

**UTAH RETIREMENT SYSTEMS REVISIONS**

2022 GENERAL SESSION

STATE OF UTAH

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

This bill modifies the Utah State Retirement and Insurance Benefit Act.

**Highlighted Provisions:**

This bill:

- ▶ requires a participating employer to certify each employee's status for retirement benefits;
- ▶ provides the time period for which a retiree's retirement allowance is cancelled due to a violation of the earnings limitation for a part-time appointed or elected board member;
- ▶ aligns the time period for determining final average salary with the time period for calculating years of service credit;
- ▶ adds the commissioner of the Department of Public Safety and the executive director of the Department of Corrections to the definitions of public safety service employee;
- ▶ clarifies when an elected official who is initially elected to office on or after July 1, 2011, may continue to participate in a retirement plan in which the elected official had previously accrued service credit;
- ▶ provides that a full-time Tier II employee who begins employment with an institution of higher education and has previously accrued service credit has a one-time irrevocable election to continue participation in the Utah Retirement Systems;
- ▶ provides that a member who exempts from participation in the Utah Retirement Systems is exempt from earning years of service credit during the period of exemption;
- ▶ permits a public safety service employee who is promoted to certain administrative positions to continue participation in a public safety retirement system while the employee remains employed with the same department;

- 33           ▶ permits a fire department chief to exempt from participation in the New Public  
34           Safety and Firefighters Tier II Contributory Retirement Act; and  
35           ▶ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37           None

38 **Other Special Clauses:**

39           This bill provides a special effective date.

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42           **49-11-603**, as last amended by Laws of Utah 2017, Chapter 141  
43           **49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141  
44           **49-12-102**, as last amended by Laws of Utah 2018, Chapter 415  
45           **49-13-102**, as last amended by Laws of Utah 2018, Chapter 415  
46           **49-14-102**, as last amended by Laws of Utah 2016, Chapter 227  
47           **49-14-201**, as last amended by Laws of Utah 2021, Chapter 344  
48           **49-15-102**, as last amended by Laws of Utah 2016, Chapter 227  
49           **49-15-201**, as last amended by Laws of Utah 2021, Chapter 344  
50           **49-16-102**, as last amended by Laws of Utah 2019, Chapter 349  
51           **49-22-102**, as last amended by Laws of Utah 2018, Chapter 415  
52           **49-22-201**, as last amended by Laws of Utah 2020, Chapter 24  
53           **49-22-204**, as last amended by Laws of Utah 2020, Chapters 24 and 365  
54           **49-22-205**, as last amended by Laws of Utah 2021, Chapters 64 and 382  
55           **49-22-401**, as last amended by Laws of Utah 2016, Chapter 227  
56           **49-23-102**, as last amended by Laws of Utah 2020, Chapter 180  
57           **49-23-201**, as last amended by Laws of Utah 2015, Chapters 315 and 463  
58           **49-23-203**, as last amended by Laws of Utah 2020, Chapter 24  
59           **49-23-401**, as last amended by Laws of Utah 2020, Chapter 437

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

62           Section 1. Section **49-11-603** is amended to read:

63           **49-11-603. Participating employer to report and certify -- Time limit -- Penalties**

64 **for failure to comply.**

65 (1) As soon as administratively possible, but in no event later than 30 days after the  
66 end of each pay period, a participating employer shall report and certify to the office:

67 (a) the eligibility for service credit accrual of:

68 (i) each current employee;

69 (ii) each new employee as the new employee begins employment; and

70 (iii) any changes to eligibility for service credit accrual of each employee;

71 (b) the compensation of each current employee eligible for service credit; and

72 (c) other factors relating to the proper administration of this title as required by the  
73 executive director.

74 (2) (a) Each participating employer shall submit the reports required under Subsection  
75 (1) in a format approved by the office.

76 (b) Each participating employer shall include in the reports a certification, for each  
77 employee, whether the employee is:

78 (i) an eligible employee who is accruing service credit;

79 (ii) an ineligible employee who may not accrue service credit;

80 (iii) a reemployed retiree; or

81 (iv) an employee who is eligible for employer contributions to a defined contribution  
82 plan administered under this title.

83 (3) A participating employer shall be liable to the office for:

84 (a) any liabilities and expenses, including administrative expenses and the cost of  
85 increased benefits to employees, resulting from the participating employer's failure to correctly  
86 report and certify records under this section;

87 (b) a penalty equal to the greater of:

88 (i) \$250; or

89 (ii) 50% of the total contributions for the employees for the period of the reporting  
90 error; and

91 (c) attorney fees.

92 (4) The executive director may waive all or any part of the interest, penalties, expenses,  
93 and fees if the executive director finds there were extenuating circumstances surrounding the  
94 participating employer's failure to comply with this section.

95 (5) The office may estimate the length of service, compensation, or age of any  
96 employee, if that information is not contained in the records.

97 Section 2. Section **49-11-1207** is amended to read:

98 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

99 (1) (a) If the office receives notice or learns of the reemployment of a retiree in  
100 violation of Section 49-11-1204 or 49-11-1205, the office shall:

101 (i) immediately cancel the retiree's retirement allowance;

102 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar  
103 year if the reemployment with a participating employer exceeded the limitation under  
104 Subsection 49-11-1205(1)(a)(iii)(A) [or], (3)(b), or (4)(b); and

105 (iii) recover any overpayment resulting from the violation in accordance with the  
106 provisions of Section 49-11-607 before the allowance may be reinstated.

107 (b) Reinstatement of an allowance following cancellation for a violation under this  
108 section is subject to the procedures and provisions under Section 49-11-1204.

109 (2) If a retiree or participating employer failed to report reemployment in violation of  
110 Section 49-11-1206, the retiree, participating employer, or both, who are found to be  
111 responsible for the failure to report, are liable to the office for the amount of any overpayment  
112 resulting from the violation.

113 (3) A participating employer is liable to the office for a payment or failure to make a  
114 payment in violation of this part.

115 (4) If a participating employer fails to notify the office in accordance with Section  
116 49-11-1206, the participating employer is immediately subject to a compliance audit by the  
117 office.

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

119 **49-12-102. Definitions.**

120 As used in this chapter:

121 (1) (a) "Benefits normally provided" [-(a)] means a benefit offered by an employer,  
122 including:

123 (i) a leave benefit of any kind;

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

126 (iii) employer contributions to a health savings account, health reimbursement account,  
127 health reimbursement arrangement, or medical expense reimbursement plan; and

128 (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the  
129 benefit~~[-and]~~.

130 (b) "Benefits normally provided" does not include:

131 (i) a payment for social security;

132 (ii) workers' compensation insurance;

133 (iii) unemployment insurance;

134 (iv) a payment for Medicare;

135 (v) a payment or insurance required by federal or state law that is similar to a payment  
136 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

137 (vi) any other benefit that state or federal law requires an employer to provide an  
138 employee who would not otherwise be eligible to receive the benefit; or

139 (vii) any benefit that an employer provides an employee in order to avoid a penalty or  
140 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health  
141 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal  
142 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

143 (2) (a) "Compensation" means~~[-except as provided in Subsection (2)(c);]~~ the total  
144 amount of payments made by a participating employer to a member of this system for services  
145 rendered to the participating employer, including:

146 (i) bonuses;

147 (ii) cost-of-living adjustments;

148 (iii) other payments currently includable in gross income and that are subject to social  
149 security deductions, including any payments in excess of the maximum amount subject to  
150 deduction under social security law;

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

153 (v) member contributions.

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

156 (c) "Compensation" does not include:

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

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

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

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

164 (v) any allowances or payments to a member for costs or expenses paid by the  
165 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
166 housing costs, insurance costs, equipment costs, and dependent care costs; or

167 (vi) a teacher salary bonus described in Section 53F-2-513.

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

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

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

178 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation  
179 to the office, the limitation in Subsection [~~(3)(a)~~] (3)(b) may be exceeded if:

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

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

182 [~~(c)~~] (d) If the member retires more than six months from the date of termination of  
183 employment, the member is considered to have been in service at the member's last rate of pay  
184 from the date of the termination of employment to the effective date of retirement for purposes  
185 of computing the member's final average salary only.

