

EMPLOYEE BENEFIT AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by allowing the transfer of certain member's defined benefit balance to a defined contribution plan, by adding certain employees who may elect to be excluded from membership in the public employees retirement systems and by allowing certain new public safety members to elect a 30 year retirement plan and additional salary in lieu of a 20 year retirement.

Highlighted Provisions:

This bill:

- ▶ defines certain terms;
- ▶ allows certain elected state officials and certain appointed executives and senior staff to elect to have the members' defined benefit balance transferred from the defined benefit system or plan to a defined contribution plan;
- ▶ allows certain employees to be excluded, upon written request, from future coverage under the Public Employees' Contributory Retirement System and the Public Employees' Noncontributory Retirement System, including employees of the Commission on Criminal and Juvenile Justice, employees of the governor's offices, and employees of the state treasurer and state auditor;
- ▶ allows new public safety service employees who are eligible for the Public Safety Noncontributory Retirement System to elect instead to become a member of the Public Employees' Noncontributory Retirement System and receive the difference in



28 cost in their salary; and
29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides an immediate effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **49-11-102**, as last amended by Laws of Utah 2007, Chapters 130, 252, and 329

37 **49-11-801**, as renumbered and amended by Laws of Utah 2002, Chapter 250

38 **49-12-203**, as last amended by Laws of Utah 2007, Chapters 192 and 306

39 **49-13-203**, as last amended by Laws of Utah 2007, Chapters 192 and 306

40 **49-15-201**, as last amended by Laws of Utah 2006, Chapter 139

41 **49-15-202**, as renumbered and amended by Laws of Utah 2002, Chapter 250

42 ENACTS:

43 **49-11-406**, Utah Code Annotated 1953



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

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

47 **49-11-102. Definitions.**

48 As used in this title:

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

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

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

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

57 (4) (a) "Agency" means:

58 (i) a department, division, agency, office, authority, commission, board, institution, or

59 hospital of the state;

60 (ii) a county, municipality, school district, local district, or special service district;

61 (iii) a state college or university; or

62 (iv) any other participating employer.

63 (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a
64 subdivision of another entity listed under Subsection (4)(a).

65 (5) "Allowance" or "retirement allowance" means the pension plus the annuity,
66 including any cost of living or other authorized adjustments to the pension and annuity.

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

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

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

75 (9) (a) "At-will employee" means a person who is employed by a participating
76 employer and:

77 (i) who is not entitled to merit or civil service protection and is generally considered
78 exempt from a participating employer's merit or career service personnel systems;

79 (ii) whose on-going employment status is entirely at the discretion of the person's
80 employer; or

81 (iii) who may be terminated without cause by a designated supervisor, manager, or
82 director.

83 (b) "At-will employee" does not include a career employee who has obtained a
84 reasonable expectation of continued employment based on inclusion in a participating
85 employer's merit system, civil service protection system, or career service personnel systems,
86 policies, or plans.

87 [~~9~~] (10) "Beneficiary" means any person entitled to receive a payment under this title
88 through a relationship with or designated by a member, participant, covered individual, or
89 alternate payee of a defined contribution plan.

90 ~~[(10)]~~ (11) "Board" means the Utah State Retirement Board established under Section
91 49-11-202.

92 ~~[(11)]~~ (12) "Board member" means a person serving on the Utah State Retirement
93 Board as established under Section 49-11-202.

94 ~~[(12)]~~ (13) "Contributions" means the total amount paid by the participating employer
95 and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under
96 Chapter 19, Utah ~~[Governor's]~~ Governors' and Legislators' Retirement Act.

97 ~~[(13)]~~ (14) "Council member" means a person serving on the Membership Council
98 established under Section 49-11-202.

99 ~~[(14)]~~ (15) "Covered individual" means any individual covered under Chapter 20,
100 Public Employees' Benefit and Insurance Program Act.

101 ~~[(15)]~~ (16) "Current service" means covered service as defined in Chapters 12, 13, 14,
102 15, 16, 17, 18, and 19.

103 (17) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a
104 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's
105 spouse after retirement that is based on a set formula involving one or more of the following
106 factors:

107 (a) years of service;

108 (b) final average monthly salary; or

109 (c) a retirement multiplier.

110 ~~[(16)]~~ (18) "Defined contribution" or "defined contribution plan" means any defined
111 contribution plan authorized under the Internal Revenue Code and administered by the board.

