

**Senator Beverly Ann Evans** proposes the following substitute bill:

**RETIREMENT OFFICE AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ann W. Hardy**

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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



26 under the Utah State Retirement and Insurance Benefit Act is subject to the administrative  
27 hearing process;

- 28       ▶ provides that an employee is not considered “terminated” simply because a  
29 participating employer’s legal structure is changed and allows the board to adopt  
30 rules to implement this provision;
- 31       ▶ clarifies provisions for positions eligible for exemption;
- 32       ▶ clarifies that only the spouse married to the member immediately prior to the death  
33 of covered employee is eligible for certain death benefits;
- 34       ▶ clarifies that future service credit in a particular retirement system may only be  
35 purchased by members retiring from that system;
- 36       ▶ amends the definition of “volunteer firefighter” to include a person who is trained  
37 and continues to be trained as a firefighter;
- 38       ▶ provides that a fire chief shall comply with reemployment after retirement  
39 provisions;
- 40       ▶ requires each volunteer fire department to maintain a current roll of all volunteer  
41 firefighters who meet the definition of a volunteer firefighter;
- 42       ▶ provides that the monthly long-term disability benefits offset is consistent with the  
43 amount received from Social Security benefits and terminates no later than the date  
44 the eligible employee receives a reduced allowance;
- 45       ▶ transfers the funding of health insurance coverage for persons with a disability from  
46 the long-term disability program to the Public Employees' Benefit and Insurance  
47 Program; and
- 48       ▶ makes technical corrections.

49 **Monies Appropriated in this Bill:**

50       None

51 **Other Special Clauses:**

52       None

53 **Utah Code Sections Affected:**

54 AMENDS:

55       **49-11-102**, as last amended by Chapter 240, Laws of Utah 2003

56       **49-11-303**, as last amended by Chapter 89, Laws of Utah 2004

- 57            **49-11-401**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 58            **49-11-403**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 59            **49-11-504**, as last amended by Chapter 118, Laws of Utah 2004
- 60            **49-11-609**, as last amended by Chapter 118, Laws of Utah 2004
- 61            **49-11-613**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 62            **49-12-203**, as last amended by Chapter 154, Laws of Utah 2003
- 63            **49-12-402**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 64            **49-12-405**, as last amended by Chapter 240, Laws of Utah 2003
- 65            **49-12-409**, as enacted by Chapter 216, Laws of Utah 2004
- 66            **49-13-203**, as last amended by Chapter 156, Laws of Utah 2004
- 67            **49-13-205**, as last amended by Chapter 118, Laws of Utah 2004
- 68            **49-13-402**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 69            **49-13-405**, as last amended by Chapter 240, Laws of Utah 2003
- 70            **49-13-408**, as last amended by Chapter 240, Laws of Utah 2003
- 71            **49-16-102**, as last amended by Chapter 240, Laws of Utah 2003
- 72            **49-16-203**, as enacted by Chapter 250, Laws of Utah 2002
- 73            **49-16-601**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 74            **49-16-701**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 75            **49-21-102**, as last amended by Chapters 131 and 240, Laws of Utah 2003
- 76            **49-21-402**, as last amended by Chapter 240, Laws of Utah 2003
- 77            **49-21-403**, as last amended by Chapter 240, Laws of Utah 2003

78 ENACTS:

- 79            **49-11-621**, Utah Code Annotated 1953
- 80            **49-16-601.5**, Utah Code Annotated 1953
- 81            **49-20-409**, Utah Code Annotated 1953

82 REPEALS:

- 83            **49-21-407**, as renumbered and amended by Chapter 250, Laws of Utah 2002



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

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

87            **49-11-102. Definitions.**

88 As used in this title:

89 (1) (a) "Active member" means a member who is employed or who has been employed  
90 by a participating employer within the previous 120 days.

91 (b) "Active member" does not include retirees.

92 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the  
93 basis of mortality tables as recommended by the actuary and adopted by the executive director,  
94 including regular interest.

95 (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and  
96 adopted by the board upon which the funding of system costs and benefits are computed.