186 [~~(d)~~] (e) If the member has less than five years of service credit in this system, final  
187 average salary means the average annual compensation paid to the member during the full

188 period of service credit.

189 ~~[(e)]~~ (f) The annual compensation used to calculate final average salary shall be based  
190 on~~[:]~~ a period, as determined by the board, consistent with the period used to determine years  
191 of service credit in accordance with Subsection (7).

192 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
193 ~~educational institution; or]~~

194 ~~[(ii) a contract year for a member employed by an educational institution.]~~

195 (4) "Participating employer" means an employer ~~[which]~~ that meets the participation  
196 requirements of Sections 49-12-201 and 49-12-202.

197 (5) (a) "Regular full-time employee" means an employee:

198 (i) whose term of employment for a participating employer contemplates continued  
199 employment during a fiscal or calendar year ~~[and]~~;

200 (ii) whose employment normally requires an average of 20 hours or more per week,  
201 except as modified by the board~~[:]~~;

202 (iii) who receives benefits normally provided by the participating employer.

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

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

206 (ii) a classified school employee:

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

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

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

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

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

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

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

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

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

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

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

225 and

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

228 (iii) who is a person working on a contract:

229 (A) for the purposes of vocational rehabilitation and the employment and training of  
230 people with significant disabilities; and

231 (B) that has been set aside from procurement requirements by the state pursuant to  
232 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

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

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

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

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

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

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

245 **49-13-102. Definitions.**

246 As used in this chapter:

247 (1) "Benefits normally provided" [~~has the same meaning as~~] means the same as that  
248 term is defined in Section 49-12-102.

249 (2) (a) [~~Except as provided in Subsection (2)(c), "compensation"~~] "Compensation"



250 means the total amount of payments made by a participating employer to a member of this  
251 system for services rendered to the participating employer, including:

- 252 (i) bonuses;
- 253 (ii) cost-of-living adjustments;
- 254 (iii) other payments currently includable in gross income and that are subject to social  
255 security deductions, including any payments in excess of the maximum amount subject to  
256 deduction under social security law; and
- 257 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
258 or other benefits authorized by federal law.

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

261 (c) "Compensation" does not include:

- 262 (i) the monetary value of remuneration paid in kind, including a residence or use of  
263 equipment;
- 264 (ii) the cost of any employment benefits paid for by the participating employer;
- 265 (iii) compensation paid to a temporary employee, an exempt employee, or an employee  
266 otherwise ineligible for service credit;
- 267 (iv) any payments upon termination, including accumulated vacation, sick leave  
268 payments, severance payments, compensatory time payments, or any other special payments;
- 269 (v) any allowances or payments to a member for costs or expenses paid by the  
270 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
271 housing costs, insurance costs, equipment costs, and dependent care costs; or
- 272 (vi) a teacher salary bonus described in Section 53F-2-513.

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

275 (3) (a) "Final average salary" means the amount calculated by averaging the highest  
276 three years of annual compensation preceding retirement subject to Subsections [~~(3)(a), (b), (c),~~  
277 ~~and (d)~~] (3)(b), (c), (d), and (e).

278 [~~(a)~~] (b) Except as provided in Subsection [~~(3)(b)~~] (3)(c), the percentage increase in  
279 annual compensation in any one of the years used may not exceed the previous year's  
280 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the

281 purchasing power of the dollar during the previous year, as measured by a United States Bureau  
282 of Labor Statistics Consumer Price Index average as determined by the board.

283 ~~[(b)]~~ (c) In cases where the participating employer provides acceptable documentation  
284 to the office, the limitation in Subsection ~~[(3)(a)]~~ (3)(b) may be exceeded if:

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

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

287 ~~[(c)]~~ (d) If the member retires more than six months from the date of termination of  
288 employment and for purposes of computing the member's final average salary only, the  
289 member is considered to have been in service at the member's last rate of pay from the date of  
290 the termination of employment to the effective date of retirement.

291 ~~[(d)]~~ (e) The annual compensation used to calculate final average salary shall be based  
292 on~~[:]~~ a period, as determined by the board, consistent with the period used to determine years  
293 of service credit in accordance with Subsection (7).

294 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
295 ~~educational institution; or]~~

296 ~~[(ii) a contract year for a member employed by an educational institution.]~~

297 (4) "Participating employer" means an employer ~~[which]~~ that meets the participation  
298 requirements of Sections 49-13-201 and 49-13-202.

299 (5) (a) "Regular full-time employee" means an employee:

300 (i) whose term of employment for a participating employer contemplates continued  
301 employment during a fiscal or calendar year ~~[and]~~;

302 (ii) whose employment normally requires an average of 20 hours or more per week,  
303 except as modified by the board~~[:]~~; and

304 (iii) who receives benefits normally provided by the participating employer.

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

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

308 (ii) a classified school employee:

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

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

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

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

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

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

320 (i) (A) who is hired on or after July 1, 2013; and  
321 (B) who does not receive benefits normally provided by the participating employer  
322 even if the employment normally requires an average of 20 hours per week or more for a  
323 participating employer;

324 (ii) (A) who is hired before July 1, 2013;  
325 (B) who did not qualify as a regular full-time employee before July 1, 2013;  
326 (C) who does not receive benefits normally provided by the participating employer;  
327 and

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

330 (iii) who is a person working on a contract:

331 (A) for the purposes of vocational rehabilitation and the employment and training of  
332 people with significant disabilities; and  
333 (B) that has been set aside from procurement requirements by the state pursuant to  
334 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

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

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

337 (a) a period consisting of 12 full months as determined by the board;  
338 (b) a period determined by the board, whether consecutive or not, during which a  
339 regular full-time employee performed services for a participating employer, including any time  
340 the regular full-time employee was absent on a paid leave of absence granted by a participating  
341 employer or was absent in the service of the United States government on military duty as  
342 provided by this chapter; or

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

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

346 **49-14-102. Definitions.**

347 As used in this chapter:

348 (1) (a) "Compensation" means the total amount of payments that are includable in  
349 gross income [~~which are~~] received by a public safety service employee as base income for the  
350 regularly scheduled work period. The participating employer shall establish the regularly  
351 scheduled work period. Base income shall be determined prior to the deduction of member  
352 contributions or any amounts the public safety service employee authorizes to be deducted for  
353 salary deferral or other benefits authorized by federal law.

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

356 (c) "Compensation" does not include:

357 (i) overtime;

358 (ii) sick pay incentives;

359 (iii) retirement pay incentives;

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

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

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

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

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

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

372 [~~(a)~~] (b) Except as provided in Subsection [~~(3)(b)~~] (3)(c), the percentage increase in  
373 annual compensation in any one of the years used may not exceed the previous year's

374 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the  
375 purchasing power of the dollar during the previous year, as measured by a United States Bureau  
376 of Labor Statistics Consumer Price Index average as determined by the board.

377 ~~[(b)]~~ (c) In cases where the participating employer provides acceptable documentation  
378 to the office, the limitation in Subsection ~~[(3)(a)]~~ (3)(b) may be exceeded if:

- 379 (i) the public safety service employee has transferred from another agency; or  
380 (ii) the public safety service employee has been promoted to a new position.

381 ~~[(c)]~~ (d) The annual compensation used to calculate final average salary shall be based  
382 on ~~[:]~~ a period, as determined by the board, consistent with the period used to determine years  
383 of service credit in accordance with Subsection (10).

384 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
385 ~~educational institution; or]~~

386 ~~[(ii) a contract year for a member employed by an educational institution.]~~

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

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

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

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

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

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

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

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

401 (5) "Participating employer" means an employer ~~[which]~~ that meets the participation  
402 requirements of Section 49-14-201.