112 ~~[(17)]~~ (19) "Educational institution" means a political subdivision or instrumentality of
113 the state or a combination thereof primarily engaged in educational activities or the
114 administration or servicing of educational activities, including:

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

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

117 (c) any school district and its instrumentalities;

118 (d) any vocational and technical school; and

119 (e) any entity arising out of a consolidation agreement between entities described under
120 this Subsection ~~[(17)]~~ (19).

121 [~~(18)~~] (20) (a) "Employer" means any department, educational institution, or political
122 subdivision of the state eligible to participate in a government-sponsored retirement system
123 under federal law.

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

126 [~~(19)~~] (21) "Exempt employee" means an employee working for a participating
127 employer:

128 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,
129 49-14-203, 49-15-203, or 49-16-203; and

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

132 [~~(20)~~] (22) "Final average monthly salary" means the amount computed by dividing the
133 compensation received during the final average salary period under each system by the number
134 of months in the final average salary period.

135 [~~(21)~~] (23) "Fund" means any fund created under this title for the purpose of paying
136 benefits or costs of administering a system, plan, or program.

137 [~~(22)~~] (24) (a) "Inactive member" means a member who has not been employed by a
138 participating employer for a period of at least 120 days.

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

140 [~~(23)~~] (25) (a) "Member" means a person, except a retiree, with contributions on
141 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,
142 Utah Governors' and Legislators' Retirement Act, or with a terminated system.

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

149 [~~(24)~~] (26) "Member contributions" means the sum of the contributions paid to a
150 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
151 allowed by a system, and which are made by:

152 (a) the member; and

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

155 [~~25~~] (27) "Nonelective contribution" means an amount contributed by a participating
156 employer into a participant's defined contribution account.

157 [~~26~~] (28) "Office" means the Utah State Retirement Office.

158 [~~27~~] (29) "Participant" means an individual with voluntary deferrals or nonelective
159 contributions on deposit with the defined contribution plans administered under this title.

160 [~~28~~] (30) "Participating employer" means a participating employer, as defined by
161 Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public
162 funds which is participating in a system or plan as of January 1, 2002.

163 [~~29~~] (31) "Pension" means monthly payments derived from participating employer
164 contributions.

165 [~~30~~] (32) "Plan" means the Utah Governors' and Legislators' Retirement Plan created
166 by Chapter 19, Utah Governors' and Legislators' Retirement Act, or the defined contribution
167 plans created under Section 49-11-801.

168 [~~31~~] (33) (a) "Political subdivision" means any local government entity, including
169 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
170 legally separate and distinct from the state and only if its employees are not by virtue of their
171 relationship to the entity employees [~~or~~] of the state.

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

174 (c) "Political subdivision" does not include a project entity created under Title 11,
175 Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

176 [~~32~~] (34) "Program" means the Public Employees' Insurance Program created under
177 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'
178 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term
179 Disability Act.

180 [~~33~~] (35) "Public funds" means those funds derived, either directly or indirectly, from
181 public taxes or public revenue, dues or contributions paid or donated by the membership of the
182 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,

183 the governmental, educational, and social programs and systems of the state or its political
184 subdivisions.

185 ~~[(34)]~~ (36) "Qualified defined contribution plan" means a defined contribution plan
186 that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

187 ~~[(35)]~~ (37) "Refund interest" means the amount accrued on member contributions at a
188 rate adopted by the board.

189 ~~[(36)]~~ (38) "Retiree" means an individual who has qualified for an allowance under this
190 title.

191 ~~[(37)]~~ (39) "Retirement" means the status of an individual who has become eligible,
192 applies for, and is entitled to receive an allowance under this title.

193 ~~[(38)]~~ (40) "Retirement date" means the date selected by the member on which the
194 member's retirement becomes effective with the office.

195 ~~[(39)]~~ (41) "Service credit" means:

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

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

201 ~~[(40)]~~ (42) "System" means the individual retirement systems created by Chapter 12,
202 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
203 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,
204 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'
205 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges'
206 Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement
207 Act.

208 ~~[(41)]~~ (43) "Voluntary deferrals" means an amount contributed by a participant into
209 that participant's defined contribution account.

210 Section 2. Section **49-11-406** is enacted to read:

211 **49-11-406. Governor's appointed executives and senior staff -- Appointed**
212 **legislative employees -- Transfer of value of accrued defined benefit -- Procedures.**

213 (1) As used in this section:

214 (a) "Defined benefit balance" means the total amount of the contributions made on
215 behalf of a member to a defined benefit system plus refund interest.

