

**UTAH RETIREMENT SYSTEMS AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

---

---

**LONG TITLE****General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ provides that certain employee exclusions, exemptions, participation, or elections are subject to requirements under federal law and rules made by the Utah State Retirement Board;
- ▶ amends the type of plans that an employer may contribute to for an employer related contribution for certain reemployed retirees;
- ▶ amends the application process for payments to certain survivors based on an affidavit if there are no designated beneficiaries for the deceased member;
- ▶ authorizes premium payments for eligible retired firefighters and public safety officers to be made from a defined contribution plan;
- ▶ clarifies that a retiree may be eligible to earn additional service credit in a reemployed position, regardless of whether the retirement allowance was cancelled by the Utah State Retirement Office or at the retiree's election;
- ▶ modifies provisions relating to the forfeiture of retirement benefits to:
  - clarify that reduced charges in accordance with all plea agreements may be considered convictions; and
  - establish procedures to be used for an employee appeal of the employer's determination if the Administrative Procedures Act is not applicable to that employer;
- ▶ authorizes, but does not require, an employer to elect to make all of its exchange employees eligible for retirement participation;
- ▶ modifies provisions to provide notice of the available death benefits for public safety and firefighter members of the Tier II Defined Contribution Plan; and

33           ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35           None

36 **Other Special Clauses:**

37           This bill provides a special effective date.

38 **Utah Code Sections Affected:**

39 AMENDS:

40           **49-11-406**, as last amended by Laws of Utah 2013, Chapter 310

41           **49-11-504**, as last amended by Laws of Utah 2016, Chapter 310

42           **49-11-609**, as last amended by Laws of Utah 2018, Chapter 281

43           **49-11-612**, as last amended by Laws of Utah 2018, Chapter 10

44           **49-11-1204**, as last amended by Laws of Utah 2018, Chapter 10

45           **49-11-1401**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

46           **49-12-203**, as last amended by Laws of Utah 2018, Chapter 10 and last amended by

47           Coordination Clause, Laws of Utah 2018, Chapter 315

48           **49-12-204**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315

49           **49-13-203**, as last amended by Laws of Utah 2018, Chapter 10 and last amended by

50           Coordination Clause, Laws of Utah 2018, Chapter 315

51           **49-13-204**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315

52           **49-14-203**, as last amended by Laws of Utah 2012, Chapter 298

53           **49-15-203**, as last amended by Laws of Utah 2012, Chapter 298

54           **49-16-203**, as last amended by Laws of Utah 2016, Chapter 310

55           **49-19-403**, as enacted by Laws of Utah 2002, Chapter 250

56           **49-22-201**, as last amended by Laws of Utah 2016, Chapter 227

57           **49-22-203**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315

58           **49-22-204**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315

59           **49-22-205**, as last amended by Laws of Utah 2018, Chapter 10

60           **49-23-203**, as enacted by Laws of Utah 2015, Chapter 315

61           **49-23-501**, as last amended by Laws of Utah 2013, Chapter 316

62

---

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

64 Section 1. Section **49-11-406** is amended to read:

65 **49-11-406. Governor's appointed executives and senior staff -- Appointed**  
66 **legislative employees -- Transfer of value of accrued defined benefit -- Procedures.**

67 (1) As used in this section:

68 (a) "Defined benefit balance" means the total amount of the contributions made on  
69 behalf of a member to a defined benefit system plus refund interest.

70 (b) "Senior staff" means an at-will employee who reports directly to an elected official,  
71 executive director, or director and includes a deputy director and other similar, at-will  
72 employee positions designated by the governor, the speaker of the House, or the president of  
73 the Senate and filed with the Department of Human Resource Management and the Utah State  
74 Retirement Office.

75 (2) In accordance with this section and subject to requirements under federal law and  
76 rules made by the board, a member who has service credit from a system may elect to be  
77 exempt from coverage under a defined benefit system and to have the member's defined benefit  
78 balance transferred from the defined benefit system or plan to a defined contribution plan in the  
79 member's own name if the member is:

80 (a) the state auditor;

81 (b) the state treasurer;

82 (c) an appointed executive under Subsection 67-22-2(1)(a);

83 (d) an employee in the Governor's Office;

84 (e) senior staff in the Governor's Office of Management and Budget;

85 (f) senior staff in the Governor's Office of Economic Development;

86 (g) senior staff in the Commission on Criminal and Juvenile Justice;

87 (h) a legislative employee appointed under Subsection 36-12-7(3)(a);

88 (i) a legislative employee appointed by the speaker of the House of Representatives, the  
89 House of Representatives minority leader, the president of the Senate, or the Senate minority  
90 leader; or

91 (j) senior staff of the Utah Science Technology and Research Initiative created under  
92 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

93 (3) An election made under Subsection (2):

94 (a) is final, and no right exists to make any further election;

95 (b) is considered a request to be exempt from coverage under a defined benefits  
96 system; and

97 (c) shall be made on forms provided by the office.

98 (4) The board shall adopt rules to implement and administer this section.

99 Section 2. Section **49-11-504** is amended to read:

100 **49-11-504. Reemployment of a retiree -- Restrictions.**

101 (1) As used in this section:

102 (a) "full-time" means:

103 (i) employment requiring 20 or more hours of work per week; or

104 (ii) at least a half-time teaching contract.

105 (b) "Reemployed," "reemploy," or "reemployment" means the same as those terms are  
106 defined in Section 49-11-1202.

107 (2) (a) Except for the provisions of Subsection (3), the provisions of this section do not  
108 apply to a person who is subject to the provisions of Chapter 11, Part 12, Postretirement  
109 Reemployment Restrictions Act.

110 (b) This section does not apply to employment as an elected official.

111 (3) A person who is not a retiree under this title is not subject to any postretirement  
112 restrictions under this title.

113 (4) A retiree of an agency who is reemployed may not earn additional service credit, if  
114 the retiree is reemployed by:

115 (a) a different agency; or

116 (b) the same agency after six months from the retirement date.

117 (5) A retiree of an agency who is reemployed on a full-time basis by the same agency  
118 within six months of the date of retirement is subject to the following:

119 (a) the agency shall immediately notify the office;

120 (b) the office shall cancel the retiree's allowance and reinstate the retiree to active  
121 member status;

122 (c) the allowance cancellation and reinstatement to active member status is effective on  
123 the first day of the month following the date of reemployment;

124 (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year  
125 period from the date of cancellation of the original allowance, and if the retiree retires again

126 within the two-year period, the original allowance shall be resumed; and

127 (e) a reinstated retiree retiring after the two-year period shall be credited with the  
128 service credit in the retiree's account at the time of the first retirement and from that time shall  
129 be treated as a member of a system, including the accrual of additional service credit, but  
130 subject to recalculation of the allowance under Subsection (9).

131 (6) A retiree of an agency who is reemployed by the same agency within six months of  
132 retirement on a less than full-time basis by the same agency is subject to the following:

133 (a) the retiree may earn, without penalty, compensation from that position which is not  
134 in excess of the exempt earnings permitted by Social Security;

135 (b) if a retiree receives compensation in a calendar year in excess of the Social Security  
136 limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;

137 (c) the effective date of a suspension and reinstatement of an allowance shall be set by  
138 the office; and

139 (d) any suspension of a retiree's allowance under this Subsection (6) shall be applied on  
140 a calendar year basis.