403 (6) (a) "Public safety service" means employment normally requiring an average of  
404 2,080 hours of regularly scheduled employment per year rendered by a member who is [a]:

405 (i) a law enforcement officer in accordance with Section 53-13-103;  
406 (ii) a correctional officer in accordance with Section 53-13-104;  
407 (iii) a special function officer approved in accordance with Sections 49-14-201 and  
408 53-13-105;

409 (iv) a dispatcher who is certified in accordance with Section 53-6-303; [~~or~~]  
410 (v) a full-time member of the Board of Pardons and Parole created under Section  
411 77-27-2[~~7~~];

412 (vi) the commissioner of the Department of Public Safety; or

413 (vii) the executive director of the Department of Corrections.

414 (b) Except [~~as provided under Subsections (6)(a)(iv) and (v)~~] for a position described  
415 in Subsection (6)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the  
416 course of employment, the employee's life or personal safety is at risk.

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

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

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

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

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

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

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

433 **49-14-201. System membership -- Eligibility.**

434 (1) Except as provided in Section 49-15-201, a public safety service employee of a  
435 participating employer participating in this system is eligible for service credit in this system at

436 the earliest of:

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

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

442 (c) the date the public safety service employee is employed by the participating  
443 employer and is eligible to perform public safety service, except that a public safety service  
444 employee initially entering employment with a participating employer on or after July 1, 2011,  
445 who does not have service credit accrued before July 1, 2011, in a Tier I system or plan  
446 administered by the board, may not participate in this system.

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

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

452 (b) (i) [~~Prior to~~] Before transferring a dual purpose employee from one system to  
453 another, the participating employer shall receive written permission from the office.

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

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

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

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

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

465 (c) (i) The Peace Officer Standards and Training Council's authority to decide  
466 eligibility for public safety service credit is limited to claims for coverage under this system for

467 time periods after July 1, 1989.

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

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

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

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

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

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

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

484 (7) A public safety employee who is transferred or promoted to an administration  
485 position requiring the performance of duties that consist primarily of management or  
486 supervision of public safety service employees shall continue to earn public safety service  
487 credit in this system [~~as long as~~ during the period in which the employee remains employed in  
488 the same department.

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

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

493 (b) the employee:

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

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

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

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



498 (9) An employee who is reassigned to the Division of Technology Services or to the  
499 Division of Human Resource Management, and who was a member of this system, is entitled  
500 to remain a member of this system.

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

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

505 (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or  
506 53-13-105.

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

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

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

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

515 (11) If a subcommittee is used to recommend the determination of disputes to the  
516 Peace Officer Standards and Training Council, the subcommittee shall comply with the  
517 requirements of Subsection (10) in making [its] the subcommittee's recommendation.

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

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

526 (14) (a) A public safety service employee employed by an airport police department,  
527 which elects to cover [its] the airport police department's public safety service employees under  
528 the Public Safety Noncontributory Retirement System under Subsection (13), may elect to

529 remain in the public safety service employee's current retirement system.

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

532 (i) shall be made at the time the employer elects to move [~~its~~] the employer's public  
533 safety service employees to a public safety retirement system;

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

535 (iii) is irrevocable.

536 (15) (a) Subject to Subsection (16), beginning July 1, 2015, a public safety service  
537 employee who is a dispatcher employed by:

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

539 (ii) a participating employer other than the state shall be eligible for service credit in  
540 this system if the dispatcher's participating employer elects to cover [~~its~~] the participating  
541 employer's dispatchers under this system.

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

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

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

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

554 **49-15-102. Definitions.**

555 As used in this chapter:

556 (1) (a) "Compensation" means the total amount of payments that are includable in  
557 gross income received by a public safety service employee as base income for the regularly  
558 scheduled work period. The participating employer shall establish the regularly scheduled  
559 work period. Base income shall be determined prior to the deduction of any amounts the

560 public safety service employee authorizes to be deducted for salary deferral or other benefits  
561 authorized by federal law.

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

564 (c) "Compensation" does not include:

565 (i) overtime;

566 (ii) sick pay incentives;

567 (iii) retirement pay incentives;

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

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

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

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

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

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

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

585 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation  
586 to the office, the limitation in Subsection [~~(3)(a)~~] (3)(b) may be exceeded if:

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

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

589 [~~(c)~~] (d) The annual compensation used to calculate final average salary shall be based  
590 on~~[-]~~ a period, as determined by the board, consistent with the period used to determine years

591 of service credit in accordance with Subsection (10).

592 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
593 ~~educational institution; or]~~

594 ~~[(ii) a contract year for a member employed by an educational institution.]~~

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

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

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

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

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

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

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

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

609 (5) "Participating employer" means an employer [~~which~~] that meets the participation  
610 requirements of Section 49-15-201.

611 (6) (a) "Public safety service" means employment normally requiring an average of  
612 2,080 hours of regularly scheduled employment per year rendered by a member who is [a]:

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

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

615 (iii) a special function officer approved in accordance with Sections 49-15-201 and  
616 53-13-105;

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

618 (v) a full-time member of the Board of Pardons and Parole created under Section  
619 77-27-2[-];

620 (vi) the commissioner of the Department of Public Safety; or

621 (vii) the executive director of the Department of Corrections.

622 (b) Except ~~as provided under Subsections (6)(a)(iv) and (v)~~ for a position described  
623 in Subsection (6)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the  
624 course of employment, the employee's life or personal safety is at risk.

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

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

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

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

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

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

639 **49-15-201. System membership -- Eligibility.**

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

642 (b) A public safety service employee employed by the state ~~[prior to]~~ before July 1,  
643 1989, may either elect to receive service credit in this system or continue to receive service  
644 credit under the system established under Chapter 14, Public Safety Contributory Retirement  
645 Act, by following the procedures established by the board under this chapter.

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

649 (b) (i) A participating employer other than the state that elected on or before July 1,  
650 1989, to participate in this system shall, have allowed, ~~[prior to]~~ before July 1, 1989, a public  
651 safety service employee to elect to participate in either this system or the Public Safety  
652 Contributory Retirement System.

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

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

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

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

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

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

668 (b) (i) [~~Prior to~~] Before transferring a dual purpose employee from one system to  
669 another, the participating employer shall receive written permission from the office.

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

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

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

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

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

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

684 (ii) A decision of the Peace Officer Standards and Training Council may not be applied  
685 to service credit earned in another system [~~prior to~~] before July 1, 1989.

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

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

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

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

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

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

700 (8) A public safety service employee who is transferred or promoted to an  
701 administration position requiring the performance of duties that consist primarily of  
702 management or supervision of public safety service employees shall continue to earn public  
703 safety service credit in this system [~~as long as~~] during the period in which the employee  
704 remains employed in the same department.

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

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

709 (b) the employee:

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

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

712 (iii) was hired into a position covered by this system [~~prior to~~] before July 1, 2015; and

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

714 (10) Any employee who is reassigned to the Division of Technology Services or to the

715 Division of Human Resource Management, and who was a member in this system, shall be  
716 entitled to remain a member in this system.

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

720 (i) except for a dispatcher, place the employee's life or personal safety at risk; and  
721 (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or  
722 53-13-105.

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

726 (i) perform duties that consist primarily of actively preventing or detecting crime and  
727 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;  
728 (ii) perform duties that consist primarily of providing community protection; and  
729 (iii) respond to situations involving threats to public safety and make emergency  
730 decisions affecting the lives and health of others.

731 (12) If a subcommittee is used to recommend the determination of disputes to the  
732 Peace Officer Standards and Training Council, the subcommittee shall comply with the  
733 requirements of Subsection (11) in making ~~[its]~~ the subcommittee's recommendation.

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

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

742 (15) (a) A public safety service employee employed by an airport police department,  
743 which elects to cover ~~[its]~~ the airport police department's public safety service employees under  
744 the Public Safety Noncontributory Retirement System under Subsection (14), may elect to  
745 remain in the public safety service employee's current retirement system.



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

748 (i) shall be made at the time the employer elects to move [its] the employer's public  
749 safety service employees to a public safety retirement system;

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

751 (iii) is irrevocable.

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

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

755 (ii) a participating employer other than the state shall be eligible for service credit in  
756 this system if the dispatcher's participating employer elects to cover [its] the participating  
757 employer's dispatchers under this system.

