17) Notwithstanding any other provision of this section, a person initially entering
901 employment with a participating employer on or after July 1, 2011, who does not have service
902 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
903 not participate in this system.

904 Section 9. Section **49-16-102** is amended to read:

905 **49-16-102. Definitions.**

906 As used in this chapter:

907 (1) (a) "Compensation" means the total amount of payments that are includable as
908 gross income which are received by a firefighter service employee as base income for the
909 regularly scheduled work period. The participating employer shall establish the regularly
910 scheduled work period. Base income shall be determined prior to the deduction of member
911 contributions or any amounts the firefighter service employee authorizes to be deducted for
912 salary deferral or other benefits authorized by federal law.

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

915 (c) "Compensation" does not include:

916 (i) overtime;

917 (ii) sick pay incentives;

918 (iii) retirement pay incentives;

919 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,
920 or similar payments;

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

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

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

927 (2) (a) "Disability" means a physical or mental condition that, in the judgment of the
928 office, is total and presumably permanent, and prevents a member from performing firefighter
929 service.

930 (b) The determination of disability is based upon medical and other evidence
931 satisfactory to the office.

932 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
933 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
934 [~~and~~], (b), and (c).

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

940 (b) In cases where the participating employer provides acceptable documentation to the
941 office the limitation in Subsection (3)(a) may be exceeded if:

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

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

944 (c) The annual compensation used to calculate final average salary shall be based on:

945 (i) a calendar year for a member employed by a participating employer that is not an
946 educational institution; or

947 (ii) a contract year for a member employed by an educational institution.

948 (4) (a) "Firefighter service" means employment normally requiring an average of 2,080
949 hours of regularly scheduled employment per year rendered by a member who is:

950 (i) a firefighter service employee trained in firefighter techniques and assigned to a
951 position of hazardous duty with a regularly constituted fire department; or

952 (ii) the state fire marshal appointed under Section [53-7-103](#) or a deputy state fire
953 marshal.

954 (b) "Firefighter service" does not include secretarial staff or other similar employees.

955 (5) "Firefighter service employee" means an employee of a participating employer who
956 provides firefighter service under this chapter. An employee of a regularly constituted fire
957 department who does not perform firefighter service is not a firefighter service employee.

958 (6) (a) "Line-of-duty death or disability" means a death or any physical or mental
959 disability resulting from:

960 (i) external force, violence, or disease directly resulting from firefighter service; or

961 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
962 training or another strenuous activity required as an act of duty as a firefighter service
963 employee.

964 (b) "Line-of-duty death or disability" does not include a death or any physical or mental
965 disability that:

966 (i) occurs during an activity that is required as an act of duty as a firefighter service
967 employee if the activity is not a strenuous activity, including an activity that is clerical,
968 administrative, or of a nonmanual nature;

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

970 (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether
971 prescribed or nonprescribed, contributes to the employee's death or disability; or

972 (iv) occurs in a manner other than as described in Subsection (6)(a).

973 (c) "Line-of-duty death or disability" includes the death or disability of a paid
974 firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid
975 firefighter has five years of firefighter service credit.

976 (7) "Participating employer" means an employer which meets the participation
977 requirements of Section [49-16-201](#).

978 (8) "Regularly constituted fire department" means a fire department that employs a fire
979 chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid
980 employment per year.

981 (9) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
982 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
983 physical law enforcement, prison security, disaster relief, or other emergency response activity.

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

986 (10) "System" means the Firefighters' Retirement System created under this chapter.

987 (11) (a) "Volunteer firefighter" means any individual that is not regularly employed as
988 a firefighter service employee, but who:

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

993 (b) An individual that volunteers assistance but does not meet the requirements of
994 Subsection (11)(a) is not a volunteer firefighter for purposes of this chapter.

995 (12) "Years of service credit" means the number of periods, each to consist of 12 full
996 months as determined by the board, whether consecutive or not, during which a firefighter
997 service employee was employed by a participating employer or received full-time pay while on
998 sick leave, including any time the firefighter service employee was absent in the service of the
999 United States on military duty.

1000 Section 10. Section **49-17-102** is amended to read:

1001 **49-17-102. Definitions.**

1002 As used in this chapter:

1003 (1) (a) "Compensation" means the total amount of payments which are currently
1004 includable in gross income made by a participating employer to a member of this system for
1005 services rendered to the participating employer.

1006 (b) "Compensation" includes:

1007 (i) performance-based bonuses;

1008 (ii) cost-of-living adjustments;

1009 (iii) payments subject to Social Security deductions;

1010 (iv) any payments in excess of the maximum amount subject to deduction under Social
1011 Security law;

1012 (v) amounts which the member authorizes to be deducted or reduced for salary deferral
1013 or other benefits authorized by federal law; and

1014 (vi) member contributions.

1015 (c) "Compensation" for purposes of this chapter may not exceed the amount allowed
1016 under Internal Revenue Code Section 401(a)(17).

1017 (d) "Compensation," does not include:

1018 (i) the monetary value of remuneration paid in kind, such as a residence or use of
1019 equipment;

1020 (ii) all contributions made by a participating employer under any system or plan for the
1021 benefit of a member or participant;

1022 (iii) salary paid to a temporary or exempt employee;

1023 (iv) payments upon termination or any other special payments including early
1024 retirement inducements; or

1025 (v) uniform, travel, or similar payments.

1026 (2) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1027 highest two years of annual compensation preceding retirement, subject to Subsections (2)(a)
1028 [~~and~~], (b), and (c).

1029 (a) Except as provided in Subsection (2)(b), the percentage increase in annual
1030 compensation in any one of the years used may not exceed the previous year's compensation by
1031 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1032 of the dollar during the previous year, as measured by a United States Bureau of Labor
1033 Statistics Consumer Price Index average as determined by the board.

