

**RETIREMENT OFFICE AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ann W. Hardy**

Senate Sponsor: Beverly Ann Evans

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act, including technical and conforming amendments.

**Highlighted Provisions:**

This bill:

- ▶ defines "exempt employee" to mean an employee working for a participating employer but who is not eligible for service credit and for whom a participating employer is not required to pay contributions;
- ▶ requires a member to retire from the system which most recently covered the member;
- ▶ allows a member to purchase service credit from employment covered by a Teachers Insurance and Annuity Association of America retirement plan if the member forfeits any retirement benefit from that plan for the period of credit to be purchased;
- ▶ repeals an exemption from restrictions on reemployment after retirement for appointed officers;
- ▶ requires beneficiary designations to be signed by the member and filed with the office to be binding;
- ▶ provides that any dispute regarding a benefit, right, obligation, or employment right under the Utah State Retirement and Insurance Benefit Act is subject to the administrative hearing process;
- ▶ provides that an employee is not considered "terminated" simply because a

participating employer's legal structure is changed and allows the board to adopt rules to implement this provision;

- ▶ clarifies provisions for positions eligible for exemption;
- ▶ clarifies that only the spouse married to the member immediately prior to the death of covered employee is eligible for certain death benefits;
- ▶ clarifies that future service credit in a particular retirement system may only be purchased by members retiring from that system;
- ▶ amends the definition of "volunteer firefighter" to include a person who is trained and continues to be trained as a firefighter;
- ▶ provides that a fire chief shall comply with reemployment after retirement provisions;
- ▶ requires each volunteer fire department to maintain a current roll of all volunteer firefighters who meet the definition of a volunteer firefighter;
- ▶ provides that the monthly long-term disability benefits offset is consistent with the amount received from Social Security benefits and terminates no later than the date the eligible employee receives a reduced allowance;
- ▶ transfers the funding of health insurance coverage for persons with a disability from the long-term disability program to the Public Employees' Benefit and Insurance Program; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**49-11-102**, as last amended by Chapter 240, Laws of Utah 2003

**49-11-303**, as last amended by Chapter 89, Laws of Utah 2004

**49-11-401**, as renumbered and amended by Chapter 250, Laws of Utah 2002

- 49-11-403**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-11-504**, as last amended by Chapter 118, Laws of Utah 2004
- 49-11-609**, as last amended by Chapter 118, Laws of Utah 2004
- 49-11-613**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-12-203**, as last amended by Chapter 154, Laws of Utah 2003
- 49-12-402**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-12-405**, as last amended by Chapter 240, Laws of Utah 2003
- 49-12-409**, as enacted by Chapter 216, Laws of Utah 2004
- 49-13-203**, as last amended by Chapter 156, Laws of Utah 2004
- 49-13-205**, as last amended by Chapter 118, Laws of Utah 2004
- 49-13-402**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-13-405**, as last amended by Chapter 240, Laws of Utah 2003
- 49-13-408**, as last amended by Chapter 240, Laws of Utah 2003
- 49-16-102**, as last amended by Chapter 240, Laws of Utah 2003
- 49-16-203**, as enacted by Chapter 250, Laws of Utah 2002
- 49-16-601**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-16-701**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-21-102**, as last amended by Chapters 131 and 240, Laws of Utah 2003
- 49-21-402**, as last amended by Chapter 240, Laws of Utah 2003
- 49-21-403**, as last amended by Chapter 240, Laws of Utah 2003

**ENACTS:**

- 49-11-621**, Utah Code Annotated 1953
- 49-16-601.5**, Utah Code Annotated 1953
- 49-20-409**, Utah Code Annotated 1953

**REPEALS:**

- 49-21-407**, as renumbered and amended by Chapter 250, Laws of Utah 2002

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

Section 1. Section **49-11-102** is amended to read:

**49-11-102. Definitions.**

As used in this title:

- (1) (a) "Active member" means a member who is employed or who has been employed by a participating employer within the previous 120 days.
- (b) "Active member" does not include retirees.
- (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables as recommended by the actuary and adopted by the executive director, including regular interest.
- (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and adopted by the board upon which the funding of system costs and benefits are computed.
- (4) "Agency" means:
  - (a) a department, division, agency, office, authority, commission, board, institution, or hospital of the state;
  - (b) a county, municipality, school district, or special district;
  - (c) a state college or university; or
  - (d) any other participating employer.
- (5) "Allowance" means the pension plus the annuity, including any cost of living or other authorized adjustments to the pension and annuity.
- (6) "Alternate payee" means a member's former spouse or family member eligible to receive payments under a Domestic Relations Order in compliance with Section 49-11-612.
- (7) "Annuity" means monthly payments derived from member contributions.
- (8) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of a participating employer whose appointed position is designated in the participating employer's charter, creation document, or similar document, and who earns during the first full month of the term of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-12-407.
- (9) "Beneficiary" means any person entitled to receive a payment under this title through

a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.