141 (7) For six months immediately following retirement, the retiree and participating  
142 employer who are subject to Subsection (6) shall:

143 (a) maintain an accurate record of gross earnings in employment;

144 (b) report the gross earnings at least monthly to the office;

145 (c) immediately notify the office in writing of any postretirement earnings under  
146 Subsection (6); and

147 (d) immediately notify the office in writing whether postretirement earnings equal or  
148 exceed the exempt earnings under Subsection (6).

149 (8) (a) If a participating employer hires a retiree, the participating employer may not  
150 make a retirement related contribution in an amount that exceeds the normal cost rate as  
151 defined under Section 49-11-102 on behalf of the retiree under Subsections (8)(b) and (c).

152 (b) The contributions under Subsection (8)(a) are not required, but if paid, shall be paid  
153 to a ~~retiree-designated~~:

154 (i) ~~qualified~~ defined contribution plan administered by the board~~[, if the participating~~  
155 ~~employer participates in a qualified defined contribution plan administered by the board]; or~~

156 ~~[(ii) qualified defined contribution plan offered by the participating employer if the~~

157 ~~participating employer does not participate in a qualified defined contribution plan~~  
158 ~~administered by the board.]~~

159 ~~[(c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not~~  
160 ~~participating in a qualified defined contribution plan administered by the board, the employer~~  
161 ~~may elect to pay the contributions under Subsection (8)(a) to a deferred compensation plan~~  
162 ~~administered by the board.]~~

163 (ii) deferred compensation plan administered by the board.

164 (9) A retiree who has returned to work, accrued additional service credit, and again  
165 retires shall have the retiree's allowance recalculated using:

166 (a) the formula in effect at the date of the retiree's original retirement for all service  
167 credit accrued prior to that date; and

168 (b) the formula in effect at the date of the subsequent retirement for all service credit  
169 accrued between the first and subsequent retirement dates.

170 (10) The board may make rules to implement this section.

171 Section 3. Section **49-11-609** is amended to read:

172 **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**  
173 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**  
174 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**  
175 **expenses.**

176 (1) As used in this section, "member" includes a member, retiree, participant, covered  
177 individual, a spouse of a retiree participating in the insurance benefits created by Sections  
178 49-12-404, 49-13-404, 49-22-307, and 49-23-306, or an alternate payee under a domestic  
179 relations order dividing a defined contribution account.

180 (2) (a) Except as provided under Subsection (2)(b) or (c), the most recent beneficiary  
181 designations signed by the member and filed with the office, including electronic records, at the  
182 time of the member's death are binding in the payment of any benefits due under this title.

183 (b) (i) The divorce or annulment of a member's marriage shall revoke the member's  
184 former spouse as a beneficiary from any of the member's beneficiary designations.

185 (ii) A revocation of a former spouse as a beneficiary in accordance with Subsection  
186 (2)(b)(i) does not revoke any other beneficiaries named on the member's beneficiary  
187 designations.

188 (c) A former spouse whose beneficiary designation is revoked solely under Subsection  
189 (2)(b) shall be revived on the member's beneficiary designations by:

190 (i) the member's remarriage to the former spouse; or

191 (ii) a nullification of the divorce or annulment.

192 (d) A revocation under Subsection (2)(b) does not apply to a former spouse named as a  
193 beneficiary in a beneficiary designation signed by the member and filed with the office after the  
194 date of the divorce or annulment.

195 (e) The office is not liable for having made a payment of any benefits to a beneficiary  
196 designated in a beneficiary designation affected by a divorce, annulment, or remarriage before  
197 the office received written notice of the divorce, annulment, or remarriage.

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

202 (b) A beneficiary designation or change of beneficiary designation shall be completed  
203 on forms provided by the office.

204 (4) (a) All benefits payable by the office may be paid or applied to the benefit of the  
205 decedent's heirs in the order of precedence established under Title 75, Chapter 2, Intestate  
206 Succession and Wills, if:

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

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

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

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

217 (ii) Payment to a person in any group may be based upon receipt [~~from the person~~] of  
218 an affidavit in a form satisfactory to the office that:

- 219 (A) there are no living individuals in the group preceding it;
- 220 (B) the probate of the estate of the deceased has not been commenced; and
- 221 (C) more than 30 days have elapsed since the date of death of the decedent.
- 222 (5) Benefits paid under this section shall be:
- 223 (a) a full satisfaction and discharge of all claims for benefits under this title; and
- 224 (b) payable by reason of the death of the decedent.
- 225 Section 4. Section **49-11-612** is amended to read:
- 226 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**
- 227 **payments -- Exemption from legal process.**
- 228 (1) As used in this section, "domestic relations order benefits" means:
- 229 (a) an allowance;
- 230 (b) a defined contribution account established under:
- 231 (i) Part 8, Defined Contribution Plans;
- 232 (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
- 233 (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement
- 234 Act;
- 235 (c) a continuing monthly death benefit established under:
- 236 (i) Chapter 14, Part 5, Death Benefit;
- 237 (ii) Chapter 15, Part 5, Death Benefit;
- 238 (iii) Chapter 16, Part 5, Death Benefit;
- 239 (iv) Chapter 17, Part 5, Death Benefit;
- 240 (v) Chapter 18, Part 5, Death Benefit; or
- 241 (vi) Chapter 19, Part 5, Death Benefit;
- 242 (d) a lump sum death benefit provided under:
- 243 (i) Chapter 12, Part 5, Death Benefit;
- 244 (ii) Chapter 13, Part 5, Death Benefit;
- 245 (iii) Chapter 22, Part 5, Death Benefit; or
- 246 (iv) Chapter 23, Part 5, Death Benefit; or
- 247 (e) a refund of member contributions upon termination.
- 248 (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree,
- 249 participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or

250 any other retirement right accrued or accruing under this title and the assets of the funds created  
251 by this title are not subject to alienation or assignment by the member, retiree, participant, or  
252 their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal  
253 or equitable process.

254 (3) (a) The office may, upon the request of the retiree, deduct from the retiree's  
255 allowance, insurance premiums or other dues payable on behalf of the retiree, but only to those  
256 entities that have received the deductions prior to February 1, 2002.

257 (b) The office may, upon the request of a retiree of a public safety or firefighter system,  
258 deduct insurance premiums from the retiree's allowance or defined contribution plan  
259 administered by the board.

260 (4) (a) The office shall provide for the division of domestic relations order benefits  
261 with former spouses and family members under an order of a court of competent jurisdiction  
262 with respect to domestic relations matters on file with the office.

263 (b) The court order shall specify the manner in which the domestic relations order  
264 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

265 (c) Domestic relations order benefits split under a domestic relations order are subject  
266 to the following:

267 (i) the amount to be paid or the period for which payments shall be made under the  
268 original domestic relations order may not be altered if the alteration affects the actuarial  
269 calculation of the allowance;

270 (ii) payments to an alternate payee shall begin at the time the member or beneficiary  
271 begins receiving payments; and

272 (iii) the alternate payee shall receive payments in the same form as allowances received  
273 by the member or beneficiary.

