NEW PUBLIC EMPLOYEES' TIER II
CONTRIBUTORY RETIREMENT ACT

2010 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist
House Sponsor: ____________

LONG TITLE

General Description:
This bill modifies the Utah State Retirement and Insurance Benefit Act to provide for modified retirement benefits for new public employees.

Highlighted Provisions:
This bill:
- defines terms;
- provides for a "Tier I" system or plan for which an employee is eligible to participate if the employee initially enters regular full-time employment before July 1, 2011;
- creates a "Tier II" retirement system and plan for which an employee is eligible to participate, if the employee initially enters regular full-time employment on or after July 1, 2011 and which includes a:
  - New Public Employees' Tier II Hybrid Retirement System; and
  - New Public Employees' Tier II Defined Contribution Plan;
- provides that all new public employees including public safety, firefighters, judges, governors, and legislators may only participate in a Tier II retirement system or plan;
- provides that new employees may choose between the Tier II hybrid system or the Tier II DC plan except governors and legislators are only eligible for the Tier II DC plan.
provides that the retirement benefits for Tier II hybrid system employees include:

- full retirement benefits after 35 years of service credit;
- 2.5% cost-of-living adjustments on the retirement allowance;
- a 1% multiplier for each year of service;
- a 401(k) employer contribution;
- a death benefit; and
- a disability benefit;

provides that the participating employer shall contribute for Tier II employees the percentage of employee's compensation equal to the corresponding Tier I system amortization rate plus 8%;

provides that the total Tier II contribution credited specifically on behalf of a Tier II employee is 8% of the employee's salary;

closes for employees who initially enter employment beginning on or after July 1, 2011, the:

- Public Employees' Contributory Retirement System;
- Public Employees' Noncontributory Retirement System;
- Public Safety Contributory Retirement System;
- Public Safety Noncontributory Retirement Act;
- Firefighters' Retirement System;
- Judges' Contributory Retirement System;
- Judges' Noncontributory Retirement System; and
- Utah Governors' and Legislators' Retirement System;

provides for certain exclusions from membership in the Tier II DC plan; and

makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2010.

Utah Code Sections Affected:
49-11-102, as last amended by Laws of Utah 2009, Chapter 101
49-11-401, as last amended by Laws of Utah 2005, Chapter 116
49-11-403, as last amended by Laws of Utah 2006, Chapter 260
49-11-404, as last amended by Laws of Utah 2008, Chapter 252
49-11-801, as last amended by Laws of Utah 2008, Chapter 335
49-11-1001, as enacted by Laws of Utah 2006, Chapter 305
49-12-201, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-13-201, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-14-201, as last amended by Laws of Utah 2008, Chapter 382
49-14-202, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-15-201, as last amended by Laws of Utah 2008, Chapter 382
49-15-202, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-16-201, as last amended by Laws of Utah 2004, Chapter 118
49-16-202, as last amended by Laws of Utah 2009, Chapter 101
49-17-201, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-18-201, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-19-201, as renumbered and amended by Laws of Utah 2002, Chapter 250
49-21-403, as last amended by Laws of Utah 2008, Chapter 252
53A-1a-512, as last amended by Laws of Utah 2009, Chapter 165

ENACTS:

49-22-101, Utah Code Annotated 1953
49-22-102, Utah Code Annotated 1953
49-22-103, Utah Code Annotated 1953
49-22-104, Utah Code Annotated 1953
49-22-201, Utah Code Annotated 1953
49-22-202, Utah Code Annotated 1953
49-22-203, Utah Code Annotated 1953
49-22-204, Utah Code Annotated 1953
49-22-301, Utah Code Annotated 1953
49-22-302, Utah Code Annotated 1953
49-22-303, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

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

49-11-102. Definitions.

As used in this title:

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

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

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

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

(4) (a) "Agency" means:

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

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

(iii) a state college or university; or

(iv) any other participating employer.

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

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

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

(7) "Amortization rate" means the board certified percent of salary required to amortize the unfunded actuarial accrued liability in accordance with policies established by the board upon the advice of the actuary.

[(7) (8)] "Annuity" means monthly payments derived from member contributions.

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

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

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

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

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

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

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

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

"Certified contribution rate" means the board certified percent of salary paid on behalf of an active member to the office to maintain the system on a financially and actuarially sound basis.

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

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

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

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

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

(a) years of service;
(b) final average monthly salary; or
(c) a retirement multiplier.

"Defined contribution" or "defined contribution plan" means any defined contribution plan or deferred compensation plan authorized under the Internal Revenue Code and administered by the board.

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

(a) the State Board of Education and its instrumentalities;
(b) any institution of higher education and its branches;
(c) any school district and its instrumentalities;
(d) any vocational and technical school; and
(e) any entity arising out of a consolidation agreement between entities described under this Subsection [(19)] [(21)].

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

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

[(21)] [(23)] "Exempt employee" means an employee working for a participating employer:

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

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

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

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

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

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

[(25)] [(27)] (a) "Initially entering" means hired, appointed, or elected for the first time, in current service as a member with any participating employer.

(b) "Initially entering" does not include a person who has any prior service credit on file with the office.

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

(b) "Member" also includes leased employees within the meaning of Section 414(n)(2) of the Internal Revenue Code, if the employees have contributions on deposit with the office.

If leased employees constitute less than 20% of the participating employer's work force that is
not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,
"member" does not include leased employees covered by a plan described in Section 414(n)(5)
of the federal Internal Revenue Code.

[(26)] (29) "Member contributions" means the sum of the contributions paid to a
system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
allowed by a system, and which are made by:
(a) the member; and
(b) the participating employer on the member's behalf under Section 414(h) of the
Internal Revenue Code.

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

[(28)] (31) "Office" means the Utah State Retirement Office.