(10) "Board" means the Utah State Retirement Board established under Section 49-11-202.

(11) "Board member" means a person serving on the Utah State Retirement Board as established under Section 49-11-202.

(12) "Contributions" means the total amount paid by the participating employer and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governor's and Legislators' Retirement Act.

(13) "Council member" means a person serving on the Membership Council established under Section 49-11-202.

(14) "Covered individual" means any individual covered under Chapter 20, Public Employees' Benefit and Insurance Program Act.

(15) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16, 17, 18, and 19.

(16) "Defined contribution" or "defined contribution plan" means any defined contribution plan authorized under the Internal Revenue Code and administered by the board.

(17) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including:

- (a) the State Board of Education and its instrumentalities;
- (b) any institution of higher education and its branches;
- (c) any school district and its instrumentalities;
- (d) any vocational and technical school; and
- (e) any entity arising out of a consolidation agreement between entities described under this Subsection (17).

(18) (a) "Employer" means any department, educational institution, or political subdivision of the state eligible to participate in a government-sponsored retirement system under

federal law.

(b) "Employer" may also include an agency financed in whole or in part by public funds.

(19) "Exempt employee" means an employee working for a participating employer:

(a) who is not eligible for service credit under Section 49-12-203, 49-13-203, 49-14-203, 49-15-203, or 49-16-203; and

(b) for whom a participating employer is not required to pay contributions or nonelective contributions.

~~[(19)]~~ (20) "Final average monthly salary" means the amount computed by dividing the compensation received during the final average salary period under each system by the number of months in the final average salary period.

~~[(20)]~~ (21) "Fund" means any fund created under this title for the purpose of paying benefits or costs of administering a system, plan, or program.

~~[(21)]~~ (22) (a) "Inactive member" means a member who has not been employed by a participating employer for a period of at least 120 days.

(b) "Inactive member" does not include retirees.

~~[(22)]~~ (23) (a) "Member" means a person, except a retiree, with contributions on deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, or with a terminated system.

(b) "Member" also includes leased employees within the meaning of Section 414(n)(2) of the Internal Revenue Code, if the employees have contributions on deposit with the office. If leased employees constitute less than 20% of the participating employer's work force that is not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code, "member" does not include leased employees covered by a plan described in Section 414(n)(5) of the federal Internal Revenue Code.

~~[(23)]~~ (24) "Member contributions" means the sum of the contributions paid to a system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a system, and which are made by:

(a) the member; and

(b) the participating employer on the member's behalf under Section 414(h) of the Internal Revenue Code.

~~[(24)]~~ (25) "Nonelective contribution" means an amount contributed by a participating employer into a participant's defined contribution account.

~~[(25)]~~ (26) "Office" means the Utah State Retirement Office.

~~[(26)]~~ (27) "Participant" means an individual with voluntary deferrals or nonelective contributions on deposit with the defined contribution plans administered under this title.

~~[(27)]~~ (28) "Participating employer" means a participating employer, as defined by Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public funds which is participating in a system or plan as of January 1, 2002.

~~[(28)]~~ (29) "Pension" means monthly payments derived from participating employer contributions.

~~[(29)]~~ (30) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by Chapter 19 or the defined contribution plans created under Section 49-11-801.

~~[(30)]~~ (31) (a) "Political subdivision" means any local government entity, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity employees or the state.

(b) "Political subdivision" includes special districts or authorities created by the Legislature or by local governments, including the office.

(c) "Political subdivision" does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act.

~~[(31)]~~ (32) "Program" means the Public Employees' Insurance Program created under Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees' Long-Term Disability program created under Chapter 21, Public Employees' Long-Term Disability Act.

~~[(32)]~~ (33) "Public funds" means those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the

organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

~~[(33)]~~ (34) "Refund interest" means the amount accrued on member contributions at a rate adopted by the board.

~~[(34)]~~ (35) "Retiree" means an individual who has qualified for an allowance under this title.

~~[(35)]~~ (36) "Retirement" means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.

~~[(36)]~~ (37) "Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.

~~[(37)]~~ (38) "Service credit" means:

(a) the period during which an employee is employed and compensated by a participating employer and meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are paid to the office; and

(b) periods of time otherwise purchasable under this title.

~~[(38)]~~ (39) "System" means the individual retirement systems created by Chapters 12, 13, 14, 15, 16, 17, and 18.

~~[(39)]~~ (40) "Voluntary deferrals" means an amount contributed by a participant into that participant's defined contribution account.

Section 2. Section **49-11-303** is amended to read:

**49-11-303. Fund investment standard -- Prudent investor rule.**

The fund shall be invested in accordance with the prudent ~~[man]~~ investor rule established in Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act.