274 (d) (i) Except as provided under Subsection (4)(d)(ii), to be valid, a court order under  
275 this section must be on file with the office before the member's date of death.

276 (ii) A court order under this section received by the office after the member's date of  
277 death shall be considered valid if it is received in good order before benefits relating to the  
278 member's death are paid or settled.

279 (e) A court order under this section may not require and may not be interpreted in any  
280 way to require the office to provide any type of benefit or any option not otherwise provided

281 under this title.

282 (5) In accordance with federal law, the board may deduct the required amount from any  
283 benefit, payment, or other right accrued or accruing to any member or beneficiary of a system,  
284 plan, or program under this title to offset any amount that member or beneficiary owes to a  
285 system, plan, or program administered by the board.

286 (6) The board shall make rules to implement this section.

287 Section 5. Section **49-11-1204** is amended to read:

288 **49-11-1204. General restrictions -- Election following one-year separation --**  
289 **Amortization rate.**

290 (1) A retiree may not for the same period of reemployment:

- 291 (a) (i) earn additional service credit; or  
292 (ii) receive any retirement related contribution from a participating employer; and  
293 (b) receive a retirement allowance.

294 (2) (a) Except as provided under Section 49-11-1205, the office shall cancel the  
295 retirement allowance of a retiree if the reemployment with a participating employer begins  
296 within one year of the retiree's retirement date.

297 (b) If the office cancels the retiree's retirement allowance under Subsection (2)(a), the  
298 retiree may be eligible to earn additional service credit in the reemployed position and receive  
299 an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title.

300 (3) If a reemployed retiree [~~has completed~~], in accordance with Subsection (2)(a), is  
301 exempt from having the allowance cancelled, including for completing the one-year separation  
302 from employment with a participating employer [~~required under Subsection (2)~~], the retiree  
303 may elect to:

304 (a) cancel the retiree's retirement allowance and instead earn additional service credit in  
305 the reemployed position and receive an allowance in accordance with Subsections (4)(a) and  
306 (5) and other provisions of this title; or

307 (b) continue to receive the retiree's retirement allowance, forfeit earning additional  
308 service credit, and forfeit any retirement-related contribution from the participating employer  
309 that reemployed the retiree.

310 (4) (a) If a retiree's retirement allowance is cancelled and the retiree is eligible for  
311 retirement coverage in a reemployed position, the office shall reinstate the retiree to active

312 member status on the first day of the month following the date of the employee's eligible  
313 reemployment.

314 (b) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible  
315 for retirement coverage in the reemployed position, the participating employer that reemploys  
316 the retiree shall contribute the amortization rate to the office on behalf of the retiree.

317 (c) A participating employer that reemploys a retiree in accordance with Subsection  
318 49-11-1205(1) is not required to contribute the amortization rate to the office.

319 (5) (a) For a retiree reinstated to active member status under Subsection (4)(a) who  
320 retires within two years from the date of reemployment, the office:

321 (i) may not recalculate a retirement benefit for the retiree; and

322 (ii) shall resume the allowance that was being paid to the retiree at the time of the  
323 cancellation.

324 (b) Subject to Subsection (1), for a retiree who is reinstated to active membership  
325 under Subsection (4)(a) and retires two or more years after the date of reinstatement to active  
326 membership, the office shall:

327 (i) resume the allowance that was being paid at the time of cancellation; and

328 (ii) calculate an additional allowance for the retiree based on the formula in effect at  
329 the date of the subsequent retirement for all service credit accrued between the first and  
330 subsequent retirement dates.

331 Section 6. Section **49-11-1401** is amended to read:

332 **49-11-1401. Forfeiture of retirement benefits for employees for employment**  
333 **related offense convictions -- Notifications -- Investigations -- Appeals.**

334 (1) As used in this section:

335 (a) "Convicted" means a conviction by plea or by verdict, including a plea of guilty or a  
336 plea of no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,  
337 regardless of whether the charge was, or is, subsequently reduced in accordance with the plea  
338 agreement or reduced or dismissed in accordance with the plea in abeyance agreement.

339 (b) "Employee" means a member of a system or plan administered by the board.

340 (c) (i) "Employment related offense" means a felony committed during employment or  
341 the term of an elected or appointed office with a participating employer that is:

342 (A) during the performance of the employee's duties;

- 343 (B) within the scope of the employee's employment; or  
344 (C) under color of the employee's authority.
- 345 (ii) "Employment related offense" does not include any federal offense for conduct that  
346 is lawful under Title 26, Chapter 61a, Utah Medical Cannabis Act.
- 347 (2) (a) Notwithstanding any other provision of this title, an employee shall forfeit  
348 accrual of service credit, employer retirement related contributions, including employer  
349 contributions to the employer sponsored defined contribution plans, or other retirement related  
350 benefits from a system or plan under this title in accordance with this section.
- 351 (b) The forfeiture of retirement related benefits under Subsection (2)(a) does not  
352 include the employee's contribution to a defined contribution plan.
- 353 (3) An employee shall forfeit the benefits described under Subsection (2)(a):
- 354 (a) if the employee is convicted of an employment related offense;
- 355 (b) beginning on the day on which the employment related offense occurred; and
- 356 (c) until the employee is either:
- 357 (i) re-elected or reappointed to office; or
- 358 (ii) (A) terminated from the position for which the employee was found to have  
359 committed an employment related offense; and
- 360 (B) rehired or hired as an employee who is eligible to be a member of a Utah state  
361 retirement system or plan.
- 362 (4) The employee's participating employer shall:
- 363 (a) immediately notify the office:
- 364 (i) if an employee is charged with an offense that is or may be an employment related  
365 offense under this section; and
- 366 (ii) if the employee described in Subsection (4)(a)(i) is acquitted of the offense that is  
367 or may be an employment related offense under this section; and
- 368 (b) if the employee is convicted of an offense that may be an employment related  
369 offense:
- 370 (i) conduct an investigation, which may rely on the conviction, to determine:
- 371 (A) whether the conviction is for an employment related offense; and
- 372 (B) the date on which the employment related offense was initially committed; and
- 373 (ii) after the period of time for an appeal by an employee under Subsection (5),

374 immediately notify the office of the employer's determination under this Subsection (4)(b).

375 (5) An employee may appeal the employee's participating employer's determination  
376 under Subsection (4)(b) in accordance with the participating employer's procedures for  
377 appealing agency action, including Title 63G, Chapter 4, Administrative Procedures Act, if  
378 applicable.

379 (6) (a) Notwithstanding Subsection (4), a district attorney, a county attorney, the  
380 attorney general's office, or the state auditor may notify the office and the employee's  
381 participating employer if an employee is charged with an offense that is or may be an  
382 employment related offense under this section.

383 (b) If the employee's participating employer receives a notification under Subsection  
384 (6)(a), the participating employer shall immediately report to the entity that provided the  
385 notification under Subsection (6)(a):

386 (i) if the employee is acquitted of the offense;

387 (ii) if the employee is convicted of an offense that may be an employment related  
388 offense; and

389 (iii) when the participating employer has concluded its duties under this section if the  
390 employee is convicted, including conducting an investigation, making a determination under  
391 Subsection (4)(b) that the conviction was for an employment related offense, and notifying the  
392 office under Subsection (7).