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

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

[(31)] (34) "Pension" means monthly payments derived from participating employer
contributions.

[(32)] (35) "Plan" means the Utah Governors' and Legislators' Retirement Plan created
by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees'
Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution
Plan, or the defined contribution plans created under Section 49-11-801.

[(33)] (36) (a) "Political subdivision" means any local government entity, including
cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
legally separate and distinct from the state and only if its employees are not by virtue of their
relationship to the entity employees of the state.
(b) "Political subdivision" includes local districts, special service districts, or
authorities created by the Legislature or by local governments, including the office.
(c) "Political subdivision" does not include a project entity created under Title 11,
Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.
"Program" means the Public Employees' Insurance Program created under Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees' Long-Term Disability program created under Chapter 21, Public Employees' Long-Term Disability Act.

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

"Qualified defined contribution plan" means a defined contribution plan that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

"Refund interest" means the amount accrued on member contributions at a rate adopted by the board.

"Retiree" means an individual who has qualified for an allowance under this title.

"Retirement" means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.

"Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.

"Service credit" means:

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

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

"System" means the individual retirement systems created by Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement Act.
Act[.], and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter
22, Part 3, Tier II Hybrid Retirement System.

(46) "Tier I" means a system or plan under this title for which an employee is eligible
to participate if the employee initially enters regular full-time employment before July 1, 2011.

(47) (a) "Tier II" means a system or plan under this title provided in lieu of a Tier I
system or plan for which an employee is eligible to participate, if the employee initially enters
regular full-time employment on or after July 1, 2011.

(b) "Tier II" includes:

(i) Tier II hybrid system established under Title 49, Chapter 22, Part 3, Tier II Hybrid
Retirement System; and

(ii) Tier II Defined Contribution Plan (Tier II DC Plan) established under Title 49,
Chapter 22, Part 4, Tier II Defined Contribution Plan.

(48) "Unfunded actuarial accrued liability" or "UAAL":

(a) is determined by the system's actuary; and

(b) means the excess, if any, of the accrued liability of a retirement system over the
actuarial value of its assets.

"Voluntary deferrals" means an amount contributed by a participant into
that participant's defined contribution account.

Section 2. Section 49-11-401 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) (a) Under no circumstances may service credit earned by a member under Chapter

22, New Public Employees' Tier II Contributory Retirement Act, be transferable to any other
system or plan under this title.

(b) Under no circumstances may service credit earned by a member under one of the
following systems be transferable to the system created under Chapter 22, New Public
Employees' Tier II Contributory Retirement Act:

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

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

(iii) Chapter 14, Public Safety Contributory Retirement Act;

(iv) Chapter 15, Public Safety Noncontributory Retirement Act;

(v) Chapter 16, Firefighters' Retirement Act;

(vi) Chapter 17, Judges' Contributory Retirement Act;

(vii) Chapter 18, Judges' Noncontributory Retirement Act; or
Section 3. Section 49-11-403 is amended to read:

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

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

(a) United States federal employment;

(b) employment in a private school based in the United States, if the member received an employer paid retirement benefit for the employment;

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

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

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

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

(i) the member was receiving:

(A) long-term disability benefits;

(B) short-term disability benefits; or

(C) worker's compensation disability benefits; and

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

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

(2) A member shall have:

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

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

(3) (a) To purchase credit under this section, the member, a participating employer, or a
member and a participating employer jointly shall make payment to the system under which the member is currently covered.

(b) The amount of the payment shall be determined by the office based on a formula that is:

(i) recommended by the actuary; and

(ii) adopted by the board.

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

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

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

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

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

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

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

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

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

(9) Account balances created under Section 49-22-303 or 49-22-401 may not be used to purchase service credit for a benefit under Sections 49-22-304 and 49-22-305.

Section 4. Section 49-11-404 is amended to read:


(1) (a) A participating employer may establish a salary protection program under which its employees are paid during periods of disability.

(b) If a salary protection program is established, a participating employer may enter
into benefit protection contracts with the office.

(c) A salary protection program shall:

(i) pay benefits based on the disabled member's rate of compensation at the time of disability;

(ii) be substantially equivalent to the long-term disability programs offered under Chapter 21, Public Employees' Long-Term Disability Act; and

(iii) comply with requirements adopted by the board.

(2) A benefit protection contract shall allow:

(a) the disabled member to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay in effect at the time disability commences;

(b) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;

(c) the disabled member to remain eligible during the contract period for any benefits provided by the system that covers the member; and

(d) the benefit for the disabled member to be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract.

(3) (a) The office shall establish the manner and times when employer contributions are paid.

(b) A failure to make the required payments is cause for the office to cancel a contract.

(c) Service credit and salary credit granted and accrued up to the time of cancellation may not be forfeited.

(4) For an employee covered under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, a benefit protection contract shall allow:

(a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System:

(i) the disabled member to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay in effect at the time disability commences;