97 (4) "Agency" means:

98 (a) a department, division, agency, office, authority, commission, board, institution, or  
99 hospital of the state;

100 (b) a county, municipality, school district, or special district;

101 (c) a state college or university; or

102 (d) any other participating employer.

103 (5) "Allowance" means the pension plus the annuity, including any cost of living or  
104 other authorized adjustments to the pension and annuity.

105 (6) "Alternate payee" means a member's former spouse or family member eligible to  
106 receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

107 (7) "Annuity" means monthly payments derived from member contributions.

108 (8) "Appointive officer" means an employee appointed to a position for a definite and  
109 fixed term of office by official and duly recorded action of a participating employer whose  
110 appointed position is designated in the participating employer's charter, creation document, or  
111 similar document, and who earns during the first full month of the term of office \$500 or more,  
112 indexed as of January 1, 1990, as provided in Section 49-12-407.

113 (9) "Beneficiary" means any person entitled to receive a payment under this title  
114 through a relationship with or designated by a member, participant, covered individual, or  
115 alternate payee of a defined contribution plan.

116 (10) "Board" means the Utah State Retirement Board established under Section  
117 49-11-202.

118 (11) "Board member" means a person serving on the Utah State Retirement Board as

119 established under Section 49-11-202.

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

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

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

127 (15) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16,  
128 17, 18, and 19.

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

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

134 (a) the State Board of Education and its instrumentalities;

135 (b) any institution of higher education and its branches;

136 (c) any school district and its instrumentalities;

137 (d) any vocational and technical school; and

138 (e) any entity arising out of a consolidation agreement between entities described under  
139 this Subsection (17).

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

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

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

146 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,  
147 49-14-203, 49-15-203, or 49-16-203; and

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

150            [~~(19)~~] (20) "Final average monthly salary" means the amount computed by dividing the  
151 compensation received during the final average salary period under each system by the number  
152 of months in the final average salary period.

153            [~~(20)~~] (21) "Fund" means any fund created under this title for the purpose of paying  
154 benefits or costs of administering a system, plan, or program.

155            [~~(21)~~] (22) (a) "Inactive member" means a member who has not been employed by a  
156 participating employer for a period of at least 120 days.

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

158            [~~(22)~~] (23) (a) "Member" means a person, except a retiree, with contributions on  
159 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,  
160 or with a terminated system.

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

167            [~~(23)~~] (24) "Member contributions" means the sum of the contributions paid to a  
168 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if  
169 allowed by a system, and which are made by:

170            (a) the member; and

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

173            [~~(24)~~] (25) "Nonelective contribution" means an amount contributed by a participating  
174 employer into a participant's defined contribution account.

175            [~~(25)~~] (26) "Office" means the Utah State Retirement Office.

176            [~~(26)~~] (27) "Participant" means an individual with voluntary deferrals or nonelective  
177 contributions on deposit with the defined contribution plans administered under this title.

178            [~~(27)~~] (28) "Participating employer" means a participating employer, as defined by  
179 Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public  
180 funds which is participating in a system or plan as of January 1, 2002.

181           ~~[(28)]~~ (29) "Pension" means monthly payments derived from participating employer  
182 contributions.

183           ~~[(29)]~~ (30) "Plan" means the Utah Governors' and Legislators' Retirement Plan created  
184 by Chapter 19 or the defined contribution plans created under Section 49-11-801.

185           ~~[(30)]~~ (31) (a) "Political subdivision" means any local government entity, including  
186 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is  
187 legally separate and distinct from the state and only if its employees are not by virtue of their  
188 relationship to the entity employees or the state.

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

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

193           ~~[(31)]~~ (32) "Program" means the Public Employees' Insurance Program created under  
194 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
195 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
196 Disability Act.

197           ~~[(32)]~~ (33) "Public funds" means those funds derived, either directly or indirectly, from  
198 public taxes or public revenue, dues or contributions paid or donated by the membership of the  
199 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,  
200 the governmental, educational, and social programs and systems of the state or its political  
201 subdivisions.