393 (c) The notifying entity under Subsection (6)(a) may assist the employee's participating  
394 employer with the investigation and determination described under Subsection (4)(b).

395 (7) Upon receiving a notification from a participating employer that the participating  
396 employer has made a determination under Subsection (4)(b) that the conviction was for an  
397 employment related offense, the office shall immediately forfeit any service credit, employer  
398 retirement related contributions, including employer contributions to the employer sponsored  
399 contribution plans, or other retirement related benefits accrued by or made for the benefit of the  
400 employee, beginning on the date of the initial employment related offense determined under  
401 Subsection (4)(b).

402 (8) This section applies to an employee who is convicted on or after the effective date  
403 of this act for an employment related offense.

404 (9) The board may make rules to implement this section.

405 (10) If any provision of this section, or the application of any provision to any person  
406 or circumstance, is held invalid, the remainder of this section shall be given effect without the  
407 invalid provision or application.

408 Section 7. Section **49-12-203** is amended to read:

409 **49-12-203. Exclusions from membership in system.**

410 (1) The following employees are not eligible for service credit in this system:

411 (a) subject to the requirements of Subsection (2), an employee whose employment  
412 status is temporary in nature due to the nature or the type of work to be performed;

413 (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
414 education who participates in a retirement system with a public or private retirement system,  
415 organization, or company designated by the State Board of Regents, or the Board of Directors  
416 of each technical college for an employee of each technical college, during any period in which  
417 required contributions based on compensation have been paid on behalf of the employee by the  
418 employer;

419 (c) an employee serving as an exchange employee from outside the state for an  
420 employer who has not elected to make all of the employer's exchange employees eligible for  
421 service credit in this system;

422 (d) an executive department head of the state, a member of the State Tax Commission,  
423 the Public Service Commission, and a member of a full-time or part-time board or commission  
424 who files a formal request for exemption;

425 (e) an employee of the Department of Workforce Services who is covered under  
426 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

427 (f) an employee who is employed on or after July 1, 2009, with an employer that has  
428 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection  
429 49-12-202(2)(c);

430 (g) an employee who is employed on or after July 1, 2014, with an employer that has  
431 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection  
432 49-12-202(2)(d);

433 (h) an employee who is employed with a withdrawing entity that has elected under  
434 Section 49-11-623, prior to January 1, 2017, to exclude:

435 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);

436 or

437 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

438 or

439 (i) an employee described in Subsection (1)(i)(i) or (ii) who is employed with a  
440 withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to  
441 exclude:

442 (i) new employees from participation in this system under Subsection 49-11-624(3)(a);

443 or

444 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

445 (2) If an employee whose status is temporary in nature due to the nature of type of  
446 work to be performed:

447 (a) is employed for a term that exceeds six months and the employee otherwise  
448 qualifies for service credit in this system, the participating employer shall report and certify to  
449 the office that the employee is a regular full-time employee effective the beginning of the  
450 seventh month of employment; or

451 (b) was previously terminated prior to being eligible for service credit in this system  
452 and is reemployed within three months of termination by the same participating employer, the  
453 participating employer shall report and certify that the member is a regular full-time employee  
454 when the total of the periods of employment equals six months and the employee otherwise  
455 qualifies for service credits in this system.

456 (3) (a) Upon cessation of the participating employer contributions, an employee under  
457 Subsection (1)(b) is eligible for service credit in this system.

458 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service  
459 credit earned by an employee under this chapter before July 1, 2009 is not affected under  
460 Subsection (1)(f).

461 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service  
462 credit earned by an employee under this chapter before July 1, 2014, is not affected under  
463 Subsection (1)(g).

464 (4) Upon filing a written request for exemption with the office, the following  
465 employees shall be exempt from coverage under this system:

466 (a) a full-time student or the spouse of a full-time student and individuals employed in

- 467 a trainee relationship;
- 468 (b) an elected official;
- 469 (c) an executive department head of the state, a member of the State Tax Commission,  
470 a member of the Public Service Commission, and a member of a full-time or part-time board or  
471 commission;
- 472 (d) an employee of the Governor's Office of Management and Budget;
- 473 (e) an employee of the Governor's Office of Economic Development;
- 474 (f) an employee of the Commission on Criminal and Juvenile Justice;
- 475 (g) an employee of the Governor's Office;
- 476 (h) an employee of the State Auditor's Office;
- 477 (i) an employee of the State Treasurer's Office;
- 478 (j) any other member who is permitted to make an election under Section 49-11-406;
- 479 (k) a person appointed as a city manager or chief city administrator or another person  
480 employed by a municipality, county, or other political subdivision, who is an at-will employee;  
481 [and]
- 482 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
483 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through  
484 membership in a labor organization that provides retirement benefits to its members[-]; and
- 485 (m) an employee serving as an exchange employee from outside the state for an  
486 employer who has elected to make all of the employer's exchange employees eligible for  
487 service credit in this system.
- 488 (5) (a) Each participating employer shall prepare and maintain a list designating those  
489 positions eligible for exemption under Subsection (4).
- 490 (b) An employee may not be exempted unless the employee is employed in an  
491 exempted position designated by the participating employer.
- 492 (6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a  
493 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
494 or a number equal to 10% of the eligible employees of the municipality, county, or political  
495 subdivision, whichever is less.
- 496 (b) A municipality, county, or political subdivision may exempt at least one regular  
497 full-time employee.

- 498 (7) Each participating employer shall:
- 499 (a) maintain a list of employee exemptions; and
- 500 (b) update the employee exemptions in the event of any change.
- 501 (8) The office may make rules to implement this section.
- 502 (9) An employee's exclusion, exemption, participation, or election described in this

503 section:

- 504 (a) shall be made in accordance with this section; and
- 505 (b) is subject to requirements under federal law and rules made by the board.

506 Section 8. Section **49-12-204** is amended to read:

507 **49-12-204. Higher education employees' eligibility requirements -- Election**

508 **between different retirement plans -- Classification requirements -- Transfer between**

509 **systems -- One-time election window -- Rulemaking.**

510 (1) (a) A regular full-time employee of an institution of higher education who is

511 eligible to participate in either this system or a public or private retirement system,

512 organization, or company, designated as described in Subsection (1)(c) or (d), shall, not later

513 than January 1, 1979, elect to participate exclusively in this system or in an annuity contract

514 allowed under this Subsection (1).

515 (b) The election is final, and no right exists to make any further election.

516 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the

517 public or private retirement systems, organizations, or companies that a regular full-time

518 employee of an institution of higher education is eligible to participate in under Subsection

519 (1)(a).

520 (d) The Board of Directors of each technical college shall designate the public or

521 private retirement systems, organizations, or companies that a regular full-time employee of

522 each technical college is eligible to participate in under Subsection (1)(a).

523 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired

524 by an institution of higher education after January 1, 1979, may participate only in the

525 retirement plan which attaches to the person's employment classification.