758 (b) A participating employer's election to cover [its] the participating employer's  
759 dispatchers under this system under Subsection (16)(a)(ii) is irrevocable and shall be  
760 documented by a resolution adopted by the governing body of the participating employer in  
761 accordance with rules made by the office.

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

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

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

770 **49-16-102. Definitions.**

771 As used in this chapter:

772 (1) (a) "Compensation" means the total amount of payments that are includable as  
773 gross income [~~which are~~] received by a firefighter service employee as base income for the  
774 regularly scheduled work period. The participating employer shall establish the regularly  
775 scheduled work period. Base income shall be determined prior to the deduction of member  
776 contributions or any amounts the firefighter service employee authorizes to be deducted for

777 salary deferral or other benefits authorized by federal law.

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

780 (c) "Compensation" does not include:

781 (i) overtime;

782 (ii) sick pay incentives;

783 (iii) retirement pay incentives;

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

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

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

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

792 (2) (a) "Disability" means the complete inability, due to objective medical impairment,  
793 whether physical or mental, to perform firefighter service.

794 (b) "Disability" does not include the inability to meet an employer's required standards  
795 or tests relating to fitness, physical ability, or agility that is not a result of a disability as defined  
796 under Subsection (2)(a).

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

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

805 ~~[(b)]~~ (c) In cases where the participating employer provides acceptable documentation  
806 to the office the limitation in Subsection (3)(a) may be exceeded if:

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

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

809 ~~[(e)]~~ (d) The annual compensation used to calculate final average salary shall be based  
810 on~~[:]~~ a period, as determined by the board, consistent with the period used to determine years  
811 of service credit in accordance with Subsection (13).

812 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
813 ~~educational institution; or]~~

814 ~~[(ii) a contract year for a member employed by an educational institution.]~~

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

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

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

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

822 (5) (a) "Firefighter service employee" means an employee of a participating employer  
823 who provides firefighter service under this chapter. ~~[An]~~

824 (b) "Firefighter service employee" does not include an employee of a regularly  
825 constituted fire department who does not perform firefighter service ~~[is not a firefighter service~~  
826 ~~employee]~~.

827 (6) (a) "Line-of-duty death or disability" means a death or disability resulting from:

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

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

832 (b) "Line-of-duty death or disability" does not include a death or disability that:

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

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

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

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

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

843 (7) "Objective medical impairment" means an impairment resulting from an injury or  
844 illness [~~which~~] that is diagnosed by a physician or physician assistant and [~~which~~] that is based  
845 on accepted objective medical tests or findings rather than subjective complaints.

846 (8) "Participating employer" means an employer [~~which~~] that meets the participation  
847 requirements of Section 49-16-201.

848 (9) "Regularly constituted fire department" means a fire department that employs a fire  
849 chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid  
850 employment per year.

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

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

856 (11) "System" means the Firefighters' Retirement System created under this chapter.

857 (12) (a) "Volunteer firefighter" means any individual [~~that~~] who is not regularly  
858 employed as a firefighter service employee, but who:

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

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

861 (iii) is on the rolls of a legally organized volunteer fire department [~~which~~] that  
862 provides ongoing training and serves a political subdivision of the state.

863 (b) [~~An individual that~~] "Volunteer firefighter" does not include an individual who  
864 volunteers assistance but does not meet the requirements of Subsection (12)(a) [is not a  
865 volunteer firefighter for purposes of this chapter].

866 (13) "Years of service credit" means the number of periods, each to consist of 12 full  
867 months as determined by the board, whether consecutive or not, during which a firefighter  
868 service employee was employed by a participating employer or received full-time pay while on  
869 sick leave, including any time the firefighter service employee was absent in the service of the

870 United States on military duty.

871 Section 10. Section **49-22-102** is amended to read:

872 **49-22-102. Definitions.**

873 As used in this chapter:

874 (1) "Benefits normally provided" [~~has the same meaning as~~] means the same as that  
875 term is defined in Section 49-12-102.

876 (2) (a) "Compensation" means~~[, except as provided in Subsection (2)(c);]~~ the total  
877 amount of payments made by a participating employer to a member of this system for services  
878 rendered to the participating employer, including:

879 (i) bonuses;

880 (ii) cost-of-living adjustments;

881 (iii) other payments currently includable in gross income and that are subject to social  
882 security deductions, including any payments in excess of the maximum amount subject to  
883 deduction under social security law;

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

886 (v) member contributions.

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

889 (c) "Compensation" does not include:

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

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

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

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

897 (v) any allowances or payments to a member for costs or expenses paid by the  
898 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
899 housing costs, insurance costs, equipment costs, and dependent care costs; or

900 (vi) a teacher salary bonus described in Section 53F-2-513.

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

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

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

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

913 ~~[(b)] (c)~~ In cases where the participating employer provides acceptable documentation  
 914 to the office, the limitation in Subsection ~~[(4)(a)] (4)(b)~~ may be exceeded if:

915 ~~[(i)] (i)~~ the member has transferred from another agency; or

916 ~~[(ii)] (ii)~~ the member has been promoted to a new position.

917 ~~[(c)] (d)~~ If the member retires more than six months from the date of termination of  
 918 employment, the member is considered to have been in service at the member's last rate of pay  
 919 from the date of the termination of employment to the effective date of retirement for purposes  
 920 of computing the member's final average salary only.

921 ~~[(d)] (e)~~ If the member has less than five years of service credit in this system, final  
 922 average salary means the average annual compensation paid to the member during the full  
 923 period of service credit.

924 ~~[(e)] (f)~~ The annual compensation used to calculate final average salary shall be based  
 925 on [:] a period, as determined by the board, consistent with the period used to determine years  
 926 of service credit in accordance with Subsection (8).

927 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
 928 ~~educational institution; or]~~

929 ~~[(ii) a contract year for a member employed by an educational institution.]~~

930 (5) "Participating employer" means an employer ~~[which]~~ that meets the participation  
 931 requirements of:

- 932 (a) Sections 49-12-201 and 49-12-202;
- 933 (b) Sections 49-13-201 and 49-13-202;
- 934 (c) Section 49-19-201; or
- 935 (d) Section 49-22-201 or 49-22-202.
- 936 (6) (a) "Regular full-time employee" means an employee:
- 937 (i) whose term of employment for a participating employer contemplates continued
- 938 employment during a fiscal or calendar year [~~and~~];
- 939 (ii) whose employment normally requires an average of 20 hours or more per week,
- 940 except as modified by the board[;]; and
- 941 (iii) who receives benefits normally provided by the participating employer.
- 942 (b) "Regular full-time employee" includes:
- 943 (i) a teacher whose term of employment for a participating employer contemplates
- 944 continued employment during a school year and who teaches half time or more;
- 945 (ii) a classified school employee:
- 946 (A) who is hired before July 1, 2013; and
- 947 (B) whose employment normally requires an average of 20 hours per week or more for
- 948 a participating employer, regardless of benefits provided;
- 949 (iii) an appointive officer whose appointed position is full time as certified by the
- 950 participating employer;
- 951 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the
- 952 attorney general, and a state legislator;
- 953 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position
- 954 is full time as certified by the participating employer;
- 955 (vi) a faculty member or employee of an institution of higher education who is
- 956 considered full time by that institution of higher education; and
- 957 (vii) an individual who otherwise meets the definition of this Subsection (6) who
- 958 performs services for a participating employer through a professional employer organization or
- 959 similar arrangement.
- 960 (c) "Regular full-time employee" does not include:
- 961 (i) a firefighter service employee as defined in Section 49-23-102;
- 962 (ii) a public safety service employee as defined in Section 49-23-102;

