

Effective 5/10/2016

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