526 (b) Each institution of higher education shall prepare or amend existing employment

527 classifications, under the direction of the Board of Regents, or the Board of Directors of each

528 technical college for each technical college, so that each classification is assigned with either:

- 529 (i) this system; or
- 530 (ii) a public or private system, organization, or company designated by:
- 531 (A) except as provided in Subsection (2)(b)(ii)(B), the Board of Regents; or
- 532 (B) the Board of Directors of each technical college for regular full-time employees of
- 533 each technical college.
- 534 (c) Notwithstanding a person's employment classification assignment under Subsection
- 535 (2)(b), a regular full-time employee who begins employment with an institution of higher
- 536 education on or after May 11, 2010, has a one-time irrevocable election to continue
- 537 participation in this system, if the employee has service credit in this system before the date of
- 538 employment.
- 539 (3) Notwithstanding an employment classification assignment change made under
- 540 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after
- 541 January 1, 1979, whose employment classification requires participation in this system may
- 542 elect to continue participation in this system.
- 543 (4) A regular full-time employee hired by an institution of higher education after
- 544 January 1, 1979, whose employment classification requires participation in this system shall
- 545 participate in this system.
- 546 (5) (a) Notwithstanding any other provision of this section, a regular full-time
- 547 employee of an institution of higher education shall have a one-time irrevocable election to
- 548 participate in this system if the employee:
- 549 (i) was hired after January 1, 1979;
- 550 (ii) whose employment classification assignment under Subsection (2)(b) required
- 551 participation in a retirement program other than this system; and
- 552 (iii) has service credit in a system under this title.
- 553 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.
- 554 (c) All forms required by the office must be completed and received by the office no
- 555 later than June 30, 2010, for the election to participate in this system to be effective.
- 556 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher
- 557 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue
- 558 service credit in this system.
- 559 (6) A regular full-time employee of an institution of higher education who elects to be

560 covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment  
561 while covered under another retirement program sponsored by the institution of higher  
562 education by complying with the requirements of Section 49-11-403.

563 (7) The board shall make rules to implement this section.

564 (8) An employee's participation or election described in this section:

565 (a) shall be made in accordance with this section; and

566 (b) is subject to requirements under federal law and rules made by the board.

567 Section 9. Section **49-13-203** is amended to read:

568 **49-13-203. Exclusions from membership in system.**

569 (1) The following employees are not eligible for service credit in this system:

570 (a) subject to the requirements of Subsection (2), an employee whose employment  
571 status is temporary in nature due to the nature or the type of work to be performed;

572 (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
573 education who participates in a retirement system with a public or private retirement system,  
574 organization, or company designated by the State Board of Regents, or the Board of Directors  
575 of each technical college for an employee of each technical college, during any period in which  
576 required contributions based on compensation have been paid on behalf of the employee by the  
577 employer;

578 (c) an employee serving as an exchange employee from outside the state for an  
579 employer who has not elected to make all of the employer's exchange employees eligible for  
580 service credit in this system;

581 (d) an executive department head of the state or a legislative director, senior executive  
582 employed by the governor's office, a member of the State Tax Commission, a member of the  
583 Public Service Commission, and a member of a full-time or part-time board or commission  
584 who files a formal request for exemption;

585 (e) an employee of the Department of Workforce Services who is covered under  
586 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

587 (f) an employee who is employed with an employer that has elected to be excluded  
588 from participation in this system under Subsection 49-13-202(5), effective on or after the date  
589 of the employer's election under Subsection 49-13-202(5);

590 (g) an employee who is employed with a withdrawing entity that has elected under

591 Section 49-11-623, prior to January 1, 2017, to exclude:

592 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);

593 or

594 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

595 or

596 (h) an employee described in Subsection (1)(h)(i) or (ii) who is employed with a

597 withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to

598 exclude:

599 (i) new employees from participation in this system under Subsection 49-11-624(3)(a);

600 or

601 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

602 (2) If an employee whose status is temporary in nature due to the nature of type of

603 work to be performed:

604 (a) is employed for a term that exceeds six months and the employee otherwise

605 qualifies for service credit in this system, the participating employer shall report and certify to

606 the office that the employee is a regular full-time employee effective the beginning of the

607 seventh month of employment; or

608 (b) was previously terminated prior to being eligible for service credit in this system

609 and is reemployed within three months of termination by the same participating employer, the

610 participating employer shall report and certify that the member is a regular full-time employee

611 when the total of the periods of employment equals six months and the employee otherwise

612 qualifies for service credits in this system.

613 (3) (a) Upon cessation of the participating employer contributions, an employee under

614 Subsection (1)(b) is eligible for service credit in this system.

615 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service

616 credit earned by an employee under this chapter before the date of the election under

617 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

618 (4) Upon filing a written request for exemption with the office, the following

619 employees shall be exempt from coverage under this system:

620 (a) a full-time student or the spouse of a full-time student and individuals employed in

621 a trainee relationship;

- 622 (b) an elected official;
- 623 (c) an executive department head of the state, a member of the State Tax Commission,  
624 a member of the Public Service Commission, and a member of a full-time or part-time board or  
625 commission;
- 626 (d) an employee of the Governor's Office of Management and Budget;
- 627 (e) an employee of the Governor's Office of Economic Development;
- 628 (f) an employee of the Commission on Criminal and Juvenile Justice;
- 629 (g) an employee of the Governor's Office;
- 630 (h) an employee of the State Auditor's Office;
- 631 (i) an employee of the State Treasurer's Office;
- 632 (j) any other member who is permitted to make an election under Section 49-11-406;
- 633 (k) a person appointed as a city manager or chief city administrator or another person  
634 employed by a municipality, county, or other political subdivision, who is an at-will employee;
- 635 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
636 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through  
637 membership in a labor organization that provides retirement benefits to its members; ~~and~~
- 638 (m) an employee of the Utah Science Technology and Research Initiative created under  
639 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act[-]; and
- 640 (n) an employee serving as an exchange employee from outside the state for an  
641 employer who has elected to make all of the employer's exchange employees eligible for  
642 service credit in this system.
- 643 (5) (a) Each participating employer shall prepare and maintain a list designating those  
644 positions eligible for exemption under Subsection (4).
- 645 (b) An employee may not be exempted unless the employee is employed in a position  
646 designated by the participating employer.
- 647 (6) (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a  
648 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
649 or a number equal to 10% of the eligible employees of the municipality, county, or political  
650 subdivision, whichever is less.
- 651 (b) A municipality, county, or political subdivision may exempt at least one regular  
652 full-time employee.

- 653 (7) Each participating employer shall:
- 654 (a) maintain a list of employee exemptions; and
- 655 (b) update the employee exemptions in the event of any change.
- 656 (8) The office may make rules to implement this section.
- 657 (9) An employee's exclusion, exemption, participation, or election described in this
- 658 section:
- 659 (a) shall be made in accordance with this section; and
- 660 (b) is subject to requirements under federal law and rules made by the board.

661 Section 10. Section **49-13-204** is amended to read:

662 **49-13-204. Higher education employees' eligibility requirements -- Election**

663 **between different retirement plans -- Classification requirements -- Transfer between**

664 **systems -- One-time election window -- Rulemaking.**

665 (1) (a) A regular full-time employee of an institution of higher education who is

666 eligible to participate in either this system or in a retirement system with a public or private

667 retirement system, organization, or company, designated as described in Subsection (1)(c) or

668 (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an

669 annuity contract allowed under this Subsection (1)(a).