(ii) the office to require participating employer contributions to be paid before granting
service credit and salary credit to the member;
        (iii) the disabled member to remain eligible during the contract period for any benefits
        provided by the system that covers the member; and
        (iv) the benefit for the disabled member to be improved by the annual cost-of-living
        increase factor applied to retired members of the system that covered the member on the date
        the member is eligible to receive benefits under a benefit protection contract; and
        (b) for the defined contribution portion for a member covered under Chapter 22, Part 3,
        Tier II Hybrid Retirement System or for a participant covered under Chapter 22, Part 4, Tier II
        Defined Contribution Plan, the office shall require participating employers to continue making
        the nonelective contributions on behalf of the disabled member or participant in the amounts
        specified in Subsection 49-22-303(1)(a) or 49-22-401(1).
        [(4)  (5)] (5) A participating employer that has entered into a benefit protection contract
        under this section shall submit an annual report to the office which identifies:
        (a) the employees receiving long-term disability benefits under policies initiated by the
        participating employer and approved under the benefit protection contract;
        (b) the employees that have applied for long-term disability benefits and who are
        waiting approval; and
        (c) the insurance carriers that are actively providing long-term disability benefits.
        [(5)  (6)] (6) If an employer fails to provide the annual report required under Subsection
        [(4)  (5)], the benefits that would have accrued under the benefit protection contract shall be
        forfeited.
        [(6)  (7)] (7) The board may adopt rules to implement and administer this section.
        Section 5. Section 49-11-801 is amended to read:
        49-11-801. Defined contribution plans authorized -- Subject to federal and state
        laws -- Rules to implement this provision -- Costs of administration -- Limitations on
        eligibility -- Protection of tax status.
        (1) (a) The board shall establish and administer defined contribution plans established
        under the Internal Revenue Code.
        (b) Voluntary deferrals and nonelective contributions shall be permitted according to
        the provisions of these plans as established by the board.
        (c) [The] Except as provided in Subsections 49-22-303(2)(a) and 49-22-401(3)(a), the
defined contribution account balance is vested in the participant.

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

(b) [Participants] Except as provided in Subsections 49-22-303(3) and 49-22-401(4), participants may direct the investment of their account in the investment options established by the board and in accordance with federal and state law.

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

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

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

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

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

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

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

Section 6. Section 49-11-1001 is amended to read:

49-11-1001. Partial lump-sum payment option.

(1) [At] Except as provided in Subsection (5), at the time of application for retirement, a member may elect to receive a lump-sum payment of a portion of the member's retirement allowance equal to 12 or 24 months of the member's allowance to be paid upon retirement.

(2) The member's allowance shall be reduced to reflect the actuarial value of the lump-sum received under Subsection (1).

(3) A member who has received a lump-sum payment under this section is not eligible for another lump-sum payment under this section.

(4) The board may make rules to implement this section.
(5) A member or participant of a system or plan under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, is not eligible to make an election under this section.

Section 7. Section 49-12-201 is amended to read:

**49-12-201. System membership -- Eligibility.**

(1) A regular full-time employee of a participating employer is eligible for service credit in this system upon the later of:

(a) the date on which the participating employer began participating in this system; or

(b) the effective date of employment of the regular full-time employee with the participating employer.

(2) Beginning July 1, 1986, a person entering employment with the state and its educational institutions may not participate in this system.

(3) Notwithstanding the provisions of Subsection (1), a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 8. Section 49-13-201 is amended to read:

**49-13-201. System membership -- Eligibility.**

(1) Beginning July 1, 1986, the state and its educational institutions shall participate in this system.

(a) A person entering regular full-time employment with the state or its educational institutions after July 1, 1986, but before July 1, 2011, is eligible for service credit in this system.

(b) A regular full-time employee of the state or its educational institutions prior to July 1, 1986, may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.

(2) An employer, other than the state and its educational institutions, may participate in this system except that once an employer elects to participate in this system, that election is irrevocable and the election must be made before July 1, 2011.

(a) [A] Until June 30, 2011, a person initially entering regular full-time employment with a participating employer which elects to participate in this system is eligible for service
credit in this system.

(b) A person in regular full-time employment with a participating employer prior to the participating employer's election to participate in this system may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.

(3) Notwithstanding the provisions of Subsections (1) and (2), a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 9. Section 49-14-201 is amended to read:

49-14-201. System membership -- Eligibility.

(1) Except as provided in Section 49-15-201, a public safety service employee of a participating employer participating in this system is eligible for service credit in this system at the earliest of:

(a) July 1, 1969, if the public safety service employee was employed by the participating employer on July 1, 1969, and the participating employer was participating in this system on that date;

(b) the date the participating employer begins participating in this system if the public safety service employee was employed by the participating employer on that date; or

(c) the date the public safety service employee is employed by the participating employer and is eligible to perform public safety service, except that a public safety service employee initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

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

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

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

(ii) The office may request documentation to verify the appropriateness of the transfer.
(3) The board may combine or segregate the actuarial experience of participating employers in this system for the purpose of setting contribution rates.

(4) (a) (i) Each participating employer participating in this system shall annually submit to the office a schedule indicating the positions to be covered under this system in accordance with this chapter.

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

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

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

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

(iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer Standards and Training Council granting a position coverage under this system may only be applied prospectively from the date of that decision.

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

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

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

(5) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the office and a participating employer or employee over a position to be covered under this system.

(6) The Peace Officer Standards and Training Council shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

(7) A public safety employee who is transferred or promoted to an administration position not covered by this system shall continue to earn public safety service credit in this
system as long as the employee remains employed in the same department.

(8) Any employee who is reassigned to the Department of Technology Services or to the Department of Human Resource Management, and who was a member of this system, shall be entitled to remain a member of this system.

(9) (a) To determine that a position is covered under this system, the office and, if a coverage dispute arises, the Peace Officer Standards and Training Council shall find that the position requires the employee to:

   (i) place the employee's life or personal safety at risk; and
   (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

   (b) If a position satisfies the requirements of Subsection (9)(a), the office and the Peace Officer Standards and Training Council shall consider whether or not the position requires the employee to:

   (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
   (ii) perform duties that consist primarily of providing community protection; and
   (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

(10) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection (9) in making its recommendation.

(11) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

(12) Except as provided under Subsection (13), if a participating employer's public safety service employees are not covered by this system or under Chapter 15, Public Safety Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees who may otherwise qualify for membership in this system shall, at the discretion of the participating employer, remain in their current retirement system.

(13) (a) A public safety service employee employed by an airport police department, which elects to cover its public safety service employees under the Public Safety Noncontributory Retirement System under Subsection (12), may elect to remain in the public
safety service employee's current retirement system.