216 (b) "Senior staff" means an at-will employee who reports directly to an elected official,
217 executive director, or director and includes a deputy director and other similar, at-will
218 employee positions designated by the governor, the speaker of the House, or the president of
219 the Senate and filed with the Department of Human Resource Management and the Utah State
220 Retirement Office.

221 (2) In accordance with this section and subject to federal law, a member who has
222 service credit from a system may elect to be exempt from coverage under a defined benefit
223 system and to have the member's defined benefit balance transferred from the defined benefit
224 system or plan to a defined contribution plan in the member's own name if the member is:

225 (a) the state auditor;

226 (b) the state treasurer;

227 (c) an appointed executive under Subsection 67-22-2(1)(a);

228 (d) an employee in the Governor's Office;

229 (e) senior staff in the Governor's Office of Planning and Budget;

230 (f) senior staff in the Governor's Office of Economic Development;

231 (g) senior staff in the Commission on Criminal and Juvenile Justice;

232 (h) a legislative employee appointed under Subsection 36-12-7(3)(a); or

233 (i) a legislative employee appointed by the speaker of the House of Representatives, the
234 House of Representatives minority leader, the president of the Senate, or the Senate minority
235 leader.

236 (3) An election made under Subsection (2):

237 (a) is final, and no right exists to make any further election;

238 (b) is considered a request to be exempt from coverage under a defined benefits
239 system; and

240 (c) shall be made on forms provided by the office.

241 (4) The board shall adopt rules to implement and administer this section.

242 Section 3. Section **49-11-801** is amended to read:

243 **49-11-801. Defined contribution plans authorized -- Subject to federal and state**
244 **laws -- Rules to implement this provision -- Costs of administration -- Limitations on**

245 **eligibility -- Protection of tax status.**

246 (1) (a) The board [may] shall establish and administer defined contribution plans
247 established under the Internal Revenue Code.

248 (b) Voluntary deferrals and nonelective contributions shall be permitted according to
249 the provisions of these plans as established by the board.

250 (c) The defined contribution account balance is vested in the participant.

251 (2) (a) Voluntary deferrals and nonelective contributions shall be posted to the
252 participant's account.

253 (b) Participants may direct the investment of their account in the investment options
254 established by the board and in accordance with federal and state law.

255 (3) (a) The board may make rules and create plan documents to implement and
256 administer this section.

257 (b) The board may adopt rules under which a participant may put money into a defined
258 contribution plan as permitted by federal law.

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

261 (d) Costs of administration shall be paid as established by the board.

262 (4) Voluntary deferrals and nonelective contributions may be invested separately or in
263 conjunction with the Utah State Retirement Investment Fund.

264 (5) The board or office may take actions necessary to protect the tax qualified status of
265 the systems, plans, and programs under its control, including the movement of individuals from
266 defined contribution plans to defined benefit systems or the creation of excess benefit plans
267 authorized by federal law.

268 (6) The office may, at its sole discretion, correct errors made in the administration of
269 its defined contribution plans.

270 Section 4. Section **49-12-203** is amended to read:

271 **49-12-203. Exclusions from membership in system.**

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

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

275 (i) if the term of employment exceeds six months and the employee otherwise qualifies

276 for service credit in this system, the participating employer shall report and certify to the office
277 that the employee is a regular full-time employee effective the beginning of the seventh month
278 of employment; or

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

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

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

291 (c) An employee serving as an exchange employee from outside the state.

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

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

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

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

301 (b) an elected official;

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

305 [~~(d) an at-will employee who:~~

306 [~~(i) is a person appointed by the speaker of the House of Representatives, the House of~~

307 ~~Representatives minority leader, the president of the Senate, or the Senate minority leader; or]~~
 308 ~~[(ii) is an employee of the Governor's Office of Economic Development who has been~~
 309 ~~hired directly from a position not covered by a system;]~~

310 (d) an employee of the Governor's Office of Planning and Budget;

311 (e) an employee of the Governor's Office of Economic Development;

312 (f) an employee of the Commission on Criminal and Juvenile Justice;

313 (g) an employee of the Governor's Office;

314 (h) an employee of the State Auditor's Office;

315 (i) an employee of the State Treasurer's Office;

316 (j) any other member who is permitted to make an election under Section 49-11-406;

317 ~~[(e)]~~ (k) a person appointed as a city manager or chief city administrator or another
 318 person employed by a municipality, county, or other political subdivision, who is [not entitled
 319 to merit or civil service protection] an at-will employee; and

320 ~~[(f)]~~ (l) an employee of an interlocal cooperative agency created under Title 11,
 321 Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily
 322 provided through membership in a labor organization that provides retirement benefits to its
 323 members.