1034 (b) In cases where the participating employer provides acceptable documentation to the
1035 board, the limitation in Subsection (2)(a) may be exceeded if:

1036 (i) the member has transferred from another participating employer; or

1037 (ii) the member has been promoted to a new position.

1038 (c) The annual compensation used to calculate final average salary shall be based on
1039 the state's fiscal year.

1040 (3) "Judge" means a judge or justice of the courts of record as enumerated in Section
1041 [78A-1-101](#).

1042 (4) "Participating employer" means the state.

1043 (5) "System" means the Judges' Contributory Retirement System created under this
1044 chapter.

1045 (6) "Years of service credit" means the number of periods, each to consist of 12 full
1046 months as determined by the board, whether consecutive or not, during which a judge was
1047 employed by a participating employer.

1048 Section 11. Section **49-18-102** is amended to read:

1049 **49-18-102. Definitions.**

1050 As used in this chapter:

1051 (1) (a) "Compensation" means the total amount of payments which are currently
1052 includable in gross income made by a participating employer to a member of this system for
1053 services rendered to the participating employer.

1054 (b) "Compensation" includes:

1055 (i) performance-based bonuses;

1056 (ii) cost-of-living adjustments;

1057 (iii) payments subject to Social Security deductions;

1058 (iv) any payments in excess of the maximum amount subject to deduction under Social
1059 Security law; and

1060 (v) amounts which the member authorizes to be deducted or reduced for salary deferral
1061 or other benefits authorized by federal law.

1062 (c) "Compensation" for purposes of this chapter may not exceed the amount allowed
1063 under Internal Revenue Code Section 401(a)(17).

1064 (d) "Compensation" does not include:

1065 (i) the monetary value of remuneration paid in kind, such as a residence or use of
1066 equipment;

1067 (ii) all contributions made by a participating employer under a system or plan for the
1068 benefit of a member or participant;

1069 (iii) salary paid to a temporary or exempt employee;

1070 (iv) payments upon termination or any other special payments including early
1071 retirement inducements; or

1072 (v) uniform, travel, or similar payments.

1073 (2) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1074 highest two years of annual compensation preceding retirement, subject to Subsections (2)(a)
1075 [~~and~~], (b), and (c).

1076 (a) Except as provided in Subsection (2)(b), the percentage increase in annual
1077 compensation in any one of the years used may not exceed the previous year's compensation by
1078 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1079 of the dollar during the previous year, as measured by a United States Bureau of Labor
1080 Statistics Consumer Price Index average as determined by the board.

1081 (b) In cases where the participating employer provides acceptable documentation to the

1082 board, the limitation in Subsection (2)(a) may be exceeded if:

1083 (i) the member has transferred from another agency; or

1084 (ii) the member has been promoted to a new position.

1085 (c) The annual compensation used to calculate final average salary shall be based on

1086 the state's fiscal year.

1087 (3) "Judge" means a judge or justice of the courts of record as enumerated in Section

1088 78A-1-101.

1089 (4) "Participating employer" means the state.

1090 (5) "System" means the Judges' Noncontributory Retirement System created under this
1091 chapter.

1092 (6) "Years of service credit" means the number of periods, each to consist of 12 full
1093 months or as determined by the board, whether consecutive or not, during which a judge was
1094 employed by a participating employer.

1095 Section 12. Section **49-21-403** is amended to read:

1096 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

1097 (1) An eligible employee covered by this chapter and eligible for service credit under a
1098 system or plan, including an eligible employee who relinquishes rights to retirement benefits
1099 under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall
1100 receive a monthly disability benefit until the earlier of:

1101 (a) the date of the eligible employee's death;

1102 (b) the date the eligible employee no longer has a disability;

1103 (c) the date the eligible employee has accumulated or would have accumulated, if the
1104 employee had not chosen the Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan,
1105 Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan, been a volunteer firefighter, or
1106 exempted from a retirement system or plan:

1107 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public
1108 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement
1109 Act;

1110 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'
1111 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;

1112 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public

1113 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory
1114 Retirement Act;

1115 (iv) 35 years of service credit if the eligible employee is covered by the defined benefit
1116 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the
1117 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

1118 (v) 25 years of service credit if the eligible employee is covered by the defined benefit
1119 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the
1120 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; [or]

1121 (d) the date the eligible employee has received a monthly disability benefit for the
1122 following applicable time periods:

1123 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
1124 until age 65;

1125 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
1126 monthly disability benefit is payable for five years;

1127 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1128 monthly disability benefit is payable for four years;

1129 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1130 monthly disability benefit is payable for three years;

1131 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1132 monthly disability benefit is payable for two years; and

1133 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
1134 monthly disability benefit is payable for one year[-]; or

1135 (e) the eligible employee's retirement date, set when the eligible employee retires from
1136 a system or from the Utah Governors' and Legislators' Retirement Plan.

1137 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible
1138 for service credit under a system may retire under the requirements of the system which
1139 covered the eligible employee on the date of disability.

1140 (b) The final average salary used in the calculation of the allowance shall be based on
1141 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase
1142 factor applied to retirees of the system which covered the eligible employee on the date of
1143 disability.

1144 (3) An eligible employee who is eligible for service credit in a system, but has
1145 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
1146 eligible employee would have received by being eligible for service credit in the system
1147 covering the eligible employee on the date of disability, except for the accrual of service credit,
1148 in accordance with this title.

1149 (4) An eligible employee receiving a monthly disability benefit who has service credit
1150 from two or more systems may not combine service credits under Section 49-11-405 in
1151 qualifying for retirement, unless the eligible employee would receive a greater allowance by
1152 combining the service credits.