(b) The public safety service employee's election to remain in the current retirement system under Subsection (13)(a):

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

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

(iii) is irrevocable.

(14) Notwithstanding any other provision of this section, a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 10. Section 49-14-202 is amended to read:

49-14-202. Participation of employers -- Requirements -- Supplemental programs

-- Full participation in system.

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

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

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

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

(d) Chapter 15, Public Safety Noncontributory Retirement Act[; or]

(e) Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

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

(3) If a participating employer under Subsection (1) covers any of its public safety service employees under the Public Safety Contributory Retirement System or the Public Safety Noncontributory Retirement System, that participating employer shall cover all of its public safety service employees under one of those systems, except for a public safety service employee initially entering employment with a participating employer on or after July 1, 2011.

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

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

(6) An employer may not elect to participate in this system after July 1, 1989.

Section 11. Section 49-15-201 is amended to read:


(1) (a) A public safety service employee employed by the state after July 1, 1989, but
before July 1, 2011, is eligible for service credit in this system.

(b) A public safety service employee employed by the state prior to July 1, 1989, may
either elect to receive service credit in this system or continue to receive service credit under
the system established under Chapter 14, Public Safety Contributory Retirement Act, by
following the procedures established by the board under this chapter.

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

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

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

(c) A public safety service employee hired by a participating employer other than the
state after July 1, 1989, but before July 1, 2011, shall become a member in this system.

(d) A public safety service employee of a participating employer other than the state
who began participation in this system after July 1, 1989, but before July 1, 2011, is only
eligible for service credit in this system.

(e) A person initially entering employment with a participating employer on or after
July 1, 2011, may not participate in this system.

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

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

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

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

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

(5) (a) (i) Each participating employer participating in this system shall annually submit to the office a schedule indicating the positions to be covered under this system in accordance with this chapter.

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

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

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

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

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

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

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

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

(6) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the office and a participating employer or employee over a position to be covered under this system.
(7) The Peace Officer Standards and Training Council shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

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

(9) Any employee who is reassigned to the Department of Technology Services or to the Department of Human Resource Management, and who was a member in this system, shall be entitled to remain a member in this system.

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

(i) place the employee's life or personal safety at risk; and
(ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

(b) If a position satisfies the requirements of Subsection (10)(a), the office and Peace Officer Standards and Training Council shall consider whether the position requires the employee to:

(i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
(ii) perform duties that consist primarily of providing community protection; and
(iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

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

(12) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

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

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

(b) The public safety service employee's election to remain in the current retirement system under Subsection (14)(a):

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

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

(iii) is irrevocable.

(15) Notwithstanding any other provision of this section, a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 12. Section 49-15-202 is amended to read:


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

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

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

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

(d) Chapter 15, Public Safety Noncontributory Retirement Act[; or]

(e) Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

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

(3) If a participating employer under Subsection (1) covers any of its public safety service employees under the Public Safety Contributory Retirement System or the Public Safety Noncontributory Retirement System, that participating employer shall cover all of its
public safety service employees under one of those systems, except for a public safety service employee initially entering employment with a participating employer beginning on or after July 1, 2011.

(4) (a) Until June 30, 2011, an employer that is not participating in this system may by resolution of its governing body apply for coverage of its public safety service employees by this system.

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

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

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

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

Section 13. Section 49-16-201 is amended to read:

49-16-201. System membership -- Eligibility.

(1) A firefighter service employee who performs firefighter service for an employer participating in this system is eligible for service credit in this system upon the earliest of:

(a) July 1, 1971, if the firefighter service employee was employed by the participating employer on July 1, 1971, and the participating employer was participating in this system on that date;

(b) the date the participating employer begins participating in this system if the firefighter service employee was employed by the participating employer on that date; or

(c) the date the firefighter service employee is hired to perform firefighter services for a participating employer, if the firefighter initially enters employment before July 1, 2011.

(2) (a) (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll the dual purpose employees in the system in which the greatest amount of time is actually worked.

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

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

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

(3) (a) A person hired by a regularly constituted fire department on or after July 1, 1971, who does not perform firefighter service is not eligible for service credit in this system.

(b) The nonfirefighter service employee shall become a member of the system for which the nonfirefighter service employee qualifies for service credit.

(c) The service credit exclusion under this Subsection (3) may not be interpreted to prohibit the assignment of a disabled or partially disabled firefighter to a nonfirefighter service position.

(d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for service credit in this system.

(4) An allowance or other benefit may not be granted under this system that is based upon the same service for benefits received under some other system.

(5) Service as a volunteer firefighter is not eligible for service credit in this system.

(6) An employer that maintains a regularly constituted fire department is eligible to participate in this system.

(7) Beginning July 1, 2011, a person initially entering employment with a participating employer may not participate in this system.

Section 14. Section 49-16-202 is amended to read:

49-16-202. Participation of employers -- Full participation in system --

Supplemental programs authorized.

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

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

(b) Chapter 13, Public Employees’ Noncontributory Retirement Act; [or]

(c) Chapter 16, Firefighters’ Retirement Act[; or]

(d) Chapter 22, New Public Employees’ Tier II Contributory Retirement Act.
(2) Any employer that covers its firefighter service employees under Subsection (1)(c) is a participating employer in this system.

(3) If a participating employer under Subsection (1) covers any of its firefighter service employees under the Firefighters' Retirement System, that participating employer shall cover all of its firefighter service employees under that system, except for a firefighter service employee initially entering employment with a participating employer on or after July 1, 2011.

(4) (a) [An] Until June 30, 2011, an employer that is not participating in this system may, by resolution of its governing body submitted to the board, apply for coverage of its firefighter service employees by this system. (b) Upon approval of the board, the employer shall become a participating employer in this system subject to this title.

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

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

Section 15. Section 49-17-201 is amended to read:

49-17-201. System membership -- Eligibility.