- 963 (iii) a classified school employee:
- 964 (A) who is hired on or after July 1, 2013; and
- 965 (B) who does not receive benefits normally provided by the participating employer
- 966 even if the employment normally requires an average of 20 hours per week or more for a
- 967 participating employer;
- 968 (iv) a classified school employee:
- 969 (A) who is hired before July 1, 2013;
- 970 (B) who did not qualify as a regular full-time employee before July 1, 2013;
- 971 (C) who does not receive benefits normally provided by the participating employer;
- 972 and
- 973 (D) whose employment hours are increased on or after July 1, 2013, to require an
- 974 average of 20 hours per week or more for a participating employer; or
- 975 (E) who is a person working on a contract:
- 976 (I) for the purposes of vocational rehabilitation and the employment and training of
- 977 people with significant disabilities; and
- 978 (II) that has been set aside from procurement requirements by the state pursuant to
- 979 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- 980 (7) "System" means the New Public Employees' Tier II Contributory Retirement
- 981 System created under this chapter.
- 982 (8) "Years of service credit" means:
- 983 (a) a period consisting of 12 full months as determined by the board;
- 984 (b) a period determined by the board, whether consecutive or not, during which a
- 985 regular full-time employee performed services for a participating employer, including any time
- 986 the regular full-time employee was absent on a paid leave of absence granted by a participating
- 987 employer or was absent in the service of the United States government on military duty as
- 988 provided by this chapter; or
- 989 (c) the regular school year consisting of not less than eight months of full-time service
- 990 for a regular full-time employee of an educational institution.
- 991 Section 11. Section **49-22-201** is amended to read:
- 992 **49-22-201. System membership -- Eligibility.**
- 993 (1) Beginning July 1, 2011, a participating employer shall participate in this system.



994 (2) (a) A person initially entering regular full-time employment with a participating  
995 employer on or after July 1, 2011, who does not have service credit accrued before July 1,  
996 2011, in a Tier I system or plan administered by the board, is eligible:

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

999 (ii) as a participant for defined contributions under the Tier II defined contribution plan  
1000 established by Part 4, Tier II Defined Contribution Plan.

1001 (b) A person initially entering regular full-time employment with a participating  
1002 employer on or after July 1, 2011, shall:

1003 (i) make an election to participate in the system created under this chapter:

1004 (A) as a member for service credit and defined contributions under the Tier II hybrid  
1005 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1006 (B) as a participant for defined contributions under the Tier II defined contribution plan  
1007 established by Part 4, Tier II Defined Contribution Plan; and

1008 (ii) electronically submit to the office notification of the member's election under  
1009 Subsection (2)(b)(i) in a manner approved by the office.

1010 (c) An election made by a person initially entering regular full-time employment with a  
1011 participating employer under this Subsection (2) is irrevocable beginning one year from the  
1012 date of eligibility for accrual of benefits.

1013 (d) If no election is made under Subsection (2)(b)(i), the person shall become a  
1014 member eligible for service credit and defined contributions under the Tier II hybrid retirement  
1015 system established by Part 3, Tier II Hybrid Retirement System.

1016 (3) Notwithstanding the provisions of this section and except as provided in Subsection  
1017 (4), an elected official initially entering office on or after July 1, 2011:

1018 (a) is only eligible to participate in the Tier II defined contribution plan established  
1019 under Part 4, Tier II Defined Contribution Plan;

1020 (b) is not eligible to participate in the Tier II hybrid retirement system established  
1021 under Part 3, Tier II Hybrid Retirement System; and

1022 (c) is vested immediately in the elected official's benefit and the benefit is  
1023 nonforfeitable, including the total amount contributed by the participating employer and the  
1024 total amount contributed by the member in the Tier II defined contribution plan.

1025 (4) ~~[Notwithstanding the provisions of Subsection (3), a]~~ A legislator or full-time  
1026 elected official initially entering office on or after July 1, 2011, who has previously accrued  
1027 service credit:

1028 (a) in a Tier I retirement system or plan administered by the board shall continue in the  
1029 Tier I system or plan for which the legislator or full-time elected official is eligible; or

1030 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which  
1031 the ~~[legislator or]~~ full-time elected official is eligible.

1032 Section 12. Section **49-22-204** is amended to read:

1033 **49-22-204. Higher education employees' eligibility requirements -- Election**  
1034 **between different retirement plans -- Classification requirements -- Transfer between**  
1035 **systems.**

1036 (1) (a) A regular full-time employee of an institution of higher education who is  
1037 eligible to participate in either this system or in a retirement annuity contract with a public or  
1038 private system, organization, or company, designated as described in Subsection (1)(c) or (d),  
1039 shall, not later than January 1, 1979, elect to participate exclusively in this system or in an  
1040 annuity contract allowed under this Subsection (1).

1041 (b) The election is final, and no right exists to make any further election.

1042 (c) Except as provided in Subsection (1)(d), the Utah Board of Higher Education shall  
1043 designate the public or private retirement systems, organizations, or companies that a regular  
1044 full-time employee of an institution of higher education is eligible to participate in under  
1045 Subsection (1)(a).

1046 (d) The technical college board of trustees of each technical college shall designate the  
1047 public or private retirement systems, organizations, or companies that a regular full-time  
1048 employee of each technical college is eligible to participate in under Subsection (1)(a).

1049 (2) (a) A regular full-time employee hired by an institution of higher education after  
1050 January 1, 1979, may participate only in the retirement plan ~~[which attaches to]~~ designated for  
1051 the person's employment classification.

1052 (b) Each institution of higher education shall prepare or amend existing employment  
1053 classifications, under the direction of the Utah Board of Higher Education, or the technical  
1054 college board of trustees of each technical college for each technical college, so that each  
1055 classification is assigned with either:

- 1056 (i) this system; or
- 1057 (ii) a public or private system, organization, or company designated by:
- 1058 (A) except as provided under Subsection (2)(b)(ii)(B), the Utah Board of Higher
- 1059 Education; or
- 1060 (B) the technical college board of trustees of each technical college for regular
- 1061 full-time employees of each technical college.
- 1062 (c) Notwithstanding a person's employment classification assignment under Subsection
- 1063 (2)(b), a regular full-time employee who begins employment with an institution of higher
- 1064 education has a one-time irrevocable election to continue participation in this system if the
- 1065 employee:
- 1066 (i) has service credit in this system before the date of employment with the institution
- 1067 of higher education; and
- 1068 (ii) makes the election before participating in the system described in Subsection
- 1069 (2)(b)(ii).
- 1070 (3) A regular full-time employee hired by an institution of higher education on or after
- 1071 July 1, 2011, whose employment classification requires participation in this system may elect
- 1072 to continue participation in this system upon change to an employment classification [~~which~~
- 1073 that requires participation in a public or private system, organization, or company designated
- 1074 by:
- 1075 (a) except as provided in Subsection (3)(b), the Utah Board of Higher Education; or
- 1076 (b) the technical college board of trustees of each technical college for regular full-time
- 1077 employees of each technical college.
- 1078 (4) A regular full-time employee hired by an institution of higher education on or after
- 1079 July 1, 2011, whose employment classification requires participation in this system shall
- 1080 participate in this system.
- 1081 (5) An employee's participation or election described in this section:
- 1082 (a) shall be made in accordance with this section; and
- 1083 (b) is subject to requirements under federal law and rules made by the board.
- 1084 Section 13. Section **49-22-205** is amended to read:
- 1085 **49-22-205. Exemptions from participation in system.**
- 1086 (1) Upon filing a written request for exemption with the office, the following

- 1087 employees are exempt from participation in the system as provided in this section:
- 1088 (a) an executive department head of the state;
- 1089 (b) a member of the State Tax Commission;
- 1090 (c) a member of the Public Service Commission;
- 1091 (d) a member of a full-time or part-time board or commission;
- 1092 (e) an employee of the Governor's Office of Planning and Budget;
- 1093 (f) an employee of the Governor's Office of Economic Opportunity;
- 1094 (g) an employee of the Commission on Criminal and Juvenile Justice;
- 1095 (h) an employee of the Governor's Office;
- 1096 (i) an employee of the State Auditor's Office;
- 1097 (j) an employee of the State Treasurer's Office;
- 1098 (k) any other member who is permitted to make an election under Section 49-11-406;
- 1099 (l) a person appointed as a city manager or appointed as a city administrator or another
- 1100 at-will employee of a municipality, county, or other political subdivision;
- 1101 (m) an employee of an interlocal cooperative agency created under Title 11, Chapter
- 1102 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided
- 1103 through membership in a labor organization that provides retirement benefits to its members;
- 1104 and
- 1105 (n) an employee serving as an exchange employee from outside the state for an
- 1106 employer who has elected to make all of the employer's exchange employees eligible for
- 1107 service credit in this system.
- 1108 (2) (a) A participating employer shall prepare and maintain a list designating those
- 1109 positions eligible for exemption under Subsection (1).
- 1110 (b) An employee may not be exempted unless the employee is employed in a position
- 1111 designated by the participating employer under Subsection (1).
- 1112 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a
- 1113 municipality, county, or political subdivision may not exempt a total of more than 50 positions
- 1114 or a number equal to 10% of the eligible employees of the municipality, county, or political
- 1115 subdivision, whichever is less.
- 1116 (b) A municipality, county, or political subdivision may exempt at least one regular
- 1117 full-time employee.