202           ~~[(33)]~~ (34) "Refund interest" means the amount accrued on member contributions at a  
203 rate adopted by the board.

204           ~~[(34)]~~ (35) "Retiree" means an individual who has qualified for an allowance under this  
205 title.

206           ~~[(35)]~~ (36) "Retirement" means the status of an individual who has become eligible,  
207 applies for, and is entitled to receive an allowance under this title.

208           ~~[(36)]~~ (37) "Retirement date" means the date selected by the member on which the  
209 member's retirement becomes effective with the office.

210           ~~[(37)]~~ (38) "Service credit" means:

211           (a) the period during which an employee is employed and compensated by a

212 participating employer and meets the eligibility requirements for membership in a system or the  
213 Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are  
214 paid to the office; and

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

216 [~~(38)~~] (39) "System" means the individual retirement systems created by Chapters 12,  
217 13, 14, 15, 16, 17, and 18.

218 [~~(39)~~] (40) "Voluntary deferrals" means an amount contributed by a participant into  
219 that participant's defined contribution account.

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

221 **49-11-303. Fund investment standard -- Prudent investor rule.**

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

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

225 **49-11-401. Transfer of service credit -- Eligibility for service credit --**

226 **Computation of service credit -- Retirement from most recent system.**

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

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

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

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

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

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

241 (c) The board shall fix the minimum time per day, per month, and per year upon the  
242 basis of which one year of service and proportionate parts of a year shall be credited toward



243 qualification for retirement. Service may be computed on a fiscal or calendar year basis and  
 244 portions of years served shall be accumulated and counted as service. In any event, all of the  
 245 service rendered in any one fiscal or calendar year may not count for more than one year.

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

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

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

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

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

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

256 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

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

260 (a) United States federal employment;

261 (b) employment in a private school based in the United States;

262 (c) public employment in another state which qualifies the member for membership in  
 263 the public plan or system covering the employment, but only if the member does not qualify for  
 264 any retirement benefits based on the employment;

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

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

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

269 (i) the member was receiving:

270 (A) long-term disability benefits;

271 (B) short-term disability benefits; or

272 (C) worker's compensation disability benefits; and

273 (ii) the member's employer had not entered into a benefit protection contract under

274 Section 49-11-404 during the period the member was disabled due to sickness or accident[-]; or  
275 (g) employment covered by a Teachers Insurance and Annuity Association of America  
276 retirement plan if the member forfeits any retirement benefit from that retirement plan for the  
277 period of employment to be purchased under this Subsection (1)(g).

278 (2) A member shall have:

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

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

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

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

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

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

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

295 (i) pay the increased cost, plus interest, to receive the full amount of service credit; or

296 (ii) not pay the increased cost and have the purchased service credit prorated.

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

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

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

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

305 **49-11-504. Reemployment of a retiree -- Restrictions.**

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

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

310 (3) For the purposes of Subsections (4) and (5), "full-time" employment means  
311 employment requiring 20 hours of work per week or more or at least a half-time teaching  
312 contract.

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

315 (a) the agency shall immediately notify the office;

316 (b) the office shall cancel the retiree's allowance and reinstate the retiree to active  
317 member status;

318 (c) the allowance cancellation and reinstatement to active member status is effective on  
319 the first day of the month following the date of reemployment;

320 (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year  
321 period from the date of cancellation of the original allowance, and if the retiree retires again  
322 within the two-year period, the original allowance shall be resumed; and

323 (e) a reinstated retiree retiring after the two-year period shall be credited with the  
324 service credit in the retiree's account at the time of the first retirement and from that time shall  
325 be treated as a member of a system, including the accrual of additional service credit, but  
326 subject to recalculation of the allowance under Subsection (9).

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

329 (a) the retiree may earn, without penalty, compensation from that position which is not  
330 in excess of the exempt earnings permitted by Social Security;

331 (b) if a retiree receives compensation in a calendar year in excess of the Social Security  
332 limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;

333 (c) the effective date of a suspension and reinstatement of an allowance shall be set by  
334 the office; and

335 (d) any suspension of a retiree's allowance under this Subsection (5) shall be applied

336 on a calendar year basis.