1153 (5) An eligible employee covered by this chapter who is a participant in the Tier II
1154 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or
1155 Chapter 23, Part 4, Tier II Defined Contribution Plan, who applies and is qualified for a
1156 monthly disability benefit, shall receive a monthly disability benefit until the earlier of:

1157 (a) the date of the eligible employee's death;
1158 (b) the date the eligible employee no longer has a disability;
1159 (c) (i) 35 years from the date the eligible employee began participation in the Tier II
1160 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan; or

1161 (ii) 25 years from the date the eligible employee began participation in the Tier II
1162 Defined Contribution Plan created in Chapter 23, Part 4, Tier II Defined Contribution Plan; or

1163 (d) the date the eligible employee has received a monthly disability benefit for the
1164 following applicable time periods:

1165 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
1166 until age 65;

1167 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
1168 monthly disability benefit is payable for five years;

1169 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1170 monthly disability benefit is payable for four years;

1171 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1172 monthly disability benefit is payable for three years;

1173 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1174 monthly disability benefit is payable for two years; and

1175 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
1176 monthly disability benefit is payable for one year.

1177 Section 13. Section **49-22-102** is amended to read:

1178 **49-22-102. Definitions.**

1179 As used in this chapter:

1180 (1) "Benefits normally provided" has the same meaning as defined in Section

1181 [49-12-102](#).

1182 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
1183 amount of payments made by a participating employer to a member of this system for services
1184 rendered to the participating employer, including:

1185 (i) bonuses;

1186 (ii) cost-of-living adjustments;

1187 (iii) other payments currently includable in gross income and that are subject to Social
1188 Security deductions, including any payments in excess of the maximum amount subject to
1189 deduction under Social Security law;

1190 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
1191 or other benefits authorized by federal law; and

1192 (v) member contributions.

1193 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
1194 under Internal Revenue Code, Section 401(a)(17).

1195 (c) "Compensation" does not include:

1196 (i) the monetary value of remuneration paid in kind, including a residence or use of
1197 equipment;

1198 (ii) the cost of any employment benefits paid for by the participating employer;

1199 (iii) compensation paid to a temporary employee or an employee otherwise ineligible
1200 for service credit;

1201 (iv) any payments upon termination, including accumulated vacation, sick leave
1202 payments, severance payments, compensatory time payments, or any other special payments; or

1203 (v) any allowances or payments to a member for costs or expenses paid by the
1204 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
1205 housing costs, insurance costs, equipment costs, and dependent care costs.

1206 (d) The executive director may determine if a payment not listed under this Subsection
1207 (2) falls within the definition of compensation.

1208 (3) "Corresponding Tier I system" means the system or plan that would have covered
1209 the member if the member had initially entered employment before July 1, 2011.

1210 (4) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1211 highest five years of annual compensation preceding retirement subject to Subsections (4)(a),
1212 (b), (c), [~~and~~] (d), and (e).

1213 (a) Except as provided in Subsection (4)(b), the percentage increase in annual
1214 compensation in any one of the years used may not exceed the previous year's compensation by
1215 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1216 of the dollar during the previous year, as measured by a United States Bureau of Labor
1217 Statistics Consumer Price Index average as determined by the board.

1218 (b) In cases where the participating employer provides acceptable documentation to the
1219 office, the limitation in Subsection (4)(a) may be exceeded if:

1220 (i) the member has transferred from another agency; or

1221 (ii) the member has been promoted to a new position.

1222 (c) If the member retires more than six months from the date of termination of
1223 employment, the member is considered to have been in service at the member's last rate of pay
1224 from the date of the termination of employment to the effective date of retirement for purposes
1225 of computing the member's final average salary only.

1226 (d) If the member has less than five years of service credit in this system, final average
1227 salary means the average annual compensation paid to the member during the full period of
1228 service credit.

1229 (e) The annual compensation used to calculate final average salary shall be based on:

1230 (i) a calendar year for a member employed by a participating employer that is not an
1231 educational institution; or

1232 (ii) a contract year for a member employed by an educational institution.

1233 (5) "Participating employer" means an employer which meets the participation
1234 requirements of:

1235 (a) Sections 49-12-201 and 49-12-202;

1236 (b) Sections 49-13-201 and 49-13-202;

- 1237 (c) Section 49-19-201; or
- 1238 (d) Section 49-22-201 or 49-22-202.
- 1239 (6) (a) "Regular full-time employee" means an employee whose term of employment
- 1240 for a participating employer contemplates continued employment during a fiscal or calendar
- 1241 year and whose employment normally requires an average of 20 hours or more per week,
- 1242 except as modified by the board, and who receives benefits normally provided by the
- 1243 participating employer.
- 1244 (b) "Regular full-time employee" includes:
- 1245 (i) a teacher whose term of employment for a participating employer contemplates
- 1246 continued employment during a school year and who teaches half time or more;
- 1247 (ii) a classified school employee:
- 1248 (A) who is hired before July 1, 2013; and
- 1249 (B) whose employment normally requires an average of 20 hours per week or more for
- 1250 a participating employer, regardless of benefits provided;
- 1251 (iii) an appointive officer whose appointed position is full time as certified by the
- 1252 participating employer;
- 1253 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the
- 1254 attorney general, and a state legislator;
- 1255 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position
- 1256 is full time as certified by the participating employer;
- 1257 (vi) a faculty member or employee of an institution of higher education who is
- 1258 considered full time by that institution of higher education; and
- 1259 (vii) an individual who otherwise meets the definition of this Subsection (6) who
- 1260 performs services for a participating employer through a professional employer organization or
- 1261 similar arrangement.
- 1262 (c) "Regular full-time employee" does not include:
- 1263 (i) a firefighter service employee as defined in Section 49-23-102;
- 1264 (ii) a public safety service employee as defined in Section 49-23-102;
- 1265 (iii) a classified school employee:
- 1266 (A) who is hired on or after July 1, 2013; and
- 1267 (B) who does not receive benefits normally provided by the participating employer

1268 even if the employment normally requires an average of 20 hours per week or more for a
1269 participating employer; or

1270 (iv) a classified school employee:

1271 (A) who is hired before July 1, 2013;

1272 (B) who did not qualify as a regular full-time employee before July 1, 2013;

1273 (C) who does not receive benefits normally provided by the participating employer;

1274 and

1275 (D) whose employment hours are increased on or after July 1, 2013, to require an
1276 average of 20 hours per week or more for a participating employer.