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

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

328 (4) (a) In accordance with this section, a municipality, county, or political subdivision
 329 may not exempt more than 50 positions or a number equal to 10% of the employees of the
 330 municipality, county, or political subdivision whichever is lesser.

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

333 (5) Each participating employer shall:

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

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

336 (6) The office may make rules to implement this section.

337 Section 5. Section **49-13-203** is amended to read:

338 **49-13-203. Exclusions from membership in system.**

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

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

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

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

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

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

358 (c) An employee serving as an exchange employee from outside the state.

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

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

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

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

- 369 (b) an elected official;
- 370 (c) an executive department head of the state [~~or a legislative director, senior executive~~
 371 ~~employed by the governor's office~~], a member of the State Tax Commission, a member of the
 372 Public Service Commission, and a member of a full-time or part-time board or commission;
- 373 [~~(d) an at-will employee who:~~
- 374 [~~(i) is a person appointed by the speaker of the House of Representatives, the House of~~
 375 ~~Representatives minority leader, the president of the Senate, or the Senate minority leader; or]~~
- 376 [~~(ii) is an employee of the Governor's Office of Economic Development who has been~~
 377 ~~hired directly from a position not covered by a system;]~~
- 378 (d) an employee of the Governor's Office of Planning and Budget;
- 379 (e) an employee of the Governor's Office of Economic Development;
- 380 (f) an employee of the Commission on Criminal and Juvenile Justice;
- 381 (g) an employee of the Governor's Office;
- 382 (h) an employee of the State Auditor's Office;
- 383 (i) an employee of the State Treasurer's Office;
- 384 (j) any other member who is permitted to make an election under Section 49-11-406;
- 385 [~~(e)~~] (k) a person appointed as a city manager or chief city administrator or another
 386 person employed by a municipality, county, or other political subdivision, who is [not entitled
 387 to merit or civil service protection] an at-will employee; and
- 388 [~~(f)~~] (l) an employee of an interlocal cooperative agency created under Title 11,
 389 Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily
 390 provided through membership in a labor organization that provides retirement benefits to its
 391 members.
- 392 (3) (a) Each participating employer shall prepare a list designating those positions
 393 eligible for exemption under Subsection (2).
- 394 (b) An employee may not be exempted unless the employee is employed in a position
 395 designated by the participating employer.
- 396 (4) (a) In accordance with this section, a municipality, county, or political subdivision
 397 may not exempt more than 50 positions or a number equal to 10% of the employees of the
 398 municipality, county, or political subdivision, whichever is lesser.
- 399 (b) A municipality, county, or political subdivision may exempt at least one regular

400 full-time employee.

401 (5) Each participating employer shall:

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

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

404 (6) The office may make rules to implement this section.

405 Section 6. Section **49-15-201** is amended to read:

406 **49-15-201. System membership -- Eligibility.**

407 (1) (a) A public safety service employee employed by the state after July 1, 1989, is
408 eligible for service credit in this system.

409 (b) ~~[(A) By following the procedures established by the board under this chapter, a~~
410 public safety service employee employed by the state prior to July 1, 1989, may ~~[either]~~ elect
411 to:

412 (i) receive service credit in this system; or

413 (ii) continue to receive service credit under the system established under Chapter 14,
414 Public Safety Contributory Retirement Act~~[-, by following the procedures established by the~~
415 ~~board under this chapter].~~

416 (2) (a) ~~[Public]~~ A public safety service ~~[employees]~~ employee of a participating
417 employer other than the state that elected on or before July 1, 1989, to remain in the Public
418 Safety Contributory Retirement System shall be eligible only for service credit in that system.

419 (b) ~~[(†)]~~ A participating employer other than the state that elected on or before July 1,
420 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety
421 service employee to elect to participate in either this system or the Public Safety Contributory
422 Retirement System.

423 ~~[(ii) Except as expressly allowed by this title, the election of the public safety service~~
424 ~~employee is final and may not be changed.]~~

425 (c) ~~[(A) Except as provided under Subsection (3), a~~ public safety service employee
426 hired by a participating employer other than the state after July 1, 1989, shall become a
427 member in this system.

428 (d) ~~[(A) Except as provided under Subsection (3),~~ public safety service employee of a
429 participating employer other than the state who began participation in this system after July 1,
430 1989, is only eligible for service credit in this system.