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

339 (a) maintain an accurate record of gross earnings in employment;

340 (b) report the gross earnings at least monthly to the office;

341 (c) immediately notify the office in writing of any postretirement earnings under  
342 Subsection (4); and

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

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

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

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

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

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

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

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

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

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

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

367           **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**  
368 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**  
369 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**  
370 **expenses.**

371           (1) As used in this section, "member" includes a member, retiree, participant, covered  
372 individual, a spouse of a retiree participating in the insurance benefits created by Sections  
373 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a  
374 defined contribution account.

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

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

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

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

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

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

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

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

397           (ii) Payment to a person in any group based upon receipt from the person of an

398 affidavit in a form satisfactory to the office that:

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

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

406 **49-11-613. Appeals procedure -- Right of appeal to hearing officer -- Board**  
407 **reconsideration -- Judicial review.**

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

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

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

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

418 (2) The hearing officer shall:

- 419 (a) be hired by the executive director after consultation with the board;
- 420 (b) follow the procedures and requirements of Title 63, Chapter 46b, Administrative  
421 Procedures Act, except as specifically modified under this title;

422 (c) hear and determine all facts pertaining to applications for benefits under any  
423 system, plan, or program under this title and all matters pertaining to the administration of the  
424 office; and

425 (d) make conclusions of law in determining the person's rights under any system, plan,  
426 or program under this title and matters pertaining to the administration of the office.

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

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

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

433 (a) that the board acted in excess of its powers;

434 (b) that the order or award was procured by fraud;

435 (c) that the evidence does not justify the determination of the hearing officer; or

436 (d) that the party has discovered new material evidence that could not, with reasonable  
437 diligence, have been discovered or procured prior to the hearing.

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

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

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

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

444 **49-11-621. Change in employer -- Eligibility for retirement.**

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

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

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

451 **49-12-203. Exclusions from membership in system.**

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

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

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

459 (ii) if an employee, previously terminated prior to being eligible for service credit in

460 this system is reemployed within three months of termination by the same participating  
461 employer, the participating employer shall report and certify that the member is a regular  
462 full-time employee when the total of the periods of employment equals six months and the  
463 employee otherwise qualifies for service credit in this system.

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

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

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

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

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

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

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

481 ~~[(h) (i) A person appointed as a city manager or chief city administrator or another~~  
482 ~~person employed by a municipality, county, or other political subdivision who is not entitled to~~  
483 ~~merit or civil service protection.]~~

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

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

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



491 (b) an elected official;

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

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

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

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

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

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

508 ~~[(3)]~~ (5) Each participating employer shall:

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

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

511 ~~[(4)]~~ (6) The office may make rules to implement this section.

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

513 **49-12-402. Service retirement plans -- Calculation of retirement allowance --**  
 514 **Social Security limitations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

552 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time

553 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time  
554 of initial retirement under Option One shall be paid to the retiree for the remainder of the  
555 retiree's life, beginning on the last day of the month following the month in which the lawful  
556 spouse dies.

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

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

565 (b) Periods of employment which are exempt from this system under Subsection  
566 49-12-203(1)(~~(c)~~)(b), may be purchased by the member for the purpose of retirement only if all  
567 benefits from the Teachers' Insurance and Annuity Association of America or any other public  
568 or private system or organization based on this period of employment are forfeited.

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

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

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

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

578 **49-12-405. Death of married member -- Service retirement benefits to surviving**  
579 **spouse.**

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

584 (a) the member has:  
585 (i) 25 or more years of service credit;  
586 (ii) attained age 60 with 20 or more years of service credit;  
587 (iii) attained age 62 with ten or more years of service credit; or  
588 (iv) attained age 65 with four or more years of service credit; and  
589 (b) the member dies leaving a spouse to whom the member has been married at least  
590 six months immediately prior to the death date.

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

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

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

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

598 (4) Except for a return of member contributions, benefits payable under this section are  
599 retirement benefits and shall be paid in addition to any payments made under Section  
600 49-12-501 and constitute a full and final settlement of the claim of the spouse or any other  
601 beneficiary filing claim for benefits under Section 49-12-501.