1277 (7) "System" means the New Public Employees' Tier II Contributory Retirement
1278 System created under this chapter.

1279 (8) "Years of service credit" means:

1280 (a) a period consisting of 12 full months as determined by the board;

1281 (b) a period determined by the board, whether consecutive or not, during which a
1282 regular full-time employee performed services for a participating employer, including any time
1283 the regular full-time employee was absent on a paid leave of absence granted by a participating
1284 employer or was absent in the service of the United States government on military duty as
1285 provided by this chapter; or

1286 (c) the regular school year consisting of not less than eight months of full-time service
1287 for a regular full-time employee of an educational institution.

1288 Section 14. Section **49-22-201** is amended to read:

1289 **49-22-201. System membership -- Eligibility.**

1290 (1) Beginning July 1, 2011, a participating employer shall participate in this system.

1291 (2) (a) A person initially entering regular full-time employment with a participating
1292 employer on or after July 1, 2011, who does not have service credit accrued before July 1,
1293 2011, in a Tier I system or plan administered by the board, is eligible:

1294 (i) as a member for service credit and defined contributions under the Tier II hybrid
1295 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1296 (ii) as a participant for defined contributions under the Tier II defined contribution plan
1297 established by Part 4, Tier II Defined Contribution Plan.

1298 (b) A person initially entering regular full-time employment with a participating

1299 employer on or after July 1, 2011, shall:

1300 (i) make an election to participate in the system created under this chapter:

1301 (A) as a member for service credit and defined contributions under the Tier II hybrid
1302 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1303 (B) as a participant for defined contributions under the Tier II defined contribution plan
1304 established by Part 4, Tier II Defined Contribution Plan; and

1305 (ii) electronically submit to the office notification of the member's election under
1306 Subsection (2)(b)(i) in a manner approved by the office.

1307 (c) An election made by a person initially entering regular full-time employment with a
1308 participating employer under this Subsection (2) is irrevocable beginning one year from the
1309 date of eligibility for accrual of benefits.

1310 (d) If no election is made under Subsection (2)(b)(i), the person shall become a
1311 member eligible for service credit and defined contributions under the Tier II hybrid retirement
1312 system established by Part 3, Tier II Hybrid Retirement System.

1313 (3) Notwithstanding the provisions of this section and except as provided in Subsection
1314 (4), an elected official initially entering office on or after July 1, 2011:

1315 (a) is only eligible to participate in the Tier II defined contribution plan established
1316 under Part 4, Tier II Defined Contribution Plan; [~~and~~]

1317 (b) is not eligible to participate in the Tier II hybrid retirement system established
1318 under Part 3, Tier II Hybrid Retirement System[~~;~~]; and

1319 (c) is vested immediately in the elected official's benefit and the benefit is
1320 nonforfeitable, including the total amount contributed by the participating employer and the
1321 total amount contributed by the member in the Tier II defined contribution plan.

1322 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected
1323 official initially entering office on or after July 1, 2011, who has service credit accrued before
1324 July 1, 2011:

1325 (a) in a Tier I retirement system or plan administered by the board shall continue in the
1326 Tier I system or plan for which the legislator or full-time elected official is eligible; or

1327 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which
1328 the legislator or full-time elected official is eligible.

1329 Section 15. Section **49-22-205** is amended to read:

1330 **49-22-205. Exemptions from participation in system.**

1331 (1) Upon filing a written request for exemption with the office, the following
1332 employees are exempt from participation in the system as provided in this section:

1333 (a) ~~[an elected official; (b)]~~ an executive department head of the state;

1334 ~~[(c)]~~ (b) a member of the State Tax Commission;

1335 ~~[(d)]~~ (c) a member of the Public Service Commission;

1336 ~~[(e)]~~ (d) a member of a full-time or part-time board or commission;

1337 ~~[(f)]~~ (e) an employee of the Governor's Office of Management and Budget;

1338 ~~[(g)]~~ (f) an employee of the Governor's Office of Economic Development;

1339 ~~[(h)]~~ (g) an employee of the Commission on Criminal and Juvenile Justice;

1340 ~~[(i)]~~ (h) an employee of the Governor's Office;

1341 ~~[(j)]~~ (i) an employee of the State Auditor's Office;

1342 ~~[(k)]~~ (j) an employee of the State Treasurer's Office;

1343 ~~[(l)]~~ (k) any other member who is permitted to make an election under Section

1344 [49-11-406](#);

1345 ~~[(m)]~~ (l) a person appointed as a city manager or appointed as a city administrator or
1346 another at-will employee of a municipality, county, or other political subdivision;

1347 ~~[(n)]~~ (m) an employee of an interlocal cooperative agency created under Title 11,
1348 Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily
1349 provided through membership in a labor organization that provides retirement benefits to its
1350 members; and

1351 ~~[(o)]~~ (n) an employee of the Utah Science Technology and Research Initiative created
1352 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

1353 (2) (a) A participating employer shall prepare a list designating those positions eligible
1354 for exemption under Subsection (1).

1355 (b) An employee may not be exempted unless the employee is employed in a position
1356 designated by the participating employer under Subsection (1).

1357 (3) (a) In accordance with this section, Section [49-12-203](#), and Section [49-13-203](#), a
1358 municipality, county, or political subdivision may not exempt a total of more than 50 positions
1359 or a number equal to 10% of the employees of the municipality, county, or political
1360 subdivision, whichever is less.

