

Part 2 Membership Eligibility

49-15-201 System membership -- Eligibility.

- (1)
 - (a) A public safety service employee employed by the state after July 1, 1989, but before July 1, 2011, is eligible for service credit in this system.
 - (b) A public safety service employee employed by the state prior to July 1, 1989, may either elect to receive service credit in this system or continue to receive service credit under the system established under Chapter 14, Public Safety Contributory Retirement Act, by following the procedures established by the board under this chapter.
- (2)
 - (a) Public safety service employees of a participating employer other than the state that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement System shall be eligible only for service credit in that system.
 - (b)
 - (i) A participating employer other than the state that elected on or before July 1, 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety service employee to elect to participate in either this system or the Public Safety Contributory Retirement System.
 - (ii) Except as expressly allowed by this title, the election of the public safety service employee is final and may not be changed.
 - (c) A public safety service employee hired by a participating employer other than the state after July 1, 1989, but before July 1, 2011, shall become a member in this system.
 - (d) A public safety service employee of a participating employer other than the state who began participation in this system after July 1, 1989, but before July 1, 2011, is only eligible for service credit in this system.
 - (e) A person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.
- (3)
 - (a)
 - (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll those dual purpose employees in the system in which the greatest amount of time is actually worked.
 - (ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.
 - (b)
 - (i) Prior to transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.
 - (ii) The office may request documentation to verify the appropriateness of the transfer.
- (4) The board may combine or segregate the actuarial experience of participating employers in this system for the purpose of setting contribution rates.
- (5)
 - (a)

- (i) Each participating employer participating in this system shall annually submit to the office a schedule indicating the positions to be covered under this system in accordance with this chapter.
- (ii) The office may require documentation to justify the inclusion of any position under this system.
- (b) If there is a dispute between the office and a participating employer or employee over any position to be covered, the disputed position shall be submitted to the Peace Officer Standards and Training Council established under Section 53-6-106 for determination.
- (c)
 - (i) The Peace Officer Standards and Training Council's authority to decide eligibility for public safety service credit is limited to claims for coverage under this system for time periods after July 1, 1989.
 - (ii) A decision of the Peace Officer Standards and Training Council may not be applied to service credit earned in another system prior to July 1, 1989.
 - (iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer Standards and Training Council granting a position coverage under this system may only be applied prospectively from the date of that decision.
 - (iv) A decision of the Peace Officer Standards and Training Council granting a position coverage under this system may be applied retroactively only if:
 - (A) the participating employer covered other similarly situated positions under this system during the time period in question; and
 - (B) the position otherwise meets all eligibility requirements for receiving service credit in this system during the period for which service credit is to be granted.
- (6) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the office and a participating employer or employee over a position to be covered under this system.
- (7) The Peace Officer Standards and Training Council shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.
- (8) A public safety service employee who is transferred or promoted to an administration position requiring the performance of duties that consist primarily of management or supervision of public safety service employees shall continue to earn public safety service credit in this system as long as the employee remains employed in the same department.
- (9) An employee of the Department of Corrections shall continue to earn public safety service credit in this system if:
 - (a) the employee's position is no longer covered under this system for new employees hired on or after July 1, 2015; and
 - (b) the employee:
 - (i) remains employed by the Department of Corrections;
 - (ii) meets the eligibility requirements of this system;
 - (iii) was hired into a position covered by this system prior to July 1, 2015; and
 - (iv) has not had a break in service on or after July 1, 2015.
- (10) Any employee who is reassigned to the Department of Technology Services or to the Department of Human Resource Management, and who was a member in this system, shall be entitled to remain a member in this system.
- (11)
 - (a) To determine that a position is covered under this system, the office and, if a coverage dispute arises, the Peace Officer Standards and Training Council shall find that the position requires the employee to:

- (i) except for a dispatcher, place the employee's life or personal safety at risk; and
 - (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or 53-13-105.
- (b) If a position satisfies the requirements of Subsection (11)(a), the office and Peace Officer Standards and Training Council shall consider whether the position requires the employee to:
 - (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
 - (ii) perform duties that consist primarily of providing community protection; and
 - (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.
- (12) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection (11) in making its recommendation.
- (13) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.
- (14) Except as provided under Subsection (15), if a participating employer's public safety service employees are not covered by this system or under Chapter 14, Public Safety Contributory Retirement Act, as of January 1, 1998, those public safety service employees who may otherwise qualify for membership in this system shall, at the discretion of the participating employer, remain in their current retirement system.
- (15)
 - (a) A public safety service employee employed by an airport police department, which elects to cover its public safety service employees under the Public Safety Noncontributory Retirement System under Subsection (14), may elect to remain in the public safety service employee's current retirement system.
 - (b) The public safety service employee's election to remain in the current retirement system under Subsection (15)(a):
 - (i) shall be made at the time the employer elects to move its public safety service employees to a public safety retirement system;
 - (ii) shall be documented by written notice to the participating employer; and
 - (iii) is irrevocable.
- (16)
 - (a) Subject to Subsection (17), beginning July 1, 2015, a public safety service employee who is a dispatcher employed by:
 - (i) the state shall be eligible for service credit in this system; and
 - (ii) a participating employer other than the state shall be eligible for service credit in this system if the dispatcher's participating employer elects to cover its dispatchers under this system.
 - (b) A participating employer's election to cover its dispatchers under this system under Subsection (16)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the governing body of the participating employer in accordance with rules made by the office.
 - (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution of a participating employer under Subsection (16)(b), is not eligible for service credit in this system.
- (17) Notwithstanding any other provision of this section, a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 227, 2016 General Session

49-15-202 Participation of employers -- Requirements -- Admission -- Full participation in system -- Supplemental programs authorized.