(1) Except as provided in Subsection (2) and Section 49-18-201, judges are members of and are eligible for service credit in this system.

(2) A judge initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 16. Section 49-18-201 is amended to read:

49-18-201. System membership -- Eligibility.

(1) Judges appointed after July 1, 1997, but before July 1, 2011, are members of and are eligible for service credit in this system.

(2) (a) Any judge appointed prior to July 1, 1997, may either become a member of the Judges' Noncontributory Retirement System or remain a member of the Judges' Contributory Retirement System established under Chapter 17, Judges' Contributory Retirement Act, by following the procedures established by the board [pursuant to] under this chapter.

(b) Judges may only elect to participate in this system under this Subsection (2) prior to January 1, 1998.
Section 17. Section 49-19-201 is amended to read:


(1) Governors and legislators who enter office before July 1, 2011, are eligible for service credit in this plan during their term of service in their elected position.

(2) A governor or legislator initially entering office on or after July 1, 2011:

(a) may not participate in this system;

(b) is only eligible to participate in the Tier II Defined Contribution Plan established under Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan; and

(c) is not eligible to participate in the Tier II hybrid retirement system established under Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System.

Section 18. Section 49-21-403 is amended to read:

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

(1) An eligible employee covered by this chapter and eligible for service credit under a system, or a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, including an eligible employee who relinquishes rights to retirement benefits under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly disability benefit until the earlier of:

(a) the date the eligible employee is no longer disabled;

(b) the date the eligible employee has accumulated:

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

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

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

(iv) 35 years of service credit if the eligible employee is covered by the defined benefit portion under Chapter 22, Part 3, Tier II Hybrid Retirement System; or
(c) the date the eligible employee has received a monthly disability benefit for the following applicable time periods:

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

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

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

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

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

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

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

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

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

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

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

(a) the date the eligible employee would be eligible for an unreduced allowance;

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

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

Section 19. Section 49-22-101 is enacted to read:

CHAPTER 22. NEW PUBLIC EMPLOYEES' TIER II CONTRIBUTORY
RETIREMENT ACT


49-22-101. Title.
This chapter is known as the "New Public Employees' Tier II Contributory Retirement
Act."

Section 20. Section 49-22-102 is enacted to read:


As used in this chapter:

(1) (a) Except as provided in Subsection (1)(c), "compensation" means the total
amount of payments made by a participating employer to a member of this system for services
rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to Social
Security deductions, including any payments in excess of the maximum amount subject to
deduction under Social Security law;

(iv) amounts that the member authorizes to be deducted or reduced for salary deferral
or other benefits authorized by federal law; and

(v) member contributions.

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

(c) "Compensation" does not include:

(i) the monetary value of remuneration paid in kind, including a residence or use of
equipment;
(ii) the cost of any employment benefits paid for by the participating employer;
(iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;
(iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or
(v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.

(d) The executive director may determine if a payment not listed under this Subsection (1) falls within the definition of compensation.

(2) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.

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

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

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

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

(c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.

(d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
(4) "Participating employer" means an employer which meets the participation requirements of:

(a) Sections 49-12-201 and 49-12-202;
(b) Sections 49-13-201 and 49-13-202;
(c) Sections 49-14-201 and 49-14-202;
(d) Sections 49-15-201 and 49-15-202;
(e) Sections 49-16-201 and 49-16-202;
(f) Section 49-17-201;
(g) Section 49-18-201; or
(h) Section 49-19-201.

(5) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.

(b) "Regular full-time employee" includes:

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;
(ii) a classified school employee whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
(iii) an officer, elective or appointive, who earns during the first full month of the term of office $500 or more, indexed as of January 1, 1990, as provided in Section 49-22-309;
(iv) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and
(v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.

(6) "System" means the New Public Employees' Tier II Contributory Retirement System created under this chapter.

(7) "Years of service credit" means:

(a) a period, consisting of 12 full months as determined by the board;
(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Section 21. Section 49-22-103 is enacted to read:

**49-22-103. Creation of system.**

(1) There is created for members employed by a participating employer the "New Public Employees' Tier II Contributory Retirement System."

(2) The New Public Employees' Tier II Contributory Retirement System includes:

(a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and

(b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.

Section 22. Section 49-22-104 is enacted to read:

**49-22-104. Creation of trust fund.**

(1) There is created the "New Public Employees' Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Section 23. Section 49-22-201 is enacted to read:

**Part 2. Membership Eligibility**

**49-22-201. System membership -- Eligibility.**

(1) Beginning July 1, 2011, a participating employer shall participate in this system.

(2) (a) A person entering regular full-time employment with a participating employer
on or after July 1, 2011, is eligible:

(i) as a member for service credit and defined contributions under the Tier II hybrid
retirement system established by Part 3, Tier II Hybrid Retirement System; or

(ii) as a participant for defined contributions under the Tier II defined contributions
plan established by Part 4, Tier II Defined Contribution Plan.

(b) A person entering full-time employment with a participating employer on or after
July 1, 2011, shall:

(i) make an election to participate in the system created under this chapter within 30
days from the date of employment:

(A) as a member for service credit and defined contributions under the Tier II Hybrid
Retirement System established by Part 3, Tier II Hybrid Retirement System; or

(B) as a participant for defined contributions under the Tier II defined contributions
plan established by Part 4, Tier II Defined Contribution Plan; and

(ii) submit to the office notification of the member's election under Subsection (2)(b) in
a manner approved by the office.

(c) An election made by a person entering full-time employment with a participating
employer under this Subsection (2) is irrevocable.

(d) If no election is made under Subsection (2)(b), the person shall become a member
eligible for service credit and defined contributions under the Tier II Hybrid Retirement System
established by Part 3, Tier II Hybrid Retirement System.