670 (b) The election is final, and no right exists to make any further election.

671 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the

672 public or private retirement systems, organizations, or companies that a regular full-time

673 employee of an institution of higher education is eligible to participate in under Subsection

674 (1)(a).

675 (d) The Board of Directors of each technical college shall designate the public or

676 private retirement systems, organizations, or companies that a regular full-time employee of

677 each technical college is eligible to participate in under Subsection (1)(a).

678 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired

679 by an institution of higher education after January 1, 1979, may participate only in the

680 retirement plan which attaches to the person's employment classification.

681 (b) Each institution of higher education shall prepare or amend existing employment

682 classifications, under the direction of the Board of Regents, or the Board of Directors of each

683 technical college for regular full-time employees of each technical college, so that each

684 classification is assigned with either:

685 (i) this system; or

686 (ii) a public or private system, organization, or company designated by:

687 (A) except as provided in Subsection (2)(b)(ii)(B), the Board of Regents; or

688 (B) the Board of Directors of each technical college for regular full-time employees of  
689 each technical college.

690 (c) Notwithstanding a person's employment classification assignment under Subsection  
691 (2)(b), a regular full-time employee who begins employment with an institution of higher  
692 education on or after May 11, 2010, has a one-time irrevocable election to continue  
693 participation in this system, if the employee has service credit in this system before the date of  
694 employment.

695 (3) Notwithstanding an employment classification assignment change made under  
696 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after  
697 January 1, 1979, whose employment classification requires participation in this system may  
698 elect to continue participation in this system.

699 (4) A regular full-time employee hired by an institution of higher education after  
700 January 1, 1979, whose employment classification requires participation in this system shall  
701 participate in this system.

702 (5) (a) Notwithstanding any other provision of this section, a regular full-time  
703 employee of an institution of higher education whose employment classification assignment  
704 under Subsection (2)(b) required participation in a retirement program other than this system  
705 shall have a one-time irrevocable election to participate in this system.

706 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

707 (c) All forms required by the office must be completed and received by the office no  
708 later than June 30, 2010, for the election to participate in this system to be effective.

709 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher  
710 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue  
711 service credit in this system.

712 (6) A regular full-time employee of an institution of higher education who elects to be  
713 covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment  
714 while covered under another retirement program by complying with the requirements of

715 Section 49-11-403.

716 (7) The board shall make rules to implement this section.

717 (8) An employee's participation or election described in this section:

718 (a) shall be made in accordance with this section; and

719 (b) is subject to requirements under federal law and rules made by the board.

720 Section 11. Section **49-14-203** is amended to read:

721 **49-14-203. Exemption of certain employees from coverage.**

722 (1) A public safety service employee is excluded from coverage under this system if

723 the employee:

724 (a) is serving:

725 (i) as the Commissioner of Public Safety;

726 (ii) as the executive director of the Department of Corrections; or

727 (iii) as the elected or appointed sheriff or chief of police of a public safety organization;

728 and

729 (b) files a formal written request seeking the exemption.

730 (2) Except as provided in Subsection (3), the public safety service employee may not

731 continue employment with the same participating employer and receive an allowance from the

732 office based on public safety service at the same time.

733 (3) (a) The Commissioner of Public Safety or an elected sheriff who is eligible to retire

734 under Section 49-14-401 may until July 1, 2010:

735 (i) retire from this system and receive an allowance;

736 (ii) continue in the elected or appointed position; and

737 (iii) file for the exemption under Subsection (1).

738 (b) A person who makes an election under Subsection (3)(a) may continue under the

739 terms of the election.

740 (4) An employee's exclusion, exemption, participation, or election described in this

741 section:

742 (a) shall be made in accordance with this section; and

743 (b) is subject to requirements under federal law and rules made by the board.

744 Section 12. Section **49-15-203** is amended to read:

745 **49-15-203. Exemption of certain employees from coverage.**

746 (1) A public safety service employee is excluded from coverage under this system if  
747 the employee:

748 (a) is serving:

749 (i) as the Commissioner of Public Safety;

750 (ii) as the executive director of the Department of Corrections; or

751 (iii) as the elected or appointed sheriff or chief of police of a public safety organization;

752 and

753 (b) files a formal written request seeking the exemption.

754 (2) Except as provided in Subsection (3), the public safety service employee may not  
755 continue employment with the same participating employer and receive an allowance from the  
756 office based on public safety service at the same time.

757 (3) (a) The Commissioner of Public Safety, an elected sheriff, or an appointed chief of  
758 police who is eligible to retire under Section 49-15-401 may until July 1, 2010:

759 (i) retire from this system and receive an allowance;

760 (ii) continue in the elected or appointed position; and

761 (iii) file for the exemption under Subsection (1).

762 (b) A person who makes an election under Subsection (3)(a) may continue under the  
763 terms of the election.

764 (4) An employee's exclusion, exemption, participation, or election described in this  
765 section:

766 (a) shall be made in accordance with this section; and

767 (b) is subject to requirements under federal law and rules made by the board.

768 Section 13. Section **49-16-203** is amended to read:

769 **49-16-203. Exemption of certain employees from coverage -- Exception.**

770 (1) A firefighter service employee serving as the chief of any fire department or district  
771 is excluded from coverage under this system if that firefighter service employee files a formal  
772 written request seeking exemption.

773 (2) The chief of any fire department or district who retires from that position shall  
774 comply with the provisions of Section 49-11-504 and Chapter 11, Part 12, Postretirement  
775 Reemployment Restrictions Act, upon reemployment by the participating employer.

776 (3) An employee's exclusion, exemption, participation, or election described in this

777 section:

778 (a) shall be made in accordance with this section; and

779 (b) is subject to requirements under federal law and rules made by the board.

780 Section 14. Section **49-19-403** is amended to read:

781 **49-19-403. Retirement option.**

782 (1) A governor or legislator may elect to forfeit the allowance provided by this chapter  
783 and in lieu thereof participate, on the same basis as other state elected and appointed officers  
784 under Title 67, Chapter 22, State Officer Compensation, in a defined contribution plan  
785 administered by the office, in accordance with Section 49-11-801 and in accordance with  
786 federal law.

787 (2) A governor's or legislator's exclusion, exemption, participation, or election  
788 described in this section:

789 (a) shall be made in accordance with this section; and

790 (b) is subject to requirements under federal law and rules made by the board.