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

603 **49-12-409. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination**  
604 **policy.**

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

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

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

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

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

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

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

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

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

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

625 **49-13-203. Exclusions from membership in system.**

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

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

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

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

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

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

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

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

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

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

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

656 [~~(i)~~] (i) ~~A person appointed as a city manager or chief city administrator or another~~  
657 ~~person employed by a municipality, county, or other political subdivision, who is not entitled to~~  
658 ~~merit or civil service protection.]~~

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

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

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

666 (b) an elected official;

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

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

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

676 (b) An employee may not be exempted unless they are employed in a position

677 designated by the participating employer.

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

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

683 [~~(3)~~] (5) Each participating employer shall:

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

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

686 [~~(4)~~] (6) The office may make rules to implement this section.

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

688 **49-13-205. Conversion to system -- Time schedule -- Conversion windows.**

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

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

693 (ii) The employer shall indicate whether or not it elects to participate by enacting a  
694 resolution or ordinance to that effect.

695 (iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the  
696 employer, at which all employees of the political subdivision shall be given an opportunity to  
697 be heard on the question of participating in this system.

698 (iv) Notice of the hearing shall be mailed to all employees within 30 days of the  
699 hearing and shall contain the time, place, and purpose of the hearing.

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

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

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

707 (5) A member of the Contributory Retirement System who is employed by one agency

708 and who either transfers to or is reemployed by another agency shall [~~transfer to~~] be enrolled in  
709 the Noncontributory Retirement System as of the date of employment, if the participating  
710 employer has elected to participate in the Noncontributory Retirement System.

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

712 **49-13-402. Service retirement plans -- Calculation of retirement allowance --**  
713 **Social Security limitations.**

714 (1) (a) Except as provided under Section 49-13-701, retirees of this system may choose  
715 from the six retirement options described in this section.

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

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

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

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

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

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

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

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

738 (b) Option Three is a reduced allowance paid to and throughout the lifetime of the



739 retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout  
740 the lifetime of the retiree's lawful spouse at the time of retirement.

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

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

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

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

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

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

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

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

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

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

776 **49-13-405. Death of married members -- Service retirement benefits to surviving**  
777 **spouse.**

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

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

784 (a) the member has:

785 (i) 15 or more years of service credit;

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

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

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

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

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

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

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

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

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

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

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

808 (5) Except for a return of member contributions, benefits payable under this section are  
809 retirement benefits and shall be paid in addition to any other payments made under Section  
810 49-13-501 and shall constitute a full and final settlement of the claim of the spouse or any other  
811 beneficiary filing a claim for benefits under Section 49-13-501.

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

813 **49-13-408. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination**  
814 **policy.**

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

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

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

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

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

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

826 (ii) otherwise meet federal eligibility requirements.

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

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

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

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

835           **49-16-102. Definitions.**

836           As used in this chapter:

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

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

845           (c) "Compensation" does not include:

846           (i) overtime;

847           (ii) sick pay incentives;

848           (iii) retirement pay incentives;

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

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

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

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

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

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

862           (3) "Final average salary" means the amount computed by averaging the highest three

863 years of annual compensation preceding retirement subject to Subsections (3)(a) and (b).

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

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

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

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

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

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

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

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

886 (b) A paid firefighter who receives a service connected disability benefit for more than  
887 six months due to violence or illness other than heart disease, lung disease, or respiratory tract  
888 condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty  
889 death or disability benefit due to heart disease, lung disease, or respiratory tract condition for  
890 two years after the firefighter returned to work unless clear and convincing evidence is  
891 presented that the heart disease, lung disease, or respiratory tract condition was directly a result  
892 of firefighter service.

893 (7) "Participating employer" means an employer which meets the participation

894 requirements of Section 49-16-201.