(3) Notwithstanding the provisions of this section, a governor or legislator initially
entering office on or after July 1, 2011:

(a) is only eligible to participate in the Tier II defined contribution plan established
under Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan; and

(b) is not eligible to participate in the Tier II hybrid retirement system established
under Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System.

Section 24. Section 49-22-202 is enacted to read:

49-22-202. Participation of employers -- Limitations -- Exclusions -- Admission
requirements.

(1) (a) Unless excluded under Subsection (2), an employer is a participating employer
and may not withdraw from participation in this system.
(b) In addition to their participation in this system, a participating employer may not provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees unless the actuarial funded ratio of all the systems under this title reach 100%.

(2) An employer that is a charter school sponsored by the State Board of Education or a school district may be excluded from participation in this system if the charter school makes an election of nonparticipation in accordance with Section 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election of nonparticipation in accordance with Subsection 53A-1a-512(9).

(3) (a) An employer may, by resolution of its governing body, apply for admission to this system.

(b) Upon approval of the resolution by the board, the employer is a participating employer in this system and is subject to this title.

(4) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

Section 25. Section 49-22-203 is enacted to read:

49-22-203. Exclusions from membership in system.

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

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

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

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

(b) (i) A current or future employee of a two-year or four-year college or university who holds, or is entitled to hold, under Section 49-22-204, a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer.

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

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

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

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

Section 26. Section 49-22-204 is enacted to read:

49-22-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems.

(1) (a) Regular full-time employees of institutions of higher education who are eligible to participate in either this system or in a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).

(b) The election is final, and no right exists to make any further election.

(2) (a) A regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.

(b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is
assigned with either:

(i) this system;

(ii) the Teachers' Insurance and Annuity Association of America; or

(iii) another public or private system, organization, or company designated by the Board of Regents.

(3) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system may elect to continue participation in this system upon change to an employment classification which requires participation in:

(a) an annuity plan with the Teachers' Insurance and Annuity Association of America;

or

(b) another public or private system, organization, or company designated by the Board of Regents.

(4) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system shall participate in this system.

Section 27. Section 49-22-301 is enacted to read:

Part 3. Tier II Hybrid Retirement System

49-22-301. Contributions.

(1) Participating employers and members shall jointly pay the certified contribution rates to the office to maintain the defined benefit portion of this system on a financially and actuarially sound basis.

(2) (a) A participating employer shall pay up to 8% of compensation toward the certified contribution rate to the office for the defined benefit portion of this system.

(b) A member shall pay the amount, if any, of the certified contribution rate for the defined benefit portion of this system that exceeds 8% to the office.

(c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office.

(3) A participating employer may not elect to pay all or part of the required member contributions under Subsection (2)(b), in addition to the required participating employer
(4) (a) All member contributions are credited by the office to the account of the individual member.

(b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) All member contributions are vested and nonforfeitable.

(5) (a) Each member is considered to consent to payroll deductions of member contributions.

(b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

Section 28. Section 49-22-302 is enacted to read:

49-22-302. Purchase of service credit.

Any member who works 20 or more hours per week for a participating employer participating in this system, but does not meet other eligibility requirements for service credit, may purchase such service credit in accordance with Section 49-11-403.

Section 29. Section 49-22-303 is enacted to read:

49-22-303. Defined contribution benefit established -- Contribution by employer and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.

(1) (a) Participating employers shall make a nonelective contribution on behalf of each of its regular full-time employees who are members of this system in an amount equal to 8% minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

(i) is sponsored by the board; and

(ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) The member may make additional payments to the qualified 401(k) plan which receives the employer contribution described in this Subsection (1).

(2) (a) The total amount contributed by the participating employer under Subsection (1)(a) vests to the member's benefit four years from the date of employment.

(b) The total amount contributed by the member under Subsection (1)(b) vests to the
member's benefit immediately and is nonforfeitable.

(3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).

(b) A member may direct the investment of contributions made by a participating employer under Subsection (1)(a) only after the contributions have vested in accordance with Subsection (2)(a).

(c) A member may direct the investment of contributions made by the member under Subsection (1)(b).

(4) No loans shall be available from contributions made by a participating employer under Subsection (1)(a).

(5) No hardship distributions shall be available from contributions made by a participating employer under Subsection (1)(a).

(6) (a) Except as provided in Subsection (6)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a), all contributions made by a participating employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

(b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a) subsequently enters employment with the same or another participating employer within five years of the termination date of the previous employment:

(i) all contributions made by the previous participating employer on behalf of the member shall be reinstated upon the member's completion of the vesting period under Subsection (2)(a); and

(ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (2)(a).

(c) The board shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against employer contributions made under this section.

(7) The board may request from any other qualified 401(k) plan under Subsection (1)
or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(8) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Section 30. Section 49-22-304 is enacted to read:

**49-22-304. Defined benefit eligibility for an allowance -- Date of retirement -- Qualifications.**

(1) A member is qualified to receive an allowance from this system when:

(a) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

(i) the member has accrued at least four years of service credit and has attained an age of 65 years;

(ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;

(iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or

(iv) the member has accrued at least 35 years of service credit.

(2) (a) The member's retirement date:

(i) shall be the 1st or the 16th day of the month, as selected by the member;

(ii) shall be on or after the date of termination; and

(iii) may not be more than 90 days before or after the date the application is received by the office.

(b) A member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).

Section 31. Section 49-22-305 is enacted to read:

**49-22-305. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) The retirees of this system may choose from the six retirement options described
(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

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

(a) If the retiree is at least 65 years of age or has accrued at least 35 years of service credit, the allowance is an amount equal to 1% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35 or more years of accrued credit in which event no reduction is made to the allowance.

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

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

(d) An Option One allowance is only payable to the member during the member's lifetime.