431 (3) (a) A public safety service employee who initially enters employment beginning
432 July 1, 2008 with a participating employer may elect to become a member of:

433 (i) this system; or

434 (ii) the Public Employees' Noncontributory Retirement System under Chapter 13,

435 Public Employees' Noncontributory Retirement Act.

436 (b) For a public safety service employee who elects to participate in the Public
437 Employees' Noncontributory Retirement System, the participating employer shall, in addition
438 to any other compensation, pay as part of the employee's compensation an amount equal to the
439 difference in the cost of the two retirement systems, to be calculated as follows:

440 (i) the amount that the participating employer would be required to pay for the
441 employee's retirement benefit if the employee was a member of that system based on the
442 retirement contribution rate under the Public Safety Noncontributory Retirement System;

443 (ii) minus the amount that the participating employer pays for the employee's
444 retirement benefit based on the retirement contribution rate under the Public Employees'
445 Noncontributory Retirement System; and

446 (iii) minus the additional amount the participating employer pays for percent of salary
447 based benefits and for state or federal payroll taxes due to the increased compensation paid to
448 the employee under this Subsection (3).

449 (4) Except as expressly allowed by this title, the election of the public safety service
450 employee under Subsection (1), (2), or (3) is final and may not be changed.

451 ~~[(3)]~~ (5) (a) (i) A participating employer that has public safety service and firefighter
452 service employees that require cross-training and duty shall enroll those dual purpose
453 employees in the system in which the greatest amount of time is actually worked.

454 (ii) The employees shall either be full-time public safety service or full-time firefighter
455 service employees of the participating employer.

456 (b) (i) Prior to transferring a dual purpose employee from one system to another, the
457 participating employer shall receive written permission from the office.

458 (ii) The office may request documentation to verify the appropriateness of the transfer.

459 ~~[(4)]~~ (6) The board may combine or segregate the actuarial experience of participating
460 employers in this system for the purpose of setting contribution rates.

461 ~~[(5)]~~ (7) (a) (i) Each participating employer participating in this system shall annually

462 submit to the office a schedule indicating the positions to be covered under this system in
463 accordance with this chapter.

464 (ii) The office may require documentation to justify the inclusion of any position under
465 this system.

466 (b) If there is a dispute between the office and a participating employer or employee
467 over any position to be covered, the disputed position shall be submitted to the Peace Officer
468 Standards and Training Council established under Section 53-6-106 for determination.

469 (c) (i) The Peace Officer Standards and Training Council's authority to decide
470 eligibility for public safety service credit is limited to claims for coverage under this system for
471 time periods after July 1, 1989.

472 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
473 to service credit earned in another system prior to July 1, 1989.

474 (iii) Except as provided under Subsection [~~(5)~~] (7)(c)(iv), a decision of the Peace
475 Officer Standards and Training Council granting a position coverage under this system may
476 only be applied prospectively from the date of that decision.

477 (iv) A decision of the Peace Officer Standards and Training Council granting a position
478 coverage under this system may be applied retroactively only if:

479 (A) the participating employer covered other similarly situated positions under this
480 system during the time period in question; and

481 (B) the position otherwise meets all eligibility requirements for receiving service credit
482 in this system during the period for which service credit is to be granted.

483 [~~(6)~~] (8) The Peace Officer Standards and Training Council may use a subcommittee to
484 provide a recommendation to the council in determining disputes between the office and a
485 participating employer or employee over a position to be covered under this system.

486 [~~(7)~~] (9) The Peace Officer Standards and Training Council shall comply with Title 63,
487 Chapter 46b, Administrative Procedures Act, in resolving coverage disputes in this system.

488 [~~(8)~~] (10) A public safety service employee who is transferred or promoted to an
489 administration position not covered by this system shall continue to earn public safety service
490 credit in this system as long as the employee remains employed in the same department.

491 [~~(9)~~] (11) Any employee who is reassigned to the Department of Technology Services
492 or to the Department of Human Resource Management, and who was a member in this system,

493 shall be entitled to remain a member in this system.

494 ~~[(10)]~~ (12) (a) To determine that a position is covered under this system, the office and,
495 if a coverage dispute arises, the Peace Officer Standards and Training Council shall find that
496 the position requires the employee to:

497 (i) place the employee's life or personal safety at risk; and

498 (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

499 (b) If a position satisfies the requirements of Subsection ~~[(10)]~~ (12)(a), the office and
500 Peace Officer Standards and Training Council shall consider whether the position requires the
501 employee to:

502 (i) perform duties that consist primarily of actively preventing or detecting crime and
503 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

504 (ii) perform duties that consist primarily of providing community protection; and

505 (iii) respond to situations involving threats to public safety and make emergency
506 decisions affecting the lives and health of others.