- 1118 (4) Each participating employer shall:
- 1119 (a) maintain a list of employee exemptions; and
- 1120 (b) update an employee exemption in the event of any change.
- 1121 (5) Beginning on the effective date of the exemption for an employee who elects to be
- 1122 exempt in accordance with Subsection (1):
- 1123 (a) for a member of the Tier II defined contribution plan:
- 1124 (i) the participating employer shall contribute the nonelective contribution and the
- 1125 amortization rate described in Section 49-22-401, except that the nonelective contribution is
- 1126 exempt from the vesting requirements of Subsection 49-22-401(3)(a); ~~and~~
- 1127 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 1128 (iii) the member is not eligible for additional service credit in the plan for the period of
- 1129 exempt employment; and
- 1130 (b) for a member of the Tier II hybrid retirement system:
- 1131 (i) the participating employer shall contribute the nonelective contribution and the
- 1132 amortization rate described in Section 49-22-401, except that the contribution is exempt from
- 1133 the vesting requirements of Subsection 49-22-401(3)(a);
- 1134 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 1135 (iii) the member is not eligible for additional service credit in the system for the period
- 1136 of exempt employment.
- 1137 (6) If an employee who is a member of the Tier II hybrid retirement system
- 1138 subsequently revokes the election of exemption made under Subsection (1), the provisions
- 1139 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee
- 1140 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- 1141 (7) (a) All employer contributions made on behalf of an employee shall be invested in
- 1142 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election
- 1143 period under Subsection 49-22-201(2)(c) is expired if the employee:
- 1144 (i) elects to be exempt in accordance with Subsection (1); and
- 1145 (ii) continues employment with the participating employer through the one-year
- 1146 election period under Subsection 49-22-201(2)(c).
- 1147 (b) An employee is entitled to receive a distribution of the employer contributions
- 1148 made on behalf of the employee and all associated investment gains and losses if the employee:

- 1149 (i) elects to be exempt in accordance with Subsection (1); and  
1150 (ii) terminates employment prior to the one-year election period under Subsection  
1151 49-22-201(2)(c).
- 1152 (8) (a) The office shall make rules to implement this section.  
1153 (b) The rules made under this Subsection (8) shall include provisions to allow the  
1154 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
1155 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
1156 8, 2012.
- 1157 (9) An employee's exemption, participation, or election described in this section:  
1158 (a) shall be made in accordance with this section; and  
1159 (b) is subject to requirements under federal law and rules made by the board.
- 1160 Section 14. Section **49-22-401** is amended to read:  
1161 **49-22-401. Contributions -- Rates.**
- 1162 (1) Up to the amount allowed by federal law, the participating employer shall make a  
1163 nonelective contribution of 10% of the participant's compensation to a defined contribution  
1164 plan.
- 1165 (2) (a) The participating employer shall contribute the 10% nonelective contribution  
1166 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
1167 Internal Revenue Code [~~which~~] that:
- 1168 (i) is sponsored by the board; and  
1169 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
- 1170 (b) The member may make voluntary deferrals to:  
1171 (i) the qualified 401(k) plan [~~which~~] that receives the employer contribution described  
1172 in this Subsection (2); or  
1173 (ii) at the member's option, another defined contribution plan established by the  
1174 participating employer.
- 1175 (c) In addition to the percent specified under Subsection (2)(a), the participating  
1176 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1177 compensation to the office to be applied to the employer's corresponding Tier I system liability.
- 1178 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the  
1179 participating employer under Subsection (2)(a) vests to the member upon accruing four years of

1180 employment as a regular full-time employee under this title.

1181 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
1182 member's benefit immediately and is nonforfeitable.

1183 (c) (i) Upon filing a written request for exemption with the office, an eligible employee  
1184 is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section  
1185 49-22-205.

1186 (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for  
1187 additional service credit in the plan for the period of exempt employment.

1188 (d) (i) Years of employment under Subsection (3)(a) includes any fraction of a year to  
1189 which the member may be entitled.

1190 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of  
1191 one year of the total years required for vesting, the member shall be considered to have the total  
1192 years of employment required for vesting.

1193 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
1194 invested in a default option selected by the board until the member is vested in accordance with  
1195 Subsection (3)(a).

1196 (b) A member may direct the investment of contributions including associated  
1197 investment gains and losses made by a participating employer under Subsection (2)(a) only  
1198 after the contributions have vested in accordance with Subsection (3)(a).

1199 (c) A member may direct the investment of contributions made by the member under  
1200 Subsection (3)(b).

1201 (5) No loans shall be available from contributions made by a participating employer  
1202 under Subsection (2)(a).

1203 (6) No hardship distributions shall be available from contributions made by a  
1204 participating employer under Subsection (2)(a).

1205 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1206 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
1207 contributions made by a participating employer on behalf of the member including associated  
1208 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1209 (b) If a member who terminates employment with a participating employer prior to the  
1210 vesting period described in Subsection (3)(a) subsequently enters employment with the same or

1211 another participating employer within 10 years of the termination date of the previous  
1212 employment:

1213 (i) all contributions made by the previous participating employer on behalf of the  
1214 member including associated investment gains and losses shall be reinstated upon the member's  
1215 employment as a regular full-time employee; and

1216 (ii) the length of time that the member worked with the previous employer shall be  
1217 included in determining whether the member has completed the vesting period under  
1218 Subsection (3)(a).

1219 (c) The office shall establish a forfeiture account and shall specify the uses of the  
1220 forfeiture account, which may include an offset against administrative costs or employer  
1221 contributions made under this section.

1222 (8) The office may request from any other ~~[qualified 401(k)]~~ plan under Subsection  
1223 (2)(b)(ii) any relevant information pertaining to the maintenance of ~~[its]~~ the plan's tax  
1224 qualification under the Internal Revenue Code.

1225 (9) The office may take any action ~~[which in its]~~ that in the office's judgment is  
1226 necessary to maintain the tax-qualified status of ~~[its]~~ the office's 401(k) defined contribution  
1227 plan under federal law.

1228 Section 15. Section **49-23-102** is amended to read:

1229 **49-23-102. Definitions.**

1230 As used in this chapter:

1231 (1) (a) "Compensation" means the total amount of payments that are includable in  
1232 gross income received by a public safety service employee or a firefighter service employee as  
1233 base income for the regularly scheduled work period. The participating employer shall  
1234 establish the regularly scheduled work period. Base income shall be determined prior to the  
1235 deduction of any amounts the public safety service employee or firefighter service employee  
1236 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

1237 (b) "Compensation" includes performance-based bonuses and cost-of-living  
1238 adjustments.

1239 (c) "Compensation" does not include:

1240 (i) overtime;

1241 (ii) sick pay incentives;



1242 (iii) retirement pay incentives;

1243 (iv) the monetary value of remuneration paid in kind, as in a residence, use of  
1244 equipment or uniform, travel, or similar payments;

1245 (v) a lump-sum payment or special payment covering accumulated leave; and

1246 (vi) all contributions made by a participating employer under this system or under any  
1247 other employee benefit system or plan maintained by a participating employer for the benefit of  
1248 a member or participant.

1249 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed  
1250 under Section 401(a)(17), Internal Revenue Code.