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

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

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

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

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

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

(4) Periods of employment which are exempt from this system under Subsection
49-22-203(1)(b), may be purchased by the member for the purpose of retirement only if all
benefits from the Teachers' Insurance and Annuity Association of America or any other public
or private system or organization based on this period of employment are forfeited.

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

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

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

Section 32. Section 49-22-306 is enacted to read:


(1) If a retiree's allowance, as computed under this chapter, amounts to $25 or less, the
allowance may be settled by the office by making a lump-sum payment of an amount
actuarially equivalent to the allowance.

(2) A payment made under this section constitutes a full and complete settlement of the
retiree's claim against this system.

Section 33. Section 49-22-307 is enacted to read:


(1) (a) Upon retirement, a retiree may elect to have the office deduct an actuarially
determined amount from the retiree's allowance to provide a lump-sum benefit payable to a
beneficiary upon the death of the retiree.

(b) Upon retirement, a retiree may also elect to have an actuarially determined amount
deducted from the retiree's allowance to provide a lump-sum death benefit payable to a
beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

(c) The board may make rules for the administration of this lump-sum death benefit.

(2) (a) For a retiree who pays for a lump-sum death benefit under this section through a
reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and
49-11-610.

(b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death
benefit is payable after the death of the retiree, the allowance shall be restored to its original
amount.

(3) (a) A retiree may elect to cancel the lump-sum death benefit under this section.
(b) The cancellation under this Subsection (3) is irrevocable.
(c) Upon cancellation, the allowance shall be restored to its original amount and
benefits under this section may not be paid.

Section 34. Section 49-22-308 is enacted to read:

49-22-308. Death of married members -- Service retirement benefits to surviving
spouse.

(1) As used in this section, "member's full allowance" means an Option Three
allowance calculated under Section 49-22-305 without an actuarial reduction.

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

(a) the member has:
   (i) 15 or more years of service credit;
   (ii) attained age 62 with 10 or more years of service credit; or
   (iii) attained age 65 with four or more years of service credit; and
(b) the member dies leaving a spouse to whom the member has been married at least
six months immediately prior to the death date.
(3) The spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:

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

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

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

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

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

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

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

(5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-22-501 and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-22-501.

Section 35. Section 49-22-309 is enacted to read:


(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-22-305, if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer
1392 Price Index is less than 2.5%.
1393 (3) The Consumer Price Index used in calculating adjustments shall be a United States
1394 Bureau of Labor Statistics Consumer Price Index average as determined by the board.
1395 (4) The cost-of-living adjustment made under this section may not decrease the
1396 allowance.
1397 Section 36. Section 49-22-310 is enacted to read:
1398 49-22-310. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination
1399 policy.
1400 (1) (a) A member may purchase or a member and a participating employer may jointly
1401 purchase a maximum of five years of service credit which cannot otherwise be purchased under
1402 this title.
1403 (b) At a minimum, the years of service credit purchased shall be sufficient to allow the
1404 member to meet the retirement eligibility requirements of this system with no actuarial
1405 reduction.
1406 (c) The member's retirement date shall be immediately after the purchase of years of
1407 service credit.
1408 (d) The member shall pay at least 5% of the cost of the purchase.
1409 (e) To qualify for a purchase of service credit under this section, the member shall:
1410 (i) have at least five years of service credit; and
1411 (ii) otherwise meet federal eligibility requirements.
1412 (2) The purchase price for the years of service credit shall be calculated and paid for as
1413 provided in Section 49-11-403.
1414 (3) Prior to making any purchase of years of service credit under this section, a
1415 participating employer shall adopt a purchase policy that includes nondiscriminatory
1416 participation standards for all regular full-time employees.
1417 (4) Only members retiring from this system may purchase service credit under this
1418 section.
1419 Section 37. Section 49-22-401 is enacted to read:
1420 Part 4. Tier II Defined Contribution Plan
1422 (1) Up to the amount allowed by federal law, the participating employer shall
contribute 8% of the participant's compensation to a defined contribution plan.

(2) (a) The participating employer shall contribute the 8% nonelective contribution described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

(i) is sponsored by the board; and

(ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) The member may make additional payments to the qualified 401(k) plan which receives the employer contribution described in this Subsection (2).

(c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office.

(3) (a) The total amount contributed by the participating employer under Subsection (2)(a) vests to the member's benefit four years from the date of employment.

(b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.

(4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).

(b) A member may direct the investment of contributions made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).

(c) A member may direct the investment of contributions made by the member under Subsection (3)(b).

(5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).

(6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).

(7) (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member under Subsection (2)(a) are subject to forfeiture.
(b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within five years of the termination date of the previous employment:

(i) all contributions made by the previous participating employer on behalf of the member shall be reinstated upon the member's completion of the vesting period under Subsection (3)(a); and

(ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).

(c) The board shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against employer contributions made under this section.

(8) The board may request from any other qualified 401(k) plan under Subsection (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(9) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Section 38. Section 49-22-402 is enacted to read:

49-22-402. Defined contribution distributions for disabled members.

For a person who is disabled and receives contributions under Subsection 49-11-404(4)(b), the disabled member may begin receiving distributions from the defined contributions made by the participating employer on behalf of the disabled member when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II Hybrid Retirement System under Part 3, Tier II Hybrid Retirement System.

Section 39. Section 49-22-501 is enacted to read:

Part 5. Death Benefit


(1) The office shall provide a death benefit through the purchase of a group insurance
(2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:

(a) benefit levels;

(b) classes of members; and

(c) a living benefit option.

(3) This death benefit is payable when:

(a) the member dies prior to the member's retirement date or dies under circumstances which Section 49-22-304 requires to be treated as the death of a member before retirement;

(b) the office receives acceptable proof of death; and

(c) benefits are not payable under Section 49-22-306.