- 1361 (b) A municipality, county, or political subdivision may exempt at least one regular
1362 full-time employee.
- 1363 (4) Each participating employer shall:
- 1364 (a) file each employee exemption annually with the office; and
- 1365 (b) update an employee exemption in the event of any change.
- 1366 (5) Beginning on the effective date of the exemption for an employee who elects to be
1367 exempt in accordance with Subsection (1):
- 1368 (a) for a member of the Tier II defined contribution plan:
- 1369 (i) the participating employer shall contribute the nonelective contribution and the
1370 amortization rate described in Section 49-22-401, except that the nonelective contribution is
1371 exempt from the vesting requirements of Subsection 49-22-401(3)(a); and
- 1372 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 1373 (b) for a member of the Tier II hybrid retirement system:
- 1374 (i) the participating employer shall contribute the nonelective contribution and the
1375 amortization rate described in Section 49-22-401, except that the contribution is exempt from
1376 the vesting requirements of Subsection 49-22-401(3)(a);
- 1377 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 1378 (iii) the member is not eligible for additional service credit in the system.
- 1379 (6) If an employee who is a member of the Tier II hybrid retirement system
1380 subsequently revokes the election of exemption made under Subsection (1), the provisions
1381 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee
1382 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- 1383 (7) (a) All employer contributions made on behalf of an employee shall be invested in
1384 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election
1385 period under Subsection 49-22-201(2)(c) is expired if the employee:
- 1386 (i) elects to be exempt in accordance with Subsection (1); and
- 1387 (ii) continues employment with the participating employer through the one-year
1388 election period under Subsection 49-22-201(2)(c).
- 1389 (b) An employee is entitled to receive a distribution of the employer contributions
1390 made on behalf of the employee and all associated investment gains and losses if the employee:
- 1391 (i) elects to be exempt in accordance with Subsection (1); and

1392 (ii) terminates employment prior to the one-year election period under Subsection
1393 49-22-201(2)(c).

1394 (8) (a) The office shall make rules to implement this section.

1395 (b) The rules made under this Subsection (8) shall include provisions to allow the
1396 exemption provided under Subsection (1) to apply to all contributions made beginning on or
1397 after July 1, 2011, on behalf of an exempted employee who began the employment before May
1398 8, 2012.

1399 Section 16. Section 49-22-303 is amended to read:

1400 **49-22-303. Defined contribution benefit established -- Contribution by employer**
1401 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
1402 **plans.**

1403 (1) (a) A participating employer shall make a nonelective contribution on behalf of
1404 each regular full-time employee who is a member of this system in an amount equal to 10%
1405 minus the contribution rate paid by the employer [~~pursuant to~~] under Subsection
1406 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under
1407 Section 401(k) of the Internal Revenue Code which:

1408 (i) is sponsored by the board; and

1409 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1410 (b) The member may make voluntary deferrals to:

1411 (i) the qualified 401(k) plan which receives the employer contribution described in this
1412 Subsection (1); or

1413 (ii) at the member's option, another defined contribution plan established by the
1414 participating employer.

1415 (2) (a) The total amount contributed by the participating employer under Subsection
1416 (1)(a), including associated investment gains and losses, vests to the member upon accruing
1417 four years of service credit under this title.

1418 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
1419 member's benefit immediately and is nonforfeitable.

1420 (c) (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to
1421 which the member may be entitled.

1422 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of

1423 one year of the total years required for vesting, the member shall be considered to have the total
1424 years of service credit required for vesting.

1425 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be
1426 invested in a default option selected by the board until the member is vested in accordance with
1427 Subsection (2)(a).

1428 (b) A member may direct the investment of contributions made by a participating
1429 employer under Subsection (1)(a) only after the contributions have vested in accordance with
1430 Subsection (2)(a).

1431 (c) A member may direct the investment of contributions made by the member under
1432 Subsection (1)(b).

1433 (4) No loans shall be available from contributions made by a participating employer
1434 under Subsection (1)(a).

1435 (5) No hardship distributions shall be available from contributions made by a
1436 participating employer under Subsection (1)(a).

1437 (6) (a) Except as provided in Subsection (6)(b) and Section [49-22-205](#), if a member
1438 terminates employment with a participating employer prior to the vesting period described in
1439 Subsection (2)(a), all contributions, including associated investment gains and losses, made by
1440 a participating employer on behalf of the member under Subsection (1)(a) are subject to
1441 forfeiture.

1442 (b) If a member who terminates employment with a participating employer prior to the
1443 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
1444 another participating employer within 10 years of the termination date of the previous
1445 employment:

1446 (i) all contributions made by the previous participating employer on behalf of the
1447 member, including associated investment gains and losses, shall be reinstated upon
1448 employment as a regular full-time employee; and

1449 (ii) the length of time that the member worked with the previous employer shall be
1450 included in determining whether the member has completed the vesting period under
1451 Subsection (2)(a).

1452 (c) The office shall establish a forfeiture account and shall specify the uses of the
1453 forfeiture account, which may include an offset against administrative costs or employer

1454 contributions made under this section.

1455 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
1456 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
1457 Internal Revenue Code.

1458 (8) The office may take any action which in its judgment is necessary to maintain the
1459 tax-qualified status of its 401(k) defined contribution plan under federal law.

1460 Section 17. Section **49-22-401** is amended to read:

1461 **49-22-401. Contributions -- Rates.**

1462 (1) Up to the amount allowed by federal law, the participating employer shall make a
1463 nonelective contribution of 10% of the participant's compensation to a defined contribution
1464 plan.