1251 (2) "Corresponding Tier I system" means the system or plan that would have covered  
1252 the member if the member had initially entered employment before July 1, 2011.

1253 (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.

1254 (4) (a) "Final average salary" means the amount calculated by averaging the highest  
1255 five years of annual compensation preceding retirement subject to Subsections [~~(4)(a), (b), (c),~~  
1256 ~~(d), and (e)~~] (4)(b), (c), (d), (e), and (f).

1257 [~~(a)~~] (b) Except as provided in Subsection [~~(4)(b)~~] (4)(c), the percentage increase in  
1258 annual compensation in any one of the years used may not exceed the previous year's  
1259 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the  
1260 purchasing power of the dollar during the previous year, as measured by a United States Bureau  
1261 of Labor Statistics Consumer Price Index average as determined by the board.

1262 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation  
1263 to the office, the limitation in Subsection [~~(4)(a)~~] (4)(b) may be exceeded if:

1264 (i) the member has transferred from another agency; or

1265 (ii) the member has been promoted to a new position.

1266 [~~(c)~~] (d) If the member retires more than six months from the date of termination of  
1267 employment, the member is considered to have been in service at the member's last rate of pay  
1268 from the date of the termination of employment to the effective date of retirement for purposes  
1269 of computing the member's final average salary only.

1270 [~~(d)~~] (e) If the member has less than five years of service credit in this system, final  
1271 average salary means the average annual compensation paid to the member during the full  
1272 period of service credit.

1273           ~~[(e)]~~ (f) The annual compensation used to calculate final average salary shall be based  
1274 on~~[:]~~ a period, as determined by the board, consistent with the period used to determine years  
1275 of service credit in accordance with Subsection (14).

1276           ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
1277 ~~educational institution; or]~~

1278           ~~[(ii) a contract year for a member employed by an educational institution.]~~

1279           (5) (a) "Firefighter service" means employment normally requiring an average of 2,080  
1280 hours of regularly scheduled employment per year rendered by a member who is:

1281           (i) a firefighter service employee trained in firefighter techniques and assigned to a  
1282 position of hazardous duty with a regularly constituted fire department;

1283           (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire  
1284 marshal; or

1285           (iii) a firefighter service employee who is:

1286           (A) hired on or after July 1, 2021;

1287           (B) trained in firefighter techniques;

1288           (C) assigned to a position of hazardous duty; and

1289           (D) employed by the state as a participating employer.

1290           (b) "Firefighter service" does not include secretarial staff or other similar employees.

1291           (6) (a) "Firefighter service employee" means an employee of a participating employer  
1292 who provides firefighter service under this chapter.

1293           (b) "Firefighter service employee" does not include an employee of a regularly  
1294 constituted fire department who does not perform firefighter service.

1295           (7) (a) "Line-of-duty death" means a death resulting from:

1296           (i) external force, violence, or disease occasioned by an act of duty as a public safety  
1297 service or firefighter service employee; or

1298           (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous  
1299 training or another strenuous activity required as an act of duty as a public safety service or  
1300 firefighter service employee.

1301           (b) "Line-of-duty death" does not include a death that:

1302           (i) occurs during an activity that is required as an act of duty as a public safety service  
1303 or firefighter service employee if the activity is not a strenuous activity, including an activity

- 1304 that is clerical, administrative, or of a nonmanual nature;
- 1305 (ii) occurs during the commission of a crime committed by the employee;
- 1306 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or  
1307 nonprescribed, contributes to the employee's death; or
- 1308 (iv) occurs in a manner other than as described in Subsection (7)(a).
- 1309 (8) "Participating employer" means an employer [~~which~~] that meets the participation  
1310 requirements of:
- 1311 (a) Sections 49-14-201 and 49-14-202;
- 1312 (b) Sections 49-15-201 and 49-15-202;
- 1313 (c) Sections 49-16-201 and 49-16-202; or
- 1314 (d) Sections 49-23-201 and 49-23-202.
- 1315 (9) (a) "Public safety service" means employment normally requiring an average of  
1316 2,080 hours of regularly scheduled employment per year rendered by a member who is [a]:
- 1317 (i) a law enforcement officer in accordance with Section 53-13-103;
- 1318 (ii) a correctional officer in accordance with Section 53-13-104;
- 1319 (iii) a special function officer approved in accordance with Sections 49-15-201 and  
1320 53-13-105;
- 1321 (iv) a dispatcher who is certified in accordance with Section 53-6-303; [~~and~~]
- 1322 (v) a full-time member of the Board of Pardons and Parole created under Section  
1323 77-27-2[-];
- 1324 (vi) the commissioner of the Department of Public Safety; or
- 1325 (vii) the executive director of the Department of Corrections.
- 1326 (b) Except [~~as provided under Subsections (9)(a)(iv) and (v)] for a position described  
1327 in Subsection (9)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the  
1328 course of employment, the employee's life or personal safety is at risk.~~
- 1329 (10) "Public safety service employee" means an employee of a participating employer  
1330 who performs public safety service under this chapter.
- 1331 (11) (a) "Strenuous activity" means engagement involving a difficult, stressful, or  
1332 vigorous fire suppression, rescue, hazardous material response, emergency medical service,  
1333 physical law enforcement, prison security, disaster relief, or other emergency response activity.
- 1334 (b) "Strenuous activity" includes participating in a participating employer sanctioned

1335 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

1336 (12) "System" means the New Public Safety and Firefighter Tier II Contributory  
1337 Retirement System created under this chapter.

1338 (13) (a) "Volunteer firefighter" means any individual [~~that~~] who is not regularly  
1339 employed as a firefighter service employee, but who:

1340 (i) has been trained in firefighter techniques and skills;

1341 (ii) continues to receive regular firefighter training; and

1342 (iii) is on the rolls of a legally organized volunteer fire department [~~which~~] that  
1343 provides ongoing training and serves a political subdivision of the state.

1344 (b) An individual that volunteers assistance but does not meet the requirements of  
1345 Subsection (13)(a) is not a volunteer firefighter for purposes of this chapter.

1346 (14) "Years of service credit" means:

1347 (a) a period, consisting of 12 full months as determined by the board; or

1348 (b) a period determined by the board, whether consecutive or not, during which a  
1349 regular full-time employee performed services for a participating employer, including any time  
1350 the regular full-time employee was absent on a paid leave of absence granted by a participating  
1351 employer or was absent in the service of the United States government on military duty as  
1352 provided by this chapter.

1353 Section 16. Section **49-23-201** is amended to read:

1354 **49-23-201. System membership -- Eligibility.**

1355 (1) Beginning July 1, 2011, a participating employer that employs public safety service  
1356 employees or firefighter service employees shall participate in this system.

1357 (2) (a) A public safety service employee or a firefighter service employee initially  
1358 entering employment with a participating employer on or after July 1, 2011, who does not have  
1359 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,  
1360 is eligible:

1361 (i) as a member for service credit and defined contributions under the Tier II hybrid  
1362 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1363 (ii) as a participant for defined contributions under the Tier II defined contributions  
1364 plan established by Part 4, Tier II Defined Contribution Plan.

1365 (b) A public safety service employee or a firefighter service employee initially entering

1366 employment with a participating employer on or after July 1, 2011, shall:

1367 (i) make an election to participate in the system created under this chapter:

1368 (A) as a member for service credit and defined contributions under the Tier II hybrid  
1369 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1370 (B) as a participant for defined contributions under the Tier II defined contribution plan  
1371 established by Part 4, Tier II Defined Contribution Plan; and

1372 (ii) electronically submit to the office notification of the member's election under  
1373 Subsection (2)(b)(i) in a manner approved by the office.

1374 (c) An election made by a public safety service employee or firefighter service  
1375 employee initially entering employment with a participating employer under this Subsection (2)  
1376 is irrevocable beginning one year from the date of eligibility for accrual of benefits.

1377 (d) If no election is made under Subsection (2)(b)(i), the public safety service employee  
1378 or firefighter service employee shall become a member eligible for service credit and defined  
1379 contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid  
1380 Retirement System.