(4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:

(a) the return of any member contributions under this chapter; plus

(b) a percentage of the final average salary of the member to be determined by the board.

(5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.

(6) The cost of the death benefit shall be paid by the participating employer in addition to the contribution rate established under Section 49-22-301 or 49-22-401.

(7) The portion of the death benefit provided under Subsection (4)(b), may not be paid to the beneficiary of an inactive member unless the death of the member occurs either:

(a) within a period of 120 days after the last day of work for which the person received compensation; or

(b) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.

(8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member
1516 contributions.
1517 (10) Payment of the death benefit by the office constitutes a full settlement of any
1518 beneficiary's claim against the office and the office is not liable for any further or additional
1519 claims or assessments on behalf of the member.
1520 (11) Unless otherwise specified in a written document filed with the office, death
1521 benefits payable to beneficiaries shall be in accordance with the order of precedence
1522 established under Title 75, Chapter 2, Intestate Succession and Wills.
1523 (12) A death benefit under this section may not be paid on behalf of a retiree under this
1524 system.
1525 Section 40. Section 49-22-701 is enacted to read:
1526 Part 7. Early Retirement Incentives
1527
1528 A judge shall retire upon attaining the age of 75 years.
1529 Section 41. Section 53A-1a-512 is amended to read:
1530 Employees of charter schools.
1531 (1) A charter school shall select its own employees.
1532 (2) The school's governing body shall determine the level of compensation and all
1533 terms and conditions of employment, except as otherwise provided in Subsections (7) and (8)
1534 and under this part.
1535 (3) The following statutes governing public employees and officers do not apply to
1536 charter schools:
1537 (a) Chapter 8, Utah Orderly School Termination Procedures Act;
1538 (b) Chapter 10, Educator Evaluation; and
1539 (c) Title 52, Chapter 3, Prohibiting Employment of Relatives.
1540 (4) (a) To accommodate differentiated staffing and better meet student needs, a charter
1541 school, under rules adopted by the State Board of Education, shall employ teachers who:
1542 (i) are licensed; or
1543 (ii) on the basis of demonstrated competency, would qualify to teach under alternative
1544 certification or authorization programs.
1545 (b) The school's governing body shall disclose the qualifications of its teachers to the
1546 parents of its students.
(5) State Board of Education rules governing the licensing or certification of administrative and supervisory personnel do not apply to charter schools.

(6) (a) An employee of a school district may request a leave of absence in order to work in a charter school upon approval of the local school board.

(b) While on leave, the employee may retain seniority accrued in the school district and may continue to be covered by the benefit program of the district if the charter school and the locally elected school board mutually agree.

(7) Except as provided under Subsection (8), an employee of a charter school shall be a member of a retirement system or plan under Title 49, Utah State Retirement and Insurance Benefit Act.

(8) (a) At the time of application for a charter school, whether the chartering entity is the State Charter School Board or a school district, a proposed charter school may make an election of nonparticipation as an employer for retirement programs under:

(i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act [and under];

(ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act[.]

(iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

(b) A charter school that was approved prior to July 1, 2004 may make an election of nonparticipation prior to December 31, 2004.

(c) An election provided under this Subsection (8):

(i) shall be made at the time specified under Subsection (8)(a) or (b);

(ii) shall be documented by a resolution adopted by the governing body of the charter school;

(iii) is in effect unless the charter school makes an irrevocable retraction of the election of nonparticipation in accordance with Subsection (9); and

(iv) applies to the charter school as the employer and to all employees of the charter school.

(d) The governing body of a charter school may offer employee benefit plans for its employees:

(i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

or

(ii) under any other program.
(9) (a) A charter school that made an election of nonparticipation as an employer for the following retirement programs under Title 49, Chapter 12, Public Employees' Contributory Retirement Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act, may subsequently make an irrevocable retraction of the election of nonparticipation:

(i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act;

(ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or

(iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

(b) A retraction provided under this Subsection (9):

(i) shall be documented by a resolution adopted by the governing body of the charter school;

(ii) is a one-time election;

(iii) is irrevocable; and

(iv) applies to the charter school as the employer and to all employees of the charter school.

(10) The governing body of a charter school shall ensure that, prior to the beginning of each school year, each of its employees signs a document acknowledging that the employee:

(a) has received:

(i) the disclosure required under Section 63A-4-204.5 if the charter school participates in the Risk Management Fund; or

(ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if the charter school does not participate in the Risk Management Fund; and

(b) understands the legal liability protection provided to the employee and what is not covered, as explained in the disclosure.

Section 42. Effective date.

This bill takes effect on July 1, 2010.
Fiscal Note

State Impact
This bill will result in a net savings of 3.72 percent for the non-contributory retirement plan, and a net increase of 3.97 percent for the contributory retirement system beginning in FY 2012. Additionally, the bill will result in a net reduction of 2.65 percent in the contribution rates for employees covered by the Public Safety Contributory system and 14.63 percent for employees covered by the Public Safety Noncontributory system.

Because the effective date for new hires joining the Tier II system is July 1, 2011 the proposed legislation will not have a fiscal impact on FY 2011. The state will avoid future cost increases beginning in FY 2012 and have to contribute less under the new Tier II system than they would otherwise have had to under the current benefit structure.

Individual, Business and/or Local Impact
Enactment of this bill likely will not result in direct, measurable costs and/or benefits for business.

Enactment of this bill will affect local governments, whose retirement rates would see a net decrease by 3.72 percentage points for the non-contributory retirement system. The contributory rate will increase by 3.97 percentage points. Additionally, local governments will experience a net increase contribution rates for Firefighters Retirement System between 6.92 and 8.00 percentage points. Public Safety Contributory and Noncontributory systems would experience a net decrease of rates between 2.08 and 14.34 percentage points.

Individuals will be impacted by the proposed change in statute.