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**PUBLIC EMPLOYEE AND PUBLIC SAFETY**  
**RETIREMENT AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Orville D. Carnahan**

AN ACT RELATING TO RETIREMENT; AUTHORIZING AND AMENDING EMPLOYER CONTRIBUTIONS TO CERTAIN EMPLOYEES' SUPPLEMENTAL BENEFITS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**49-3-302**, as last amended by Chapter 157, Laws of Utah 1992

ENACTS:

**49-4a-302**, Utah Code Annotated 1953

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

Section 1. Section **49-3-302** is amended to read:

**49-3-302. Supplemental benefit established -- Deferred compensation plan options -- Contribution by employer and employee -- Immediate vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.**

(1) There is established a supplemental deferred compensation benefit for members of this system.

(a) (i) For members of level A under Section 49-3-301, which are participating educational institutions or participating employers whose activities are associated with participating educational institutions, the employer shall contribute on behalf of each of its employees [~~1.5%~~ 2.5%] of the employee's salary to a deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the employee and which is sponsored by the board, by that level A employer, or by a group of similar level A employers and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1 (ii) For all other members of level A under Section 49-3-301, the employer shall contribute  
2 on behalf of each of its employees [~~1.5%~~ 2.5% of the employee's salary to the deferred  
3 compensation plan qualified under Section 401(k) of the Internal Revenue Code which is  
4 sponsored by the board.

5 (iii) The employee may also make elective contributions to either the qualified 401(k) plan  
6 which receives the [~~1.5%~~ 2.5% employer contribution described in Subsection (1)(a)(i), or to any  
7 other deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code  
8 which is selected by the employee and sponsored by the board, that level A employer, or a group  
9 of similar level A employers, and which has been grandfathered under Section 1116 of the Federal  
10 Tax Reform Act of 1986, but only up to an amount permitted by federal law.

11 (b) (i) For members of level B under Section 49-3-301, the participating employer may  
12 contribute on behalf of each of its employees any amount to the deferred compensation plan  
13 qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.

14 (ii) The employee may also contribute to the same qualified 401(k) plan which the  
15 employee selected to receive the employer contribution described in Subsection (1)(b)(i), but only  
16 up to an amount permitted by federal law.

17 (c) The employee may not make elective contributions to any other qualified 401(k) plan  
18 sponsored by a state or local government.

19 (2) The total amount contributed by the employer under Subsection (1)(a) or (b) vests to  
20 the employee's benefit immediately and is nonforfeitable.

21 (3) Each qualified deferred compensation 401(k) plan is separate and distinct from any  
22 other qualified deferred compensation 401(k) plan for all purposes including, but not limited to,  
23 purposes of fiduciary liability and plan administration. The board may request from any other  
24 qualified 401(k) plan under Subsection (1)(a)(iii) any relevant information pertaining to the  
25 maintenance of its tax qualification under the Internal Revenue Code and may request  
26 indemnification from such other plan to the extent it performs testing functions for that plan.

27 (4) Prior to January 1 of each calendar year, each employee of an employing unit specified  
28 in Subsection (1)(a)(i) shall notify the employing unit which qualified deferred compensation  
29 401(k) plan the employee has selected to receive the employer and employee contributions  
30 described in Subsections (1)(a) and (b) for that calendar year. This election may be changed only  
31 in accordance with procedures established by the employing unit. Notwithstanding this section,

1 the board may take any action which in its judgment is necessary to maintain the tax-qualified  
2 status of its 401(k) deferred compensation plan pursuant to federal law. The board shall submit  
3 findings of fact and its conclusions prior to taking any such action.

4 Section 2. Section **49-4a-302** is enacted to read:

5 **49-4a-302. Supplemental benefit established -- Deferred compensation plan --**  
6 **Contribution by employer and employee -- Immediate vesting of contributions.**

7 (1) There is established a supplemental deferred compensation benefit for members of this  
8 system.

9 (a) (i) For public safety employees of the state and state institutions of higher education,  
10 the employer shall contribute on behalf of each of its employees 1% of the employee's salary to  
11 the deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code  
12 which is sponsored by the board.

13 (ii) The employee may also make elective contributions to the qualified 401(k) plan which  
14 receives the 1% employer contribution described in Subsection (1)(a)(i), but only up to an amount  
15 permitted by federal law.

16 (b) (i) For all other members of this system not described under Subsection (1)(a), the  
17 participating employer may contribute on behalf of each of its employees any amount to the  
18 deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which  
19 is sponsored by the board.

20 (ii) The employee may also make elective contributions to the qualified 401(k) plan which  
21 receives the 1% employer contribution described in Subsection (1)(b)(i), but only up to an amount  
22 permitted by federal law.

23 (c) The employee may not make elective contributions to any other qualified 401(k) plan  
24 sponsored by a state or local government.

25 (2) The total amount contributed by the employer under Subsection (1)(a) or (b) vests to  
26 the employee's benefit immediately and is nonforfeitable.

27 Section 3. **Effective date.**

28 This act takes effect on July 1, 1998.

**Legislative Review Note**  
**as of 1-23-98 8:23 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**