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

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

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

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

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

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

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

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

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

915 **49-16-203. Exemption of certain employees from coverage -- Exception.**

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

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

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

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

926 **49-16-601. Disability benefit -- Line-of-duty disability -- Benefits -- Monthly**  
927 **allowance.**

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

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

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

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

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

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

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

942 **49-16-601.5. Line-of-duty disability benefit -- Benefits -- Monthly allowance.**

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

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

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

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

951 **49-16-701. Volunteer firefighters eligible for line-of-duty death and disability**  
952 **benefits in Division A -- Computation of benefit.**

953 (1) A volunteer firefighter is only eligible for line-of-duty death and line-of-duty  
954 disability benefits provided for firefighters enrolled in Division A, subject to Section  
955 49-16-603.

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

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

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

963 **49-20-409. Long-term disability -- Cost of health coverage waiver.**

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

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

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

970 **49-21-102. Definitions.**

971 As used in this chapter:

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

974 (2) "Elimination period" means the three months at the beginning of each continuous  
975 period of total disability for which no benefit will be paid. The elimination period begins on  
976 the nearest first day of the month from the date of disability. The elimination period may  
977 include a one-time trial return to work period of less than 15 consecutive calendar days.

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

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

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

986 (b) "Eligible employee" does not include any employee that is exempt from coverage



987 under Section 49-21-201.

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

991 (5) "Monthly disability benefit" means the monthly payments and accrual of service  
992 credit under Section 49-21-401 [~~and health insurance reimbursements paid under Section~~  
993 ~~49-21-407, or any combination of them~~].

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

997 (7) "Physician" means a licensed physician.

998 (8) "Regular monthly salary" means the amount certified by the participating employer  
999 as the monthly salary of the eligible employee, unless there is a discrepancy between the  
1000 certified amount and the amount actually paid, in which case the office shall determine the  
1001 regular monthly salary.

1002 (9) "Regular occupation" means either the primary duties performed by the eligible  
1003 employee for the twelve months preceding the date of disability, or a permanent assignment of  
1004 duty to the eligible employee.

1005 (10) "Rehabilitative employment" means any occupation or employment for wage or  
1006 profit, for which the eligible employee is reasonably qualified to perform based on education,  
1007 training, or experience while unable to perform the employee's regular occupation.

1008 (11) (a) "Total disability" or "totally disabled" means the complete inability, due to  
1009 objective medical impairment, whether physical or mental, to engage in the eligible employee's  
1010 regular occupation during the elimination period and the first 24 months of disability benefits.

1011 (b) "Total disability" means, after the elimination period and the first 24 months of  
1012 disability benefits, the complete inability, based solely on physical objective medical  
1013 impairment, to engage in any gainful occupation which is reasonable, considering the eligible  
1014 employee's education, training, and experience.

1015 Section 25. Section **49-21-402** is amended to read:

1016 **49-21-402. Reduction of benefit -- Circumstances -- Application for other benefits**  
1017 **required.**

1018 (1) A monthly disability benefit may not be paid for any period of total disability unless  
1019 the eligible employee is under the ongoing care and treatment of a physician other than the  
1020 eligible employee.

1021 (2) The monthly disability benefit shall be reduced by any amount received by, or  
1022 payable to, the eligible employee from the following sources for the same period of time during  
1023 which the eligible employee is entitled to receive a monthly disability benefit:

1024 (a) Social Security disability benefits, including all benefits received by the eligible  
1025 employee, the eligible employee's spouse, and the eligible employee's [~~dependent children~~]  
1026 children as determined by the Social Security Administration;

1027 (b) workers' compensation indemnity benefits;

1028 (c) any monies received by judgment, legal action, or settlement from a third party  
1029 liable to the employee for the disability;

1030 (d) unemployment compensation benefits; and

1031 (e) automobile no-fault, medical payments, or similar insurance payments.

1032 (3) The monthly disability benefit shall be reduced by any amount in excess of 1/3 of  
1033 the eligible employee's regular monthly salary received by, or payable to, the eligible employee  
1034 from the following sources for the same period of time during which the eligible employee is  
1035 entitled to receive a monthly disability benefit:

1036 (a) any employer-sponsored retirement programs; and

1037 (b) any disability benefit resulting from the disability for which benefits are being  
1038 received under this chapter.