- (1) An employer that employs public safety service employees and is required by Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory Retirement System or the Public Employees' Noncontributory Retirement System shall cover all its public safety service employees under one of the following systems or plans:
 - (a) Chapter 12, Public Employees' Contributory Retirement Act;
 - (b) Chapter 13, Public Employees' Noncontributory Retirement Act;
 - (c) Chapter 14, Public Safety Contributory Retirement Act;
 - (d) Chapter 15, Public Safety Noncontributory Retirement Act; or
 - (e) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.
- (2) An employer that covers its public safety employees under Subsection (1)(d) is a participating employer in this system.
- (3) If a participating employer under Subsection (1) covers any of its public safety service employees under the Public Safety Contributory Retirement System or the Public Safety Noncontributory Retirement System, that participating employer shall cover all of its public safety service employees under one of those systems, except for a public safety service employee initially entering employment with a participating employer beginning on or after July 1, 2011.
- (4)
 - (a) Until June 30, 2011, an employer that is not participating in this system may by resolution of its governing body apply for coverage of its public safety service employees by this system.
 - (b) Upon approval of the board, the employer shall become a participating employer in this system subject to this title.
- (5)
 - (a) If a participating employer purchases service credit on behalf of employees for service rendered prior to the participating employer's admission to this system, the service credit must be purchased in a nondiscriminatory manner on behalf of all current and former employees who were eligible for service credit at the time service was rendered.
 - (b) For a purchase made under this Subsection (5), an employee is not required to:
 - (i) have at least four years of service credit before the purchase can be made; or
 - (ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.
- (6) A participating employer may not withdraw from this system.
- (7) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

Amended by Chapter 15, 2014 General Session

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

- (1) A public safety service employee is excluded from coverage under this system if the employee:
 - (a) is serving:
 - (i) as the Commissioner of Public Safety;
 - (ii) as the executive director of the Department of Corrections; or
 - (iii) as the elected or appointed sheriff or chief of police of a public safety organization; and

- (b) files a formal written request seeking the exemption.
- (2) Except as provided in Subsection (3), the public safety service employee may not continue employment with the same participating employer and receive an allowance from the office based on public safety service at the same time.
- (3)
 - (a) The Commissioner of Public Safety, an elected sheriff, or an appointed chief of police who is eligible to retire under Section 49-15-401 may until July 1, 2010:
 - (i) retire from this system and receive an allowance;
 - (ii) continue in the elected or appointed position; and
 - (iii) file for the exemption under Subsection (1).
 - (b) A person who makes an election under Subsection (3)(a) may continue under the terms of the election.

Amended by Chapter 298, 2012 General Session

49-15-204 Conversion to system -- Time schedule.

The following laws govern conversion to the Public Safety Noncontributory Retirement System:

- (1) For an employee governed by Subsection 49-15-201(1)(a), the election to participate in this system shall be made within six months of July 1, 1989.
- (2)
 - (a)
 - (i) For an employer governed by Subsection 49-15-201(2)(a), the election to participate in this system shall be made within six months of July 1, 1989.
 - (ii) The employer shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect.
 - (iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the employer, at which all public safety service employees of the employer shall be given an opportunity to be heard on the question of participating in this system.
 - (iv) Notice of the hearing shall be mailed to all public safety service employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.
 - (b) A public safety service employee of an employer, prior to its election to participate, has six months from the date the employer elects to participate in which to elect to become eligible for service credit in this system.
- (3)
 - (a) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public Safety Noncontributory Retirement System beginning July 1, 1998, and ending December 31, 1998.
 - (b) A person converting to the system during this time period is subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act.
- (4) Subsections (1) and (2) shall be used to provide a time period for an appointed chief of police to convert to the Public Safety Noncontributory Retirement System beginning July 1, 2002, and ending December 31, 2002. A chief of police converting to the system during this time period shall be subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act, including an employer's election under Subsection (2).
- (5)

- (a) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public Safety Noncontributory Retirement System beginning July 1, 2007, and ending December 31, 2007.
 - (b) A person converting to the system during this time period is subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act.
- (6)
- (a) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public Safety Noncontributory Retirement System beginning July 1, 2014, and ending December 31, 2014.
 - (b) A person converting to the system during this time period is subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act.

Amended by Chapter 133, 2014 General Session