1465 (2) (a) The participating employer shall contribute the 10% nonelective contribution
1466 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1467 Internal Revenue Code which:

1468 (i) is sponsored by the board; and

1469 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1470 (b) The member may make voluntary deferrals to:

1471 (i) the qualified 401(k) plan which receives the employer contribution described in this
1472 Subsection (2); or

1473 (ii) at the member's option, another defined contribution plan established by the
1474 participating employer.

1475 (c) In addition to the percent specified under Subsection (2)(a), the participating
1476 employer shall pay the corresponding Tier I system amortization rate of the employee's
1477 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1478 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1479 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1480 employment as a regular full-time employee under this title.

1481 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1482 member's benefit immediately and is nonforfeitable.

1483 (c) Upon filing a written request for exemption with the office, an eligible employee is
1484 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section

1485 49-22-205.

1486 (d) (i) Years of employment under Subsection (3)(a) includes any fraction of a year to
1487 which the member may be entitled.

1488 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1489 one year of the total years required for vesting, the member shall be considered to have the total
1490 years of employment required for vesting.

1491 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1492 invested in a default option selected by the board until the member is vested in accordance with
1493 Subsection (3)(a).

1494 (b) A member may direct the investment of contributions including associated
1495 investment gains and losses made by a participating employer under Subsection (2)(a) only
1496 after the contributions have vested in accordance with Subsection (3)(a).

1497 (c) A member may direct the investment of contributions made by the member under
1498 Subsection (3)(b).

1499 (5) No loans shall be available from contributions made by a participating employer
1500 under Subsection (2)(a).

1501 (6) No hardship distributions shall be available from contributions made by a
1502 participating employer under Subsection (2)(a).

1503 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1504 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1505 contributions made by a participating employer on behalf of the member including associated
1506 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1507 (b) If a member who terminates employment with a participating employer prior to the
1508 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1509 another participating employer within 10 years of the termination date of the previous
1510 employment:

1511 (i) all contributions made by the previous participating employer on behalf of the
1512 member including associated investment gains and losses shall be reinstated upon the member's
1513 employment as a regular full-time employee; and

1514 (ii) the length of time that the member worked with the previous employer shall be
1515 included in determining whether the member has completed the vesting period under

1516 Subsection (3)(a).

1517 (c) The office shall establish a forfeiture account and shall specify the uses of the
1518 forfeiture account, which may include an offset against administrative costs or employer
1519 contributions made under this section.

1520 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1521 any relevant information pertaining to the maintenance of its tax qualification under the
1522 Internal Revenue Code.

1523 (9) The office may take any action which in its judgment is necessary to maintain the
1524 tax-qualified status of its 401(k) defined contribution plan under federal law.

1525 Section 18. Section **49-23-102** is amended to read:

1526 **49-23-102. Definitions.**

1527 As used in this chapter:

1528 (1) (a) "Compensation" means the total amount of payments that are includable in
1529 gross income received by a public safety service employee or a firefighter service employee as
1530 base income for the regularly scheduled work period. The participating employer shall
1531 establish the regularly scheduled work period. Base income shall be determined prior to the
1532 deduction of any amounts the public safety service employee or firefighter service employee
1533 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

1534 (b) "Compensation" includes performance-based bonuses and cost-of-living
1535 adjustments.

1536 (c) "Compensation" does not include:

1537 (i) overtime;

1538 (ii) sick pay incentives;

1539 (iii) retirement pay incentives;

1540 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
1541 equipment or uniform, travel, or similar payments;

1542 (v) a lump-sum payment or special payment covering accumulated leave; and

1543 (vi) all contributions made by a participating employer under this system or under any
1544 other employee benefit system or plan maintained by a participating employer for the benefit of
1545 a member or participant.

1546 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed

1547 under Section 401(a)(17), Internal Revenue Code.

1548 (2) "Corresponding Tier I system" means the system or plan that would have covered
1549 the member if the member had initially entered employment before July 1, 2011.

1550 (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.

1551 (4) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1552 highest five years of annual compensation preceding retirement subject to Subsections (4)(a),
1553 (b), (c), [~~and~~] (d), and (e).

1554 (a) Except as provided in Subsection (4)(b), the percentage increase in annual
1555 compensation in any one of the years used may not exceed the previous year's compensation by
1556 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1557 of the dollar during the previous year, as measured by a United States Bureau of Labor
1558 Statistics Consumer Price Index average as determined by the board.

1559 (b) In cases where the participating employer provides acceptable documentation to the
1560 office, the limitation in Subsection (4)(a) may be exceeded if:

1561 (i) the member has transferred from another agency; or

1562 (ii) the member has been promoted to a new position.

1563 (c) If the member retires more than six months from the date of termination of
1564 employment, the member is considered to have been in service at the member's last rate of pay
1565 from the date of the termination of employment to the effective date of retirement for purposes
1566 of computing the member's final average salary only.

1567 (d) If the member has less than five years of service credit in this system, final average
1568 salary means the average annual compensation paid to the member during the full period of
1569 service credit.

1570 (e) The annual compensation used to calculate final average salary shall be based on:

1571 (i) a calendar year for a member employed by a participating employer that is not an
1572 educational institution; or

1573 (ii) a contract year for a member employed by an educational institution.

1574 (5) (a) "Firefighter service" means employment normally requiring an average of 2,080
1575 hours of regularly scheduled employment per year rendered by a member who is:

1576 (i) a firefighter service employee trained in firefighter techniques and assigned to a
1577 position of hazardous duty with a regularly constituted fire department; or

1578 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire
1579 marshal.

1580 (b) "Firefighter service" does not include secretarial staff or other similar employees.

1581 (6) "Firefighter service employee" means an employee of a participating employer who
1582 provides firefighter service under this chapter. An employee of a regularly constituted fire
1583 department who does not perform firefighter service is not a firefighter service employee.