Section 3. Section **49-11-401** is amended to read:

**49-11-401. Transfer of service credit -- Eligibility for service credit -- Computation of service credit -- Retirement from most recent system.**

(1) (a) The office shall make the transfer of service credit, together with related member and participating employer contributions, from one system to another upon terms and conditions established by the board.

(b) The terms and conditions may not result in a loss of accrued benefits.

(2) Transfer of employment from a position covered by one system to a position covered by another system does not cause the employee to lose active member status.

(3) In the accrual of service credit, the following provisions apply:

(a) A person employed and compensated by a participating employer who meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan shall receive service credit for the term of the employment provided that all required contributions are paid to the office.

(b) An allowance or other benefit may not accrue under this title which is based upon the same period of employment as has been the basis for any retirement benefits under some other public retirement system.

(c) The board shall fix the minimum time per day, per month, and per year upon the basis of which one year of service and proportionate parts of a year shall be credited toward qualification for retirement. Service may be computed on a fiscal or calendar year basis and portions of years served shall be accumulated and counted as service. In any event, all of the service rendered in any one fiscal or calendar year may not count for more than one year.

(d) Service credit shall be accrued on a fiscal or calendar year basis as determined by the participating employer.

(e) A member may not accrue more than one year of service credit per fiscal or calendar year as determined by the office.

(f) Fractions of years of service credit shall be accumulated and counted in proportion to the work performed.

(4) The office may estimate the amount of service credit, compensation, or age of any member, participant, or alternate payee, if information is not contained in the records.

(5) A member shall retire from the system which most recently covered the member.

Section 4. Section **49-11-403** is amended to read:

**49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

(1) A member, a participating employer, or a member and a participating employer jointly may purchase service credit equal to the period of the member's employment in the following:

- (a) United States federal employment;
- (b) employment in a private school based in the United States;
- (c) public employment in another state which qualifies the member for membership in the public plan or system covering the employment, but only if the member does not qualify for any retirement benefits based on the employment;

(d) forfeited service credit in this state if the member does not qualify for an allowance based on the service credit;

(e) full-time public service while on an approved leave of absence; ~~[or]~~

(f) the period of time for which disability benefits were paid if:

(i) the member was receiving:

(A) long-term disability benefits;

(B) short-term disability benefits; or

(C) worker's compensation disability benefits; and

(ii) the member's employer had not entered into a benefit protection contract under Section 49-11-404 during the period the member was disabled due to sickness or accident~~[-]; or~~

(g) employment covered by a Teachers Insurance and Annuity Association of America retirement plan if the member forfeits any retirement benefit from that retirement plan for the period of employment to be purchased under this Subsection (1)(g).

(2) A member shall have:

(a) at least four years of service credit before a purchase can be made under this section;  
and

(b) forfeited service credit under any other retirement system or plan based on the public employment for which service credit is being purchased.

(3) To purchase credit under this section, the member, a participating employer, or a member and a participating employer jointly shall make payment to the system in an amount determined by the office based on a formula recommended by the actuary and adopted by the board.

(4) The purchase may be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.

(5) Total payment must be completed prior to the member's effective date of retirement or service credit will be prorated in accordance with the amount paid.

(6) (a) If any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated.

(b) If the recalculated cost exceeds the amount paid for the purchase, the member, a participating employer, or a member and a participating employer jointly may:

- (i) pay the increased cost, plus interest, to receive the full amount of service credit; or
- (ii) not pay the increased cost and have the purchased service credit prorated.

(7) If the recalculated cost under Subsection (6) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.

(8) (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.

(b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.

Section 5. Section **49-11-504** is amended to read:

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

(1) A person who retires from a nonparticipating employer is not subject to any postretirement restrictions under this title.

(2) A retiree of an agency who returns to work at a different agency is not subject to any postretirement restrictions under this section and may not earn additional service credit.

(3) For the purposes of Subsections (4) and (5), "full-time" employment means

employment requiring 20 hours of work per week or more or at least a half-time teaching contract.

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

- (a) the agency shall immediately notify the office;
- (b) the office shall cancel the retiree's allowance and reinstate the retiree to active member status;
- (c) the allowance cancellation and reinstatement to active member status is effective on the first day of the month following the date of reemployment;
- (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year period from the date of cancellation of the original allowance, and if the retiree retires again within the two-year period, the original allowance shall be resumed; and
- (e) a reinstated retiree retiring after the two-year period shall be credited with the service credit in the retiree's account at the time of the first retirement and from that time shall be treated as a member of a system, including the accrual of additional service credit, but subject to recalculation of the allowance under Subsection (9).

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

- (a) the retiree may earn, without penalty, compensation from that position which is not in excess of the exempt earnings permitted by Social Security;
- (b) if a retiree receives compensation in a calendar year in excess of the Social Security limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;
- (c) the effective date of a suspension and reinstatement of an allowance shall be set by the office; and
- (d) any suspension of a retiree's allowance under this Subsection (5) shall be applied on a calendar year basis.