1381 (3) (a) Beginning July 1, 2015, a public safety service employee who is a dispatcher  
1382 employed by:

1383 (i) the state shall be eligible for service credit in this system; and

1384 (ii) a participating employer other than the state shall be eligible for service credit in  
1385 this system if the dispatcher's participating employer elects to cover [its] the participating  
1386 employer's dispatchers under this system.

1387 (b) A participating employer's election to cover [its] the participating employer's  
1388 dispatchers under this system under Subsection (3)(a)(ii) is irrevocable and shall be  
1389 documented by a resolution adopted by the governing body of the participating employer in  
1390 accordance with rules made by the office.

1391 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution  
1392 of a participating employer under Subsection (3)(b), is not eligible for service credit in this  
1393 system.

1394 (4) A public safety service employee who is transferred or promoted to an  
1395 administration position requiring the performance of duties that consist primarily of  
1396 management or supervision of public safety service employees shall continue to earn public

1397 safety service credit in this system during the period in which the employee remains employed  
1398 in the same department.

1399 Section 17. Section **49-23-203** is amended to read:

1400 **49-23-203. Exemptions from participation in system.**

1401 (1) Upon filing a written request for exemption with the office, the following  
1402 employees are exempt from participation in the system as provided in this section if the  
1403 employee is a public safety service employee or firefighter service employee and is:

1404 (a) an executive department head of the state;

1405 (b) an elected or appointed sheriff of a county; [~~or~~]

1406 (c) an elected or appointed chief of police of a municipality[~~;~~]; or

1407 (d) the chief of any fire department or district.

1408 (2) (a) A participating employer shall prepare a list designating those positions eligible  
1409 for exemption under Subsection (1).

1410 (b) An employee may not be exempted unless the employee is employed in a position  
1411 designated by the participating employer under Subsection (1).

1412 (3) Each participating employer shall:

1413 (a) file each employee exemption annually with the office; and

1414 (b) update an employee exemption in the event of any change.

1415 (4) Beginning on the effective date of the exemption for an employee who elects to be  
1416 exempt in accordance with Subsection (1):

1417 (a) for a member of the Tier II defined contribution plan:

1418 (i) the participating employer shall contribute the nonelective contribution and the  
1419 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
1420 the vesting requirements of Subsection 49-23-401(3)(a); [~~and~~]

1421 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

1422 (iii) the member is not eligible for additional service credit in the plan for the period of  
1423 exempt employment; and

1424 (b) for a member of the Tier II hybrid retirement system:

1425 (i) the participating employer shall contribute the nonelective contribution and the  
1426 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
1427 the vesting requirements of Subsection 49-23-401(3)(a);

1428 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and  
1429 (iii) the member is not eligible for additional service credit in the system for the period  
1430 of exempt employment.

1431 (5) If an employee who is a member of the Tier II hybrid retirement system  
1432 subsequently revokes the election of exemption made under Subsection (1), the provisions  
1433 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee  
1434 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1435 (6) (a) All employer contributions made on behalf of an employee shall be invested in  
1436 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election  
1437 period under Subsection 49-23-201(2)(c) is expired if the employee:

1438 (i) elects to be exempt in accordance with Subsection (1); and

1439 (ii) continues employment with the participating employer through the one-year  
1440 election period under Subsection 49-23-201(2)(c).

1441 (b) An employee is entitled to receive a distribution of the employer contributions  
1442 made on behalf of the employee and all associated investment gains and losses if the employee:

1443 (i) elects to be exempt in accordance with Subsection (1); and

1444 (ii) terminates employment prior to the one-year election period under Subsection  
1445 49-23-201(2)(c).

1446 (7) (a) The office shall make rules to implement this section.

1447 (b) The rules made under this Subsection (7) shall include provisions to allow the  
1448 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
1449 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
1450 8, 2012.

1451 (8) An employee's exemption, participation, or election described in this section:

1452 (a) shall be made in accordance with this section; and

1453 (b) is subject to requirements under federal law and rules made by the board.

1454 Section 18. Section **49-23-401** is amended to read:

1455 **49-23-401. Contributions -- Rates.**

1456 (1) (a) Up to the amount allowed by federal law, the participating employer shall make  
1457 a nonelective contribution of 14% of the participant's compensation to a defined contribution  
1458 plan.

1459 (b) In addition to the nonelective contribution described in Subsection (1)(a), if a  
1460 participating employer elects under Subsection 49-23-301(2)(c) to pay all or part of the  
1461 required member contribution on behalf of the participating employer's employees that are  
1462 members covered under Part 3, Tier II Hybrid Retirement System, the participating employer  
1463 shall make an additional nonelective contribution to an employee that is a member covered  
1464 under this part at the same percentage rate of the participant's compensation as the participating  
1465 employer's election to pay required member contributions on behalf of the participating  
1466 employer's employees that are members covered under Part 3, Tier II Hybrid Retirement  
1467 System.

1468 (2) (a) The participating employer shall contribute the contributions described in  
1469 Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal  
1470 Revenue Code [~~which~~] that:

1471 (i) is sponsored by the board; and

1472 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1473 (b) The member may make voluntary deferrals to:

1474 (i) the qualified 401(k) plan [~~which~~] that receives the employer contribution described  
1475 in this Subsection (2); or

1476 (ii) at the member's option, another defined contribution plan established by the  
1477 participating employer.

1478 (c) In addition to the contributions specified under Subsection (2)(a), the participating  
1479 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1480 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1481 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the  
1482 participating employer under Subsection (2)(a) vests to the member upon accruing four years of  
1483 service credit under this title.

1484 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
1485 member's benefit immediately and is nonforfeitable.

1486 (c) (i) Upon filing a written request for exemption with the office, an eligible employee  
1487 is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section  
1488 49-23-203.

1489 (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for



1490 additional service credit in the plan for the period of exempt employment.

1491 (d) (i) Years of service credit under Subsection (3)(a) includes any fraction of a year to  
1492 which the member may be entitled.

1493 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of  
1494 one year of the total years required for vesting, the member shall be considered to have the total  
1495 years of service credit required for vesting.

1496 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
1497 invested in a default option selected by the board until the member is vested in accordance with  
1498 Subsection (3)(a).

1499 (b) A member may direct the investment of contributions, including associated  
1500 investment gains and losses, made by a participating employer under Subsection (2)(a) only  
1501 after the contributions have vested in accordance with Subsection (3)(a).

1502 (c) A member may direct the investment of contributions made by the member under  
1503 Subsection (3)(b).

1504 (5) No loans shall be available from contributions made by a participating employer  
1505 under Subsection (2)(a).

1506 (6) No hardship distributions shall be available from contributions made by a  
1507 participating employer under Subsection (2)(a).

1508 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1509 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
1510 contributions made by a participating employer on behalf of the member under Subsection  
1511 (2)(a), including associated investment gains and losses are subject to forfeiture.

1512 (b) If a member who terminates employment with a participating employer prior to the  
1513 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
1514 another participating employer within 10 years of the termination date of the previous  
1515 employment:

1516 (i) all contributions made by the previous participating employer on behalf of the  
1517 member, including associated investment gains and losses, shall be reinstated upon the  
1518 member's employment as a regular full-time employee; and

1519 (ii) the length of time that the member worked with the previous employer shall be  
1520 included in determining whether the member has completed the vesting period under

1521 Subsection (3)(a).

1522 (c) The office shall establish a forfeiture account and shall specify the uses of the  
1523 forfeiture account, which may include an offset against administrative costs of employer  
1524 contributions made under this section.

1525 (8) The office may request from any other [~~qualified 401(k)~~] plan under Subsection  
1526 (2)(b)(ii) any relevant information pertaining to the maintenance of [~~its~~] the plan's tax  
1527 qualification under the Internal Revenue Code.

1528 (9) The office may take any action [~~which in its~~] that in the office's judgment is  
1529 necessary to maintain the tax-qualified status of [~~its~~] the office's 401(k) defined contribution  
1530 plan under federal law.

1531 Section 19. **Effective date.**

1532 This bill takes effect on July 1, 2022.