1584 (7) (a) "Line-of-duty death" means a death resulting from:

1585 (i) external force, violence, or disease occasioned by an act of duty as a public safety
1586 service or firefighter service employee; or

1587 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
1588 training or another strenuous activity required as an act of duty as a public safety service or
1589 firefighter service employee.

1590 (b) "Line-of-duty death" does not include a death that:

1591 (i) occurs during an activity that is required as an act of duty as a public safety service
1592 or firefighter service employee if the activity is not a strenuous activity, including an activity
1593 that is clerical, administrative, or of a nonmanual nature;

1594 (ii) occurs during the commission of a crime committed by the employee;

1595 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
1596 nonprescribed, contributes to the employee's death; or

1597 (iv) occurs in a manner other than as described in Subsection (7)(a).

1598 (8) "Participating employer" means an employer which meets the participation
1599 requirements of:

1600 (a) Sections 49-14-201 and 49-14-202;

1601 (b) Sections 49-15-201 and 49-15-202;

1602 (c) Sections 49-16-201 and 49-16-202; or

1603 (d) Sections 49-23-201 and 49-23-202.

1604 (9) (a) "Public safety service" means employment normally requiring an average of
1605 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

1606 (i) law enforcement officer in accordance with Section 53-13-103;

1607 (ii) correctional officer in accordance with Section 53-13-104;

1608 (iii) special function officer approved in accordance with Sections 49-15-201 and

1609 53-13-105;

1610 (iv) dispatcher who is certified in accordance with Section 53-6-303; and

1611 (v) full-time member of the Board of Pardons and Parole created under Section

1612 77-27-2.

1613 (b) Except as provided under Subsections (9)(a)(iv) and (v), "public safety service"
1614 also requires that in the course of employment the employee's life or personal safety is at risk.

1615 (10) "Public safety service employee" means an employee of a participating employer
1616 who performs public safety service under this chapter.

1617 (11) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
1618 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
1619 physical law enforcement, prison security, disaster relief, or other emergency response activity.

1620 (b) "Strenuous activity" includes participating in a participating employer sanctioned
1621 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

1622 (12) "System" means the New Public Safety and Firefighter Tier II Contributory
1623 Retirement System created under this chapter.

1624 (13) (a) "Volunteer firefighter" means any individual that is not regularly employed as
1625 a firefighter service employee, but who:

1626 (i) has been trained in firefighter techniques and skills;

1627 (ii) continues to receive regular firefighter training; and

1628 (iii) is on the rolls of a legally organized volunteer fire department which provides
1629 ongoing training and serves a political subdivision of the state.

1630 (b) An individual that volunteers assistance but does not meet the requirements of
1631 Subsection (13)(a) is not a volunteer firefighter for purposes of this chapter.

1632 (14) "Years of service credit" means:

1633 (a) a period, consisting of 12 full months as determined by the board; or

1634 (b) a period determined by the board, whether consecutive or not, during which a
1635 regular full-time employee performed services for a participating employer, including any time
1636 the regular full-time employee was absent on a paid leave of absence granted by a participating
1637 employer or was absent in the service of the United States government on military duty as
1638 provided by this chapter.

1639 Section 19. Section 49-23-302 is amended to read:

1640 **49-23-302. Defined contribution benefit established -- Contribution by employer**
1641 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
1642 **plans.**

1643 (1) (a) A participating employer shall make a nonelective contribution on behalf of
1644 each public safety service employee or firefighter service employee who is a member of this
1645 system in an amount equal to 12% minus the contribution rate paid by the employer [~~pursuant~~
1646 ~~to~~] under Subsection 49-23-301(2)(a) of the member's compensation to a defined contribution
1647 plan qualified under Section 401(k) of the Internal Revenue Code which:

1648 (i) is sponsored by the board; and

1649 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1650 (b) The member may make voluntary deferrals to:

1651 (i) the qualified 401(k) plan which receives the employer contribution described in this
1652 Subsection (1); or

1653 (ii) at the member's option, another defined contribution plan established by the
1654 participating employer.

1655 (2) (a) The total amount contributed by the participating employer under Subsection
1656 (1)(a), including associated investment gains and losses, vests to the member upon accruing
1657 four years of service credit under this title.

1658 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
1659 member's benefit immediately and is nonforfeitable.

1660 (c) (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to
1661 which the member may be entitled.

1662 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1663 one year of the total years required for vesting, the member shall be considered to have the total
1664 years of service credit required for vesting.

1665 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be
1666 invested in a default option selected by the board until the member is vested in accordance with
1667 Subsection (2)(a).

1668 (b) A member may direct the investment of contributions made by a participating
1669 employer under Subsection (1)(a) only after the contributions have vested in accordance with
1670 Subsection (2)(a).

1671 (c) A member may direct the investment of contributions made by the member under
1672 Subsection (1)(b).

1673 (4) No loans shall be available from contributions made by a participating employer
1674 under Subsection (1)(a).

1675 (5) No hardship distributions shall be available from contributions made by a
1676 participating employer under Subsection (1)(a).

1677 (6) (a) Except as provided in Subsection (6)(b), if a member terminates employment
1678 with a participating employer prior to the vesting period described in Subsection (2)(a), all
1679 contributions, including associated investment gains and losses, made by a participating
1680 employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

1681 (b) If a member who terminates employment with a participating employer prior to the
1682 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
1683 another participating employer within 10 years of the termination date of the previous
1684 employment:

1685 (i) all contributions made by the previous participating employer on behalf of the
1686 member, including associated investment gains and losses, shall be reinstated upon the
1687 member's employment as a regular full-time employee; and

1688 (ii) the length of time that the member worked with the previous employer shall be
1689 included in determining whether the member has completed the vesting period under
1690 Subsection (2)(a).

1691 (c) The office shall establish a forfeiture account and shall specify the uses of the
1692 forfeiture account, which may include an offset against administrative costs or employer
1693 contributions made under this section.