(6) For six months immediately following retirement, the retiree and participating employer shall:

(a) maintain an accurate record of gross earnings in employment;  
(b) report the gross earnings at least monthly to the office;  
(c) immediately notify the office in writing of any postretirement earnings under Subsection (4); and

(d) immediately notify the office in writing whether postretirement earnings equal or exceed the exempt earnings under Subsection (5).

(7) A retiree of an agency who is reemployed by the same agency after six months from the retirement date is not subject to any postretirement restrictions under this title and may not earn additional service credit.

(8) If a participating employer hires a nonexempt retiree [~~that~~] who may not earn additional service credit under this section, the participating employer shall contribute the same percentage of a retiree's salary that the participating employer would have been required to contribute if the retiree were an active member, up to the amount allowed by federal law, to a retiree designated:

(a) defined contribution plan administered by the board, if the participating employer participates in the defined contribution plan administered by the board; or

(b) defined contribution plan offered by the participating employer if the participating employer does not participate in a defined contribution plan administered by the board.

(9) Notwithstanding any other provision of this section, a retiree who has returned to work, accrued additional service credit, and again retires shall have the retiree's allowance recalculated using:

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

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

(10) This section does not apply to [~~appointive officers or~~] elected positions.

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

Section 6. Section **49-11-609** is amended to read:

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

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

(2) The most recent beneficiary designations [~~contained in office records~~] signed by the member and filed with the office, including electronic records, at the time of the member's death are binding in the payment of any benefits due under this title.

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

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

(4) (a) All benefits payable by the office may be paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills, if:

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

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

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

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

(ii) Payment to a person in any group based upon receipt from the person of an affidavit in a form satisfactory to the office that:

- (A) there are no living individuals in the group preceding it;
  - (B) the probate of the estate of the deceased has not been commenced; and
  - (C) more than three months have elapsed since the date of death of the decedent.
- (5) Benefits paid under this section shall be:
- (a) a full satisfaction and discharge of all claims for benefits under this title; and
  - (b) payable by reason of the death of the decedent.

Section 7. Section **49-11-613** is amended to read:

**49-11-613. Appeals procedure -- Right of appeal to hearing officer -- Board reconsideration -- Judicial review.**

(1) (a) All members, retirees, participants, alternative payees, or covered individuals of a system, plan, or program under this title shall acquaint themselves with their rights and obligations under this title.

(b) Any dispute regarding a benefit, right, obligation, or employment right under this title is subject to the procedures provided under this section.

~~[(b)]~~ (c) A person who ~~[claims]~~ disputes a benefit, ~~[legal]~~ right, obligation, or employment right under this title shall request a ruling by the executive director.

~~[(c)]~~ (d) A person who is dissatisfied by a ruling of the executive director with respect to any benefit ~~[claim or legal right under any system, plan, or program]~~, right, obligation, or employment right under this title shall request a review of that claim by a hearing officer.

(2) The hearing officer shall:

- (a) be hired by the executive director after consultation with the board;
- (b) follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, except as specifically modified under this title;
- (c) hear and determine all facts pertaining to applications for benefits under any system, plan, or program under this title and all matters pertaining to the administration of the office; and
- (d) make conclusions of law in determining the person's rights under any system, plan, or

program under this title and matters pertaining to the administration of the office.

(3) The board shall review and approve or deny all decisions of the hearing officer in accordance with rules adopted by the board.

(4) The moving party in any proceeding brought under this section shall bear the burden of proof.

(5) A party may file an application for reconsideration by the board upon any of the following grounds:

- (a) that the board acted in excess of its powers;
- (b) that the order or award was procured by fraud;
- (c) that the evidence does not justify the determination of the hearing officer; or
- (d) that the party has discovered new material evidence that could not, with reasonable diligence, have been discovered or procured prior to the hearing.

(6) The board shall affirm, reverse, or modify the decision of the hearing officer, or remand the application to the hearing officer for further consideration.

(7) A party aggrieved by the board's decision may obtain judicial review by complying with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

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

Section 8. Section **49-11-621** is enacted to read:

**49-11-621. Change in employer -- Eligibility for retirement.**

(1) If a participating employer is dissolved, consolidated, merged, or is structurally changed in any way, but similar services are provided by the same members after the change, the members may not be considered terminated for purposes of eligibility for retirement until the members actually terminate and are otherwise eligible for retirement.

(2) The board may adopt rules to implement this section.

Section 9. Section **49-12-203** is amended to read:

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

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

- (a) An employee whose employment status is temporary in nature due to the nature or the

type of work to be performed, provided that:

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

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

~~[(b) A full-time student, the spouse of a full-time student, or a person employed in a trainee relationship who files a formal request for exemption.]~~

~~[(c)]~~ (b) (i) A current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, under Section 49-12-204, a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer.