1039 (4) Cost-of-living increases to any of the benefits listed in Subsection (2) may not be  
1040 considered in calculating a reduction to the monthly disability benefit.

1041 (5) Any amounts payable to the eligible employee from one or more of the sources  
1042 under Subsection (2) are considered as amounts received whether or not the amounts were  
1043 actually received by the eligible employee.

1044 (6) (a) An eligible employee shall first apply for all disability benefits from  
1045 governmental entities under Subsection (2) to which the eligible employee is or may be  
1046 entitled, and provide to the office evidence of the applications.

1047 (b) The eligible employee shall also first apply at the earliest eligible age for all  
1048 unreduced retirement benefits to which the eligible employee is or may be entitled, and provide

1049 to the office evidence of the application.

1050 (c) If the eligible employee fails to make application under Subsection (6)(a) or (b), the  
1051 monthly disability benefit shall be suspended.

1052 Section 26. Section **49-21-403** is amended to read:

1053 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

1054 (1) An eligible employee covered by this chapter and eligible for service credit under a  
1055 system, including an eligible employee who relinquishes rights to retirement benefits under  
1056 Section 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a  
1057 monthly disability benefit until the earlier of:

1058 (a) the date the eligible employee has accumulated:

1059 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public  
1060 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement  
1061 Act;

1062 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'  
1063 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act; or

1064 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public  
1065 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory  
1066 Retirement Act; or

1067 (b) the date the eligible employee has received a monthly disability benefit for the  
1068 following applicable time periods:

1069 (i) if the eligible employee is under age 60, the monthly disability benefit is payable  
1070 until age 65;

1071 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the  
1072 monthly disability benefit is payable for five years;

1073 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the  
1074 monthly disability benefit is payable for four years;

1075 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the  
1076 monthly disability benefit is payable for three years;

1077 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the  
1078 monthly disability benefit is payable for two years; and

1079 (vi) if the eligible employee is 69 years of age or older on the date of disability, the

1080 monthly disability benefit is payable for one year.

1081 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible  
1082 for service credit under a system may retire under the system which covered the eligible  
1083 employee on the date of disability.

1084 (b) The final average salary used in the calculation of the allowance shall be based on  
1085 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase  
1086 factor applied to retirees of the system which covered the eligible employee on the date of  
1087 disability.

1088 (3) An eligible employee who is eligible for service credit in a system, but has  
1089 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the  
1090 eligible employee would have received by being eligible for service credit in the system  
1091 covering the eligible employee on the date of disability, except for the accrual of service credit,  
1092 in accordance with this title.

1093 (4) An eligible employee receiving a monthly disability benefit who has service credit  
1094 from two or more systems may not combine service credits under Section 49-11-405 in  
1095 qualifying for retirement, unless the eligible employee would receive a greater allowance by  
1096 combining the service credits.

1097 (5) A monthly disability benefit payable to an eligible employee who is not eligible for  
1098 service credit under a system shall terminate at the earliest of:

1099 (a) the date the eligible employee would be eligible for an unreduced [~~retirement~~  
1100 ~~benefit~~] allowance; [~~or~~]

1101 (b) the date the eligible employee has received a monthly disability benefit for the  
1102 applicable time period as set forth in Subsection (1)(b)[~~;~~ or

1103 (c) the date the eligible employee receives a reduced allowance.

1104 Section 27. **Repealer.**

1105 This bill repeals:

1106 Section **49-21-407, Health insurance reimbursements for persons with a disability**  
1107 **-- Limitations.**

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**Fiscal Note**  
**Bill Number HB0180S01**

**Retirement Office Amendments**

*18-Feb-05*

*7:36 AM*

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**SENATE SUBSTITUTE**

**State Impact**

The provisions of this bill may result in some savings to the State in the future, but such savings cannot be determined.

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**Individual and Business Impact**

Some individuals may be impacted by these definitions, but it is expected to be minimal.

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**Office of the Legislative Fiscal Analyst**