1694 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
1695 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
1696 Internal Revenue Code.

1697 (8) The office may take any action which in its judgment is necessary to maintain the
1698 tax-qualified status of its 401(k) defined contribution plan under federal law.

1699 Section 20. Section **49-23-401** is amended to read:

1700 **49-23-401. Contributions -- Rates.**

1701 (1) Up to the amount allowed by federal law, the participating employer shall make a

1702 nonelective contribution of 12% of the participant's compensation to a defined contribution
1703 plan.

1704 (2) (a) The participating employer shall contribute the 12% nonelective contribution
1705 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1706 Internal Revenue Code which:

1707 (i) is sponsored by the board; and

1708 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1709 (b) The member may make voluntary deferrals to:

1710 (i) the qualified 401(k) plan which receives the employer contribution described in this
1711 Subsection (2); or

1712 (ii) at the member's option, another defined contribution plan established by the
1713 participating employer.

1714 (c) In addition to the percent specified under Subsection (2)(a), the participating
1715 employer shall pay the corresponding Tier I system amortization rate of the employee's
1716 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1717 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1718 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1719 service credit under this title.

1720 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1721 member's benefit immediately and is nonforfeitable.

1722 (c) Upon filing a written request for exemption with the office, an eligible employee is
1723 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
1724 [49-23-203](#).

1725 (d) (i) Years of service credit under Subsection (3)(a) includes any fraction of a year to
1726 which the member may be entitled.

1727 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1728 one year of the total years required for vesting, the member shall be considered to have the total
1729 years of service credit required for vesting.

1730 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1731 invested in a default option selected by the board until the member is vested in accordance with
1732 Subsection (3)(a).

1733 (b) A member may direct the investment of contributions, including associated
1734 investment gains and losses, made by a participating employer under Subsection (2)(a) only
1735 after the contributions have vested in accordance with Subsection (3)(a).

1736 (c) A member may direct the investment of contributions made by the member under
1737 Subsection (3)(b).

1738 (5) No loans shall be available from contributions made by a participating employer
1739 under Subsection (2)(a).

1740 (6) No hardship distributions shall be available from contributions made by a
1741 participating employer under Subsection (2)(a).

1742 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1743 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1744 contributions made by a participating employer on behalf of the member under Subsection
1745 (2)(a), including associated investment gains and losses are subject to forfeiture.

1746 (b) If a member who terminates employment with a participating employer prior to the
1747 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1748 another participating employer within 10 years of the termination date of the previous
1749 employment:

1750 (i) all contributions made by the previous participating employer on behalf of the
1751 member, including associated investment gains and losses, shall be reinstated upon the
1752 member's employment as a regular full-time employee; and

1753 (ii) the length of time that the member worked with the previous employer shall be
1754 included in determining whether the member has completed the vesting period under
1755 Subsection (3)(a).

1756 (c) The office shall establish a forfeiture account and shall specify the uses of the
1757 forfeiture account, which may include an offset against administrative costs of employer
1758 contributions made under this section.

1759 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1760 any relevant information pertaining to the maintenance of its tax qualification under the
1761 Internal Revenue Code.

1762 (9) The office may take any action which in its judgment is necessary to maintain the
1763 tax-qualified status of its 401(k) defined contribution plan under federal law.

1764 Section 21. Section **67-19-14.4** is amended to read:

1765 **67-19-14.4. Unused Sick Leave Retirement Program II -- Creation --**
1766 **Remuneration upon eligibility for allowance -- Medical expense account after retirement.**

1767 (1) (a) There is created the "Unused Sick Leave Retirement Program II."

1768 (b) An agency shall offer the Unused Sick Leave Retirement Option Program II to an
1769 employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah
1770 State Retirement and Insurance Benefit Act.

1771 (c) An employee who is participating in the Unused Sick Leave Retirement Program I
1772 under Section [67-19-14.2](#) may make a one-time and irrevocable election to transfer all unused
1773 sick leave hours which shall include all converted sick leave hours under Section [67-19-14.1](#)
1774 for use under the Unused Sick Leave Retirement Program II under this section.

1775 (2) (a) The Unused Sick Leave Retirement Program II provides that upon becoming
1776 eligible to receive a retirement allowance an employee employed by the state between January
1777 1, 2006, and January 3, 2014, shall receive remuneration for the employee's unused
1778 accumulated sick leave and converted sick leave accrued between January 1, 2006, and January
1779 3, 2014, in accordance with this section as follows:

1780 (i) subject to federal requirements and limitations, a contribution at the employee's rate
1781 of pay at the time of retirement for 25% of the employee's unused accumulated sick leave and
1782 converted sick leave shall be transferred directly to the employee's defined contribution plan
1783 qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah
1784 State Retirement Board; and

1785 (ii) participation in a benefit plan that provides for reimbursement for medical
1786 expenses using money deposited at the employee's rate of pay at the time of retirement from
1787 remaining unused accumulated sick leave and converted sick leave balances.

1788 (b) If the amount calculated under Subsection (2)(a)(i) exceeds the federal contribution
1789 limitations, the amount representing the excess shall be deposited under Subsection (2)(a)(ii).

1790 (c) An employee's rate of pay at the time of retirement for purposes of Subsection
1791 (2)(a)(ii) may not be less than the average rate of pay of state employees who retired in the
1792 same retirement system under Title 49, Utah State Retirement and Insurance Benefit Act,
1793 during the previous calendar year.

1794 (3) The Utah State Retirement Office shall develop and maintain a program to provide

1795 a benefit plan that provides for reimbursement for medical expenses under Subsection (2)(a)(ii)
1796 with~~[-(a)]~~ money deposited under Subsection (2)(a)(ii)~~[-and (b) accrued earnings]~~.

Legislative Review Note
Office of Legislative Research and General Counsel