791 Section 15. Section **49-22-201** is amended to read:

792 **49-22-201. System membership -- Eligibility.**

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

794 (2) (a) A person initially entering regular full-time employment with a participating  
795 employer on or after July 1, 2011, who does not have service credit accrued before July 1,  
796 2011, in a Tier I system or plan administered by the board, is eligible:

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

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

801 (b) A person initially entering regular full-time employment with a participating  
802 employer on or after July 1, 2011, shall:

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

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

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

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

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

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

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

818 (a) is only eligible to participate in the Tier II defined contribution plan established  
819 under Part 4, Tier II Defined Contribution Plan;

820 (b) is not eligible to participate in the Tier II hybrid retirement system established  
821 under Part 3, Tier II Hybrid Retirement System; and

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

825 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected  
826 official initially entering office on or after July 1, 2011, who has previously accrued service  
827 credit [~~accrued before July 1, 2011~~]:

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

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

832 Section 16. Section **49-22-203** is amended to read:

833 **49-22-203. Exclusions from membership in system.**

834 (1) The following employees are not eligible for service credit in this system:

835 (a) subject to the requirements of Subsection (2), an employee whose employment  
836 status is temporary in nature due to the nature or the type of work to be performed;

837 (b) except as provided under Subsection (3), an employee of an institution of higher  
838 education who participates in a retirement system with a public or private retirement system,

839 organization, or company designated by the State Board of Regents, or the Board of Directors  
840 of each technical college for an employee of each technical college, during any period in which  
841 required contributions based on compensation have been paid on behalf of the employee by the  
842 employer;

843 (c) an employee serving as an exchange employee from outside the state for an  
844 employer who has not elected to make all of the employer's exchange employees eligible for  
845 service credit in this system;

846 (d) an employee of the Department of Workforce Services who is covered under  
847 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

848 (e) an employee who is employed with a withdrawing entity that has elected under  
849 Section 49-11-623, prior to January 1, 2017, to exclude:

850 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);

851 or

852 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

853 (f) a person who files a written request for exemption with the office under Section  
854 49-22-205; or

855 (g) an employee described in Subsection (1)(g)(i) or (ii) who is employed with a  
856 withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to  
857 exclude:

858 (i) new employees from participation in this system under Subsection 49-11-624(3)(a);

859 or

860 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

861 (2) If an employee whose status is temporary in nature due to the nature of type of  
862 work to be performed:

863 (a) is employed for a term that exceeds six months and the employee otherwise  
864 qualifies for service credit in this system, the participating employer shall report and certify to  
865 the office that the employee is a regular full-time employee effective the beginning of the  
866 seventh month of employment; or

867 (b) was previously terminated prior to being eligible for service credit in this system  
868 and is reemployed within three months of termination by the same participating employer, the  
869 participating employer shall report and certify that the member is a regular full-time employee

870 when the total of the periods of employment equals six months and the employee otherwise  
871 qualifies for service credits in this system.

872 (3) Upon cessation of the participating employer contributions, an employee under  
873 Subsection (1)(b) is eligible for service credit in this system.

874 (4) An employee's exclusion, exemption, participation, or election described in this  
875 section:

876 (a) shall be made in accordance with this section; and

877 (b) is subject to requirements under federal law and rules made by the board.

878 Section 17. Section **49-22-204** is amended to read:

879 **49-22-204. Higher education employees' eligibility requirements -- Election**  
880 **between different retirement plans -- Classification requirements -- Transfer between**  
881 **systems.**

882 (1) (a) A regular full-time employee of an institution of higher education who is  
883 eligible to participate in either this system or in a retirement annuity contract with a public or  
884 private system, organization, or company, designated as described in Subsection (1)(c) or (d),  
885 shall, not later than January 1, 1979, elect to participate exclusively in this system or in an  
886 annuity contract allowed under this Subsection (1).

887 (b) The election is final, and no right exists to make any further election.

888 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the  
889 public or private retirement systems, organizations, or companies that a regular full-time  
890 employee of an institution of higher education is eligible to participate in under Subsection  
891 (1)(a).

892 (d) The Board of Directors of each technical college shall designate the public or  
893 private retirement systems, organizations, or companies that a regular full-time employee of  
894 each technical college is eligible to participate in under Subsection (1)(a).

895 (2) (a) A regular full-time employee hired by an institution of higher education after  
896 January 1, 1979, may participate only in the retirement plan which attaches to the person's  
897 employment classification.

898 (b) Each institution of higher education shall prepare or amend existing employment  
899 classifications, under the direction of the Board of Regents, or the Board of Directors of each  
900 technical college for each technical college, so that each classification is assigned with either:

901 (i) this system; or  
902 (ii) a public or private system, organization, or company designated by:  
903 (A) except as provided under Subsection (2)(b)(ii)(B), the Board of Regents; or  
904 (B) the Board of Directors of each technical college for regular full-time employees of  
905 each technical college.

906 (3) A regular full-time employee hired by an institution of higher education on or after  
907 July 1, 2011, whose employment classification requires participation in this system may elect  
908 to continue participation in this system upon change to an employment classification which  
909 requires participation in a public or private system, organization, or company designated by:

910 (a) except as provided in Subsection (3)(b), the Board of Regents; or  
911 (b) the Board of Directors of each technical college for regular full-time employees of  
912 each technical college.

913 (4) A regular full-time employee hired by an institution of higher education on or after  
914 July 1, 2011, whose employment classification requires participation in this system shall  
915 participate in this system.

916 (5) An employee's participation or election described in this section:

917 (a) shall be made in accordance with this section; and

918 (b) is subject to requirements under federal law and rules made by the board.

919 Section 18. Section **49-22-205** is amended to read:

920 **49-22-205. Exemptions from participation in system.**

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

- 923 (a) an executive department head of the state;  
924 (b) a member of the State Tax Commission;  
925 (c) a member of the Public Service Commission;  
926 (d) a member of a full-time or part-time board or commission;  
927 (e) an employee of the Governor's Office of Management and Budget;  
928 (f) an employee of the Governor's Office of Economic Development;  
929 (g) an employee of the Commission on Criminal and Juvenile Justice;  
930 (h) an employee of the Governor's Office;  
931 (i) an employee of the State Auditor's Office;

- 932 (j) an employee of the State Treasurer's Office;
- 933 (k) any other member who is permitted to make an election under Section 49-11-406;
- 934 (l) a person appointed as a city manager or appointed as a city administrator or another  
935 at-will employee of a municipality, county, or other political subdivision;
- 936 (m) an employee of an interlocal cooperative agency created under Title 11, Chapter  
937 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided  
938 through membership in a labor organization that provides retirement benefits to its members;
- 939 [and]
- 940 (n) an employee of the Utah Science Technology and Research Initiative created under  
941 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act[-]; and
- 942 (o) an employee serving as an exchange employee from outside the state for an  
943 employer who has elected to make all of the employer's exchange employees eligible for  
944 service credit in this system.
- 945 (2) (a) A participating employer shall prepare and maintain a list designating those  
946 positions eligible for exemption under Subsection (1).
- 947 (b) An employee may not be exempted unless the employee is employed in a position  
948 designated by the participating employer under Subsection (1).
- 949 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a  
950 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
951 or a number equal to 10% of the eligible employees of the municipality, county, or political  
952 subdivision, whichever is less.
- 953 (b) A municipality, county, or political subdivision may exempt at least one regular  
954 full-time employee.
- 955 (4) Each participating employer shall:
- 956 (a) maintain a list of employee exemptions; and
- 957 (b) update an employee exemption in the event of any change.
- 958 (5) Beginning on the effective date of the exemption for an employee who elects to be  
959 exempt in accordance with Subsection (1):
- 960 (a) for a member of the Tier II defined contribution plan:
- 961 (i) the participating employer shall contribute the nonelective contribution and the  
962 amortization rate described in Section 49-22-401, except that the nonelective contribution is

