

HB0256S01 compared with HB0256

~~text~~ shows text that was in HB0256 but was deleted in HB0256S01.

inserted text shows text that was not in HB0256 but was inserted into HB0256S01.

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Representative Don L. Ipson proposes the following substitute bill:

RETIREMENT MODIFICATIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ provides that "initially entering" employment includes employees that move from a position not covered under a Utah Retirement System to a position that is covered;
- ▶ clarifies post retirement employment provisions for a retiree who returns to work within one year or who elects to earn additional service credit;
- ▶ provides that a domestic relations court order must be received within 12 months of the death of the member;
- ▶ repeals language related to presentment by a policyholder;

HB0256S01 compared with HB0256

- ▶ amends the definition of regular full-time employee to provide that the minimum earnings required for an elective or appointive officer to be eligible for a retirement benefit under the Tier I Public Employees' Systems is based on a monthly rate, not just the first month in office;
- ▶ clarifies that an employer must be a participating employer whether or not the employer has applied for admission to the system;
- ▶ allows the executive director of the Department of Corrections to be excluded from the Public Safety Contributory Retirement System, the Public Safety Noncontributory Retirement System, and the Tier I Public Safety Noncontributory Retirement System:
- ▶ clarifies that only Tier II governors and legislators and their spouses, not all Tier II public employees, may be eligible for the governors' and legislative paid-up group health coverage;
- ▶ clarifies that Tier II firefighters, including volunteer firefighters, are covered under the URS long-term disability program;
- ▶ provides that long-term disability claims must be made within six months, rather than one year, from the employee's date of disability;
- ▶ requires an employee receiving monthly disability benefits to provide certain information and documentation requested by the office;
- ▶ provides that monthly disability benefits are reduced for payments made for sick leave, annual leave, or similar payments;
- ▶ clarifies participation requirements for employers in the Tier II systems;
- ▶ allows certain at-will employees to be exempt from the vesting requirement for the defined contribution plan in the Tier II Public Employees' Retirement System;
- ▶ allows certain public safety service employees to be exempt from the vesting requirement for the defined contribution plan in the New Public Safety and Firefighter Tier II Contributory Retirement System:
- ▶ clarifies who a participating employer must cover under the Tier II Public Safety and Firefighters Systems; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

HB0256S01 compared with HB0256

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 49-11-102, as last amended by Laws of Utah 2011, Chapter 439
- 49-11-505, as last amended by Laws of Utah 2011, Chapters 138 and 439
- 49-11-612, as last amended by Laws of Utah 2010, Chapter 266
- 49-11-616, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 49-12-102, as last amended by Laws of Utah 2008, Chapter 318
- 49-13-102, as last amended by Laws of Utah 2008, Chapter 318
- 49-13-202, as last amended by Laws of Utah 2010, Chapter 280
- 49-14-203, as last amended by Laws of Utah 2010, Chapter 264
- 49-15-203, as last amended by Laws of Utah 2010, Chapter 264
- 49-20-404, as last amended by Laws of Utah 2011, Chapter 439
- 49-21-201, as last amended by Laws of Utah 2010, Chapter 266
- 49-21-401, as last amended by Laws of Utah 2011, Chapters 366 and 439
- 49-21-402, as last amended by Laws of Utah 2011, Chapter 439
- 49-22-202, as enacted by Laws of Utah 2010, Chapter 266
- 49-22-401, as last amended by Laws of Utah 2011, Chapter 439
- 49-23-202, as enacted by Laws of Utah 2010, Chapter 266
- 49-23-401, as last amended by Laws of Utah 2011, Chapter 439
- 49-23-601, as last amended by Laws of Utah 2011, Chapters 290 and 439

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.

HB0256S01 compared with HB0256

(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.

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

(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:

(a) who earns [~~during the first full month of the term of office~~] \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407 for a Tier I appointive officer; and

(b) whose appointive position is full-time as certified by the participating employer for a Tier II appointive officer.

(10) (a) "At-will employee" means a person who is employed by a participating

HB0256S01 compared with HB0256

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.

(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.

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

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

(14) "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.

(15) "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.

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

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

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

(19) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a

HB0256S01 compared with HB0256

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.

(20) "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.

(21) "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 (21).

(22) "Elected official":

(a) means a person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office;

(b) includes a person who is appointed to serve an unexpired term of office described under Subsection (22)(a); and

(c) does not include a judge or justice who is subject to a retention election under Section 20A-12-201.

(23) (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.

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

HB0256S01 compared with HB0256

(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.

(25) "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.

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

(27) (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.

(28) (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.

(c) "Initially entering" includes an employee