507 ~~[(11)]~~ (13) If a subcommittee is used to recommend the determination of disputes to
508 the Peace Officer Standards and Training Council, the subcommittee shall comply with the
509 requirements of Subsection ~~[(10)]~~ (12) in making its recommendation.

510 ~~[(12)]~~ (14) A final order of the Peace Officer Standards and Training Council regarding
511 a dispute is a final agency action for purposes of Title 63, Chapter 46b, Administrative
512 Procedures Act.

513 ~~[(13)]~~ (15) Except as provided under Subsection ~~[(14)]~~ (16), if a participating
514 employer's public safety service employees are not covered by this system under Chapter 14,
515 Public Safety Contributory Retirement Act, as of January 1, 1998, those public safety service
516 employees who may otherwise qualify for membership in this system shall, at the discretion of
517 the participating employer, remain in their current retirement system.

518 ~~[(14)]~~ (16) (a) A public safety service employee employed by an airport police
519 department, which elects to cover its public safety service employees under the Public Safety
520 Noncontributory Retirement System under Subsection ~~[(13)]~~ (15), may elect to remain in the
521 public safety service employee's current retirement system.

522 (b) The public safety service employee's election to remain in the current retirement
523 system under Subsection ~~[(14)]~~ (16)(a):

524 (i) shall be made at the time the employer elects to move its public safety service
525 employees to a public safety retirement system;

526 (ii) documented by written notice to the participating employer; and

527 (iii) is irrevocable.

528 Section 7. Section **49-15-202** is amended to read:

529 **49-15-202. Participation of employers -- Requirements -- Admission -- Full**
530 **participation in system -- Supplemental programs authorized.**

531 (1) An employer that employs public safety service employees and is required by
532 Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees'
533 Contributory Retirement System or the Public Employees' Noncontributory Retirement System
534 shall cover all its public safety service employees under one of the following systems:

535 (a) Chapter 12, Public Employees' Contributory Retirement Act;

536 (b) Chapter 13, Public Employees' Noncontributory Retirement Act;

537 (c) Chapter 14, Public Safety Contributory Retirement Act; or

538 (d) Chapter 15, Public Safety Noncontributory Retirement Act.

539 (2) An employer that covers its public safety employees under Subsection (1)(d) is a
540 participating employer in this system.

541 (3) [~~H~~] Except as provided under Subsection 49-15-201(3), if a participating employer
542 under Subsection (1) covers any of its public safety service employees under the Public Safety
543 Contributory Retirement System or the Public Safety Noncontributory Retirement System, that
544 participating employer shall cover all of its public safety service employees under one of those
545 systems.

546 (4) (a) An employer that is not participating in this system may, by resolution of its
547 governing body, apply for coverage of its public safety service employees by this system.

548 (b) Upon approval of the board, the employer shall become a participating employer in
549 this system subject to this title.

550 (5) If a participating employer purchases service credit on behalf of employees for
551 service rendered prior to the participating employer's admission to this system, the service
552 credit must be purchased in a nondiscriminatory manner on behalf of all current and former
553 employees who were eligible for service credit at the time service was rendered.

554 (6) A participating employer may not withdraw from this system.

555 (7) In addition to their participation in the system, participating employers may provide
556 or participate in any additional public or private retirement, supplemental or defined
557 contribution plan, either directly or indirectly, for their employees.

558 Section 8. **Effective date.**

559 If approved by two-thirds of all the members elected to each house, this bill takes effect
560 upon approval by the governor, or the day following the constitutional time limit of Utah
561 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
562 the date of veto override.

Legislative Review Note

as of 1-16-08 11:17 AM

Office of Legislative Research and General Counsel

H.B. 202 - Employee Benefit Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. This bill allows certain current and future at will employees and elected officials to have their current defined benefit balance transferred from the defined benefit system or plan to a defined contribution plan. There would be a one-time cost of \$2.5 million to the retirement system, however this would not result in a overall contribution rate change.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses. Certain individuals may benefit from increased income. Investment rewards and risks may rest with current and future at will employees and elected officials that opt for a balance transfer from the defined benefit system or plan to defined contribution plan.

Certain local governments may be affected due to changes in statute, which in turn may affect existing unfunded liabilities or future contribution rates.