- 963 exempt from the vesting requirements of Subsection 49-22-401(3)(a); and
- 964 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 965 (b) for a member of the Tier II hybrid retirement system:
- 966 (i) the participating employer shall contribute the nonelective contribution and the
- 967 amortization rate described in Section 49-22-401, except that the contribution is exempt from
- 968 the vesting requirements of Subsection 49-22-401(3)(a);
- 969 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 970 (iii) the member is not eligible for additional service credit in the system.
- 971 (6) If an employee who is a member of the Tier II hybrid retirement system
- 972 subsequently revokes the election of exemption made under Subsection (1), the provisions
- 973 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee
- 974 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- 975 (7) (a) All employer contributions made on behalf of an employee shall be invested in
- 976 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election
- 977 period under Subsection 49-22-201(2)(c) is expired if the employee:
- 978 (i) elects to be exempt in accordance with Subsection (1); and
- 979 (ii) continues employment with the participating employer through the one-year
- 980 election period under Subsection 49-22-201(2)(c).
- 981 (b) An employee is entitled to receive a distribution of the employer contributions
- 982 made on behalf of the employee and all associated investment gains and losses if the employee:
- 983 (i) elects to be exempt in accordance with Subsection (1); and
- 984 (ii) terminates employment prior to the one-year election period under Subsection
- 985 49-22-201(2)(c).
- 986 (8) (a) The office shall make rules to implement this section.
- 987 (b) The rules made under this Subsection (8) shall include provisions to allow the
- 988 exemption provided under Subsection (1) to apply to all contributions made beginning on or
- 989 after July 1, 2011, on behalf of an exempted employee who began the employment before May
- 990 8, 2012.
- 991 (9) An employee's exemption, participation, or election described in this section:
- 992 (a) shall be made in accordance with this section; and
- 993 (b) is subject to requirements under federal law and rules made by the board.

994 Section 19. Section **49-23-203** is amended to read:

995 **49-23-203. Exemptions from participation in system.**

996 (1) Upon filing a written request for exemption with the office, the following  
997 employees are exempt from participation in the system as provided in this section if the  
998 employee is a public safety service employee and is:

999 (a) an executive department head of the state;

1000 (b) an elected or appointed sheriff of a county; or

1001 (c) an elected or appointed chief of police of a municipality.

1002 (2) (a) A participating employer shall prepare a list designating those positions eligible  
1003 for exemption under Subsection (1).

1004 (b) An employee may not be exempted unless the employee is employed in a position  
1005 designated by the participating employer under Subsection (1).

1006 (3) Each participating employer shall:

1007 (a) file each employee exemption annually with the office; and

1008 (b) update an employee exemption in the event of any change.

1009 (4) Beginning on the effective date of the exemption for an employee who elects to be  
1010 exempt in accordance with Subsection (1):

1011 (a) for a member of the Tier II defined contribution plan:

1012 (i) the participating employer shall contribute the nonelective contribution and the  
1013 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
1014 the vesting requirements of Subsection 49-23-401(3)(a); and

1015 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

1016 (b) for a member of the Tier II hybrid retirement system:

1017 (i) the participating employer shall contribute the nonelective contribution and the  
1018 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
1019 the vesting requirements of Subsection 49-23-401(3)(a);

1020 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

1021 (iii) the member is not eligible for additional service credit in the system.

1022 (5) If an employee who is a member of the Tier II hybrid retirement system  
1023 subsequently revokes the election of exemption made under Subsection (1), the provisions  
1024 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee

1025 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1026 (6) (a) All employer contributions made on behalf of an employee shall be invested in  
1027 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election  
1028 period under Subsection 49-23-201(2)(c) is expired if the employee:

1029 (i) elects to be exempt in accordance with Subsection (1); and

1030 (ii) continues employment with the participating employer through the one-year  
1031 election period under Subsection 49-23-201(2)(c).

1032 (b) An employee is entitled to receive a distribution of the employer contributions  
1033 made on behalf of the employee and all associated investment gains and losses if the employee:

1034 (i) elects to be exempt in accordance with Subsection (1); and

1035 (ii) terminates employment prior to the one-year election period under Subsection  
1036 49-23-201(2)(c).

1037 (7) (a) The office shall make rules to implement this section.

1038 (b) The rules made under this Subsection (7) shall include provisions to allow the  
1039 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
1040 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
1041 8, 2012.

1042 (8) An employee's exemption, participation, or election described in this section:

1043 (a) shall be made in accordance with this section; and

1044 (b) is subject to requirements under federal law and rules made by the board.

1045 Section 20. Section **49-23-501** is amended to read:

1046 **49-23-501. Death benefit -- Eligibility for death benefit -- Benefit calculation --**  
1047 **Payment of claim.**

1048 (1) The office shall provide a death benefit for members of this system.

1049 (2) The board shall make rules to administer the death benefit provided by this section  
1050 and may, in accordance with federal law, establish:

1051 (a) benefit levels;

1052 (b) classes of members; and

1053 (c) a living benefit option.

1054 (3) This death benefit is payable when:

1055 (a) the member dies prior to the member's retirement date or dies under circumstances

1056 which Subsection 49-23-304(4) requires to be treated as the death of a member before  
1057 retirement;

1058 (b) the office receives acceptable proof of death; and

1059 (c) benefits are not payable under Section 49-23-306.

1060 (4) The death benefit payable to the beneficiary under this section is a lump-sum  
1061 payment consisting of:

1062 (a) the return of any member contributions under this chapter; plus

1063 (b) a percentage of the final average salary of the member to be determined by the  
1064 board.

1065 (5) Any amount of a living benefit option paid to the member prior to death shall be  
1066 deducted from the benefit payable to the beneficiary.

1067 (6) The cost of the death benefit shall be paid by the participating employer in addition  
1068 to the contribution rate established under Section 49-23-301 or 49-23-401.

1069 (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid  
1070 to the beneficiary of an inactive member unless the death of the member occurs either:

1071 (a) within a period of 120 days after the last day of work for which the person received  
1072 compensation; or

1073 (b) while the member is still physically or mentally incapacitated from performance of  
1074 duties, if the incapacity has been continuous since the last day of work for which compensation  
1075 was received.

1076 (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance  
1077 with Sections 49-11-609 and 49-11-610.

1078 (9) The death benefit paid to the beneficiary of an inactive member, except as  
1079 otherwise provided under Subsection (7), is a lump-sum return of the member's member  
1080 contributions.

1081 (10) Payment of the death benefit by the office constitutes a full settlement of any  
1082 beneficiary's claim against the office and the office is not liable for any further or additional  
1083 claims or assessments on behalf of the member.

1084 (11) Unless otherwise specified in a written document filed with the office, death  
1085 benefits payable to beneficiaries shall be in accordance with the order of precedence  
1086 established under Title 75, Chapter 2, Intestate Succession and Wills.

1087 (12) A death benefit under this section may not be paid on behalf of a retiree under this  
1088 system.

1089 (13) Except for the death benefit described in Subsection (4), a member of the Tier II  
1090 defined contribution plan is not eligible for death benefits under this section or Section  
1091 49-23-502 or 49-23-503.

1092 Section 21. **Effective date.**

1093 This bill takes effect on July 1, 2020.