(ii) The employee, upon cessation of the participating employer contributions, shall immediately become eligible for service credit in this system.

~~[(d)]~~ (c) An employee serving as an exchange employee from outside the state.

~~[(e) An elected official who files a formal request for exemption.]~~

~~[(f)]~~ (d) An executive department head of the state, a member of the State Tax Commission, the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption.

~~[(g)]~~ (e) An employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

~~[(h) (i) A person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision who is not entitled to~~

~~merit or civil service protection.]~~

~~[(ii) A person eligible for exclusion under Subsection (1)(h)(i) shall file a formal request for exemption and be employed in a position designated as exempt under an employee exemption plan developed by the municipality, county, or political subdivision.]~~

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

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission; and

(d) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is not entitled to merit or civil service protection.

(3) (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (2).

(b) An employee may not be exempted unless they are employed in a position designated by the participating employer.

~~[(2)(a)-A]~~ (4) (a) In accordance with this section, a municipality, county, or political subdivision may not exempt more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision whichever is lesser.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

~~[(3)]~~ (5) Each participating employer shall:

(a) file employee exemptions annually with the office; and

(b) update the employee exemptions in the event of any change.

~~[(4)]~~ (6) The office may make rules to implement this section.

Section 10. Section **49-12-402** is amended to read:

**49-12-402. Service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) Except as provided under Section 49-12-701, retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is:

(i) an amount equal to 1.25% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued prior to July 1, 1975; plus

(ii) an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued on and after July 1, 1975.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, unless the member has 30 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(4) (a) (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company to \$4,800.

(ii) This limitation is not applicable to retirees who elected to continue in the this system by July 1, 1967.

(b) Periods of employment which are exempt from this system under Subsection 49-12-203(1)[~~(c)~~](b), may be purchased by the member for the purpose of retirement only if all benefits from the Teachers' Insurance and Annuity Association of America or any other public or private system or organization based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before

retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to a Option One benefit at the time of divorce, if there is no court order filed in the matter.

Section 11. Section **49-12-405** is amended to read:

**49-12-405. Death of married member -- Service retirement benefits to surviving spouse.**

(1) Upon the request of a deceased member's lawful spouse at the time of the member's death, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:

(a) the member has:

(i) 25 or more years of service credit;

(ii) attained age 60 with 20 or more years of service credit;

(iii) attained age 62 with ten or more years of service credit; or

(iv) attained age 65 with four or more years of service credit; and

(b) the member dies leaving a spouse to whom the member has been married at least six months immediately prior to the death date.

(2) The spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:

(a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or

(b) in which the application is received by the office.

(3) The Option Three benefit calculation, when there are 25 or more years of service credit, shall be calculated without a reduction in allowance under Section 49-12-402.

(4) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any payments made under Section 49-12-501

and constitute a full and final settlement of the claim of the spouse or any other beneficiary filing claim for benefits under Section 49-12-501.

Section 12. Section **49-12-409** is amended to read:

**49-12-409. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.**

(1) (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.

(b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.

(c) The member's retirement date shall be immediately after the purchase of years of service credit.

(d) The member shall pay at least 5% of the cost of the purchase.

(e) To qualify for a purchase of service credit under this section, the member shall:

(i) have at least five years of service credit; and

(ii) otherwise meet federal eligibility requirements.

(2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.

(3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.

(4) Only members retiring from this system may purchase service credit under this section.

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

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

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

(a) An employee whose employment status is temporary in nature due to the nature or the type of work to be performed, provided that:

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

(ii) if an employee, previously terminated prior to becoming eligible for service credit in this system, is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify to the office that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credit in this system.

~~[(b) A full-time student or the spouse of a full-time student and another person employed in a trainee relationship who file a formal request for exemption.]~~

~~[(e)]~~ (b) (i) A current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer.

(ii) The employee, upon cessation of the participating employer contributions, shall immediately become eligible for service credit in this system.

~~[(d)]~~ (c) An employee serving as an exchange employee from outside the state.

~~[(e) An elected official who files a formal request for exemption.]~~

~~[(f)]~~ (d) An executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption.

~~[(g)]~~ (e) An employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

~~[(h) (i) A person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is not entitled to~~

~~merit or civil service protection.]~~

~~[(ii) A person eligible for exclusion under Subsection (1)(h)(i) shall file a formal request for exemption and be employed in a position designated as exempt under an employee exemption plan developed by the municipality, county, or political subdivision.]~~

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

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission; and

(d) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is not entitled to merit or civil service protection.

(3) (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (2).

(b) An employee may not be exempted unless they are employed in a position designated by the participating employer.

~~[(2)(a)-A]~~ (4) (a) In accordance with this section, a municipality, county, or political subdivision may not exempt more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is lesser.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

~~[(3)]~~ (5) Each participating employer shall:

(a) file employee exemptions annually with the office; and

(b) update the employee exemptions in the event of any change.

~~[(4)]~~ (6) The office may make rules to implement this section.

Section 14. Section **49-13-205** is amended to read:

**49-13-205. Conversion to system -- Time schedule -- Conversion windows.**

(1) An employee governed under Section 49-13-201 shall make the election to participate in this system within six months of July 1, 1986.

(2) (a) (i) An employer governed under Sections 49-13-201 and 49-13-202 shall make the election to participate in this system within six months of July 1, 1986.

(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 employees of the political subdivision 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 employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.

(b) A regular full-time employee has six months from the date the employer elects to participate in this system in which to make the election to participate in this system and become eligible for service credit in this system.

(3) Subsections (1) and (2) shall be used to provide a second time period of conversion to this system beginning July 1, 1990.

(4) Subsections (1) and (2) shall be used to provide a third time period of conversion to this system beginning July 1, 1995.

(5) A member of the Contributory Retirement System who is employed by one agency and who either transfers to or is reemployed by another agency shall [~~transfer to~~] be enrolled in the Noncontributory Retirement System as of the date of employment, if the participating employer has elected to participate in the Noncontributory Retirement System.

Section 15. Section **49-13-402** is amended to read:

**49-13-402. Service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) Except as provided under Section 49-13-701, retirees of this system may choose

from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which event no reduction is made to the allowance.

(c) (i) Years of service include any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(4) (a) (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company to \$4,800.

(ii) This limitation is not applicable to retirees who elected to continue in the Public Employees' Contributory Retirement System by July 1, 1967.

(b) Periods of employment which are exempt from this system as permitted under Subsection 49-13-203(1)(~~e~~)(b) may be purchased by the member for the purpose of retirement only if all benefits from the Teachers' Insurance and Annuity Association of America or any other public or private system or organization based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

Section 16. Section **49-13-405** is amended to read:

**49-13-405. Death of married members -- Service retirement benefits to surviving spouse.**

(1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-13-402 without an actuarial reduction.

(2) Upon the request of a deceased member's lawful spouse at the time of the member's death, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:

(a) the member has:

(i) 15 or more years of service credit;

(ii) attained age 62 with ten or more years of service credit; or

(iii) attained age 65 with four or more years of service credit; and

(b) the member dies leaving a spouse to whom the member has been married at least six months immediately prior to the death date.

(3) The spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:

(a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or

(b) in which the application is received by the office.

(4) The allowance payable to a surviving spouse under Subsection (2) is:

(a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;

(b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive [~~two-thirds~~] 2/3 of the member's full allowance;

(c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive [~~one-third~~] 1/3 of the member's full allowance; or

(d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with ~~[10]~~ ten or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.

(5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-13-501 and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-13-501.

Section 17. Section **49-13-408** is amended to read:

**49-13-408. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.**

(1) (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.

(b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.

(c) The member's retirement date shall be immediately after the purchase of years of service credit.

(d) The member shall pay at least 5% of the cost of the purchase.

(e) To qualify for a purchase of service credit under this section, the member shall:

- (i) have at least five years of service credit; and
- (ii) otherwise meet federal eligibility requirements.

(2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.

(3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.

(4) Only members retiring from this system may purchase service credit under this

section.

Section 18. Section **49-16-102** is amended to read:

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

As used in this chapter:

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

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

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

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

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

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

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

(2) (a) "Disability" means a physical or mental condition that, in the judgment of the office, is total and presumably permanent, and prevents a member from performing firefighter service.

(b) The determination of disability is based upon medical and other evidence satisfactory to the office.

(3) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(a) and (b).

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

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

- (i) the member has transferred from another agency; or
- (ii) the member has been promoted to a new position.

(4) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department, but does not include secretarial staff or other similar employees.

(5) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.

(6) "Line-of-duty death or disability" means a death or any physical or mental disability resulting from external force, violence, or disease directly resulting from firefighter service.

(a) A paid firefighter who has five years of firefighter service credit is eligible for a line-of-duty death or disability resulting from heart disease, lung disease, or respiratory tract condition.

(b) A paid firefighter who receives a service connected disability benefit for more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty death or disability benefit due to heart disease, lung disease, or respiratory tract condition for two years

after the firefighter returned to work unless clear and convincing evidence is presented that the heart disease, lung disease, or respiratory tract condition was directly a result of firefighter service.

(7) "Participating employer" means an employer which meets the participation requirements of Section 49-16-201.

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

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

(10) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who ~~[is on the rolls of a regularly constituted fire department.];~~

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

(ii) continues to receive regular firefighter training; and

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

(b) An individual that volunteers assistance but ~~[is not a regularly enrolled firefighter]~~ does not meet the requirements of Subsection (10)(a) is not a volunteer firefighter for purposes of this chapter.

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

Section 19. Section **49-16-203** is amended to read:

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

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

~~[(2) A firefighter service employee serving as the chief of any fire department or district may not continue employment with the same participating employer and receive an allowance from the office based on firefighter service at the same time.]~~

(2) The chief of any fire department or district who retires from that position shall comply with the provisions of Section 49-11-504 upon reemployment by the participating employer.

Section 20. Section **49-16-601** is amended to read:

**49-16-601. Disability benefit -- Line-of-duty disability -- Benefits -- Monthly allowance.**

(1) An active member of this system who is unable to perform firefighter service due to a physical or mental condition that was not incurred in the line-of-duty may apply to the office for a disability retirement benefit subject to the following provisions:

~~[(a) If the condition is classified by the office as a line-of-duty disability, the member shall be granted a disability retirement benefit subject to Section 49-16-602.]~~

~~[(b) If the condition is classified by the office as a nonline-of-duty disability and]~~

(a) if the member has less than five years of service credit in this system, disability benefits are not payable[-]; and

~~[(c) If]~~ (b) if the condition is classified by the office as a nonline-of-duty disability and if the member has five or more years of service credit in this system, the member shall be granted a disability retirement benefit subject to Section 49-16-602.

(2) The monthly disability retirement benefit is 50% of the member's final average monthly salary.

Section 21. Section **49-16-601.5** is enacted to read:

**49-16-601.5. Line-of-duty disability benefit -- Benefits -- Monthly allowance.**

(1) An active member of this system who is unable to perform firefighter service due to a physical or mental condition incurred in the line-of-duty may apply to the office for a disability retirement benefit under this section.

(2) If the condition is classified by the office as a line-of-duty disability, the member

shall be granted a disability retirement benefit subject to Section 49-16-602.

(3) The monthly disability retirement benefit is 50% of the member's final average salary.

Section 22. Section **49-16-701** is amended to read:

**49-16-701. Volunteer firefighters eligible for line-of-duty death and disability benefits in Division A -- Computation of benefit.**

(1) A volunteer firefighter is only eligible for line-of-duty death and line-of-duty disability benefits provided for firefighters enrolled in Division A, subject to Section 49-16-603.

(2) The lowest monthly compensation of firefighters of a city of the first class in this state at the time of death or disability shall be considered to be the final average monthly salary of a volunteer firefighter for purposes of computing these benefits.

(3) Each volunteer fire department shall maintain a current roll of all volunteer firefighters which meet the requirements of Subsection 49-16-102(10) to determine eligibility for this benefit.

Section 23. Section **49-20-409** is enacted to read:

**49-20-409. Long-term disability -- Cost of health coverage waiver.**

(1) Under the direction of the board, the program shall provide a waiver of the cost of health insurance coverage for state employees who receive a monthly disability benefit under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.

(2) A participating employer, other than the state, may elect to provide a waiver for its employees similar to the waiver provided under Subsection (1).

Section 24. Section **49-21-102** is amended to read:

**49-21-102. Definitions.**

As used in this chapter:

(1) "Date of disability" means the date on which a period of continuous disability commences, and may not commence on or before the last day of actual work.

(2) "Elimination period" means the three months at the beginning of each continuous period of total disability for which no benefit will be paid. The elimination period begins on the nearest first day of the month from the date of disability. The elimination period may include a

one-time trial return to work period of less than 15 consecutive calendar days.

(3) (a) "Eligible employee" means:

(i) any regular full-time employee as defined under Section 49-12-102 or 49-13-102, public safety service employee as defined under Section 49-14-102 or 49-15-102, or judge as defined under Section 49-17-102 or 49-18-102, whose employer provides coverage under this chapter, or the governor of the state; and

(ii) an employee who is covered by a retirement program offered by the Teachers' Insurance and Annuity Association of America, if the employee's employer provides coverage under this chapter; and

(b) "Eligible employee" does not include any employee that is exempt from coverage under Section 49-21-201.

(4) "Maximum benefit period" means the maximum period of time the monthly disability income benefit will be paid under Section 49-21-403 for any continuous period of total disability.

(5) "Monthly disability benefit" means the monthly payments and accrual of service credit under Section 49-21-401 [~~and health insurance reimbursements paid under Section 49-21-407, or any combination of them~~].

(6) "Objective medical impairment" means an impairment resulting from an injury or illness which is diagnosed by a physician and which is based on accepted objective medical tests or findings rather than subjective complaints.

(7) "Physician" means a licensed physician.

(8) "Regular monthly salary" means the amount certified by the participating employer as the monthly salary of the eligible employee, unless there is a discrepancy between the certified amount and the amount actually paid, in which case the office shall determine the regular monthly salary.

(9) "Regular occupation" means either the primary duties performed by the eligible employee for the twelve months preceding the date of disability, or a permanent assignment of duty to the eligible employee.

(10) "Rehabilitative employment" means any occupation or employment for wage or

profit, for which the eligible employee is reasonably qualified to perform based on education, training, or experience while unable to perform the employee's regular occupation.

(11) (a) "Total disability" or "totally disabled" means the complete inability, due to objective medical impairment, whether physical or mental, to engage in the eligible employee's regular occupation during the elimination period and the first 24 months of disability benefits.

(b) "Total disability" means, after the elimination period and the first 24 months of disability benefits, the complete inability, based solely on physical objective medical impairment, to engage in any gainful occupation which is reasonable, considering the eligible employee's education, training, and experience.

Section 25. Section **49-21-402** is amended to read:

**49-21-402. Reduction of benefit -- Circumstances -- Application for other benefits required.**

(1) A monthly disability benefit may not be paid for any period of total disability unless the eligible employee is under the ongoing care and treatment of a physician other than the eligible employee.

(2) The monthly disability benefit shall be reduced by any amount received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:

(a) Social Security disability benefits, including all benefits received by the eligible employee, the eligible employee's spouse, and the eligible employee's ~~[dependent children]~~ children as determined by the Social Security Administration;

(b) workers' compensation indemnity benefits;

(c) any monies received by judgment, legal action, or settlement from a third party liable to the employee for the disability;

(d) unemployment compensation benefits; and

(e) automobile no-fault, medical payments, or similar insurance payments.

(3) The monthly disability benefit shall be reduced by any amount in excess of 1/3 of the eligible employee's regular monthly salary received by, or payable to, the eligible employee from

the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:

- (a) any employer-sponsored retirement programs; and
- (b) any disability benefit resulting from the disability for which benefits are being

received under this chapter.

(4) Cost-of-living increases to any of the benefits listed in Subsection (2) may not be considered in calculating a reduction to the monthly disability benefit.

(5) Any amounts payable to the eligible employee from one or more of the sources under Subsection (2) are considered as amounts received whether or not the amounts were actually received by the eligible employee.

(6) (a) An eligible employee shall first apply for all disability benefits from governmental entities under Subsection (2) to which the eligible employee is or may be entitled, and provide to the office evidence of the applications.

(b) The eligible employee shall also first apply at the earliest eligible age for all unreduced retirement benefits to which the eligible employee is or may be entitled, and provide to the office evidence of the application.

(c) If the eligible employee fails to make application under Subsection (6)(a) or (b), the monthly disability benefit shall be suspended.

Section 26. Section **49-21-403** is amended to read:

**49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

(1) An eligible employee covered by this chapter and eligible for service credit under a system, including an eligible employee who relinquishes rights to retirement benefits under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly disability benefit until the earlier of:

(a) the date the eligible employee has accumulated:

(i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement Act;

(ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges' Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act; or

(iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory Retirement Act; or

(b) the date the eligible employee has received a monthly disability benefit for the following applicable time periods:

(i) if the eligible employee is under age 60, the monthly disability benefit is payable until age 65;

(ii) if the eligible employee is 60 or 61 years of age on the date of disability, the monthly disability benefit is payable for five years;

(iii) if the eligible employee is 62 or 63 years of age on the date of disability, the monthly disability benefit is payable for four years;

(iv) if the eligible employee is 64 or 65 years of age on the date of disability, the monthly disability benefit is payable for three years;

(v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the monthly disability benefit is payable for two years; and

(vi) if the eligible employee is 69 years of age or older on the date of disability, the monthly disability benefit is payable for one year.

(2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible for service credit under a system may retire under the system which covered the eligible employee on the date of disability.

(b) The final average salary used in the calculation of the allowance shall be based on the annual rate of pay on the date of disability, improved by the annual cost-of-living increase factor applied to retirees of the system which covered the eligible employee on the date of disability.

(3) An eligible employee who is eligible for service credit in a system, but has relinquished rights to an allowance under Section 49-11-619, may receive the benefits the eligible employee would have received by being eligible for service credit in the system covering

the eligible employee on the date of disability, except for the accrual of service credit, in accordance with this title.

(4) An eligible employee receiving a monthly disability benefit who has service credit from two or more systems may not combine service credits under Section 49-11-405 in qualifying for retirement, unless the eligible employee would receive a greater allowance by combining the service credits.

(5) A monthly disability benefit payable to an eligible employee who is not eligible for service credit under a system shall terminate at the earliest of:

(a) the date the eligible employee would be eligible for an unreduced [~~retirement benefit~~] allowance; [~~or~~]

(b) the date the eligible employee has received a monthly disability benefit for the applicable time period as set forth in Subsection (1)(b)[~~]; or~~

(c) the date the eligible employee receives a reduced allowance.

**Section 27. Repealer.**

This bill repeals:

**Section 49-21-407, Health insurance reimbursements for persons with a disability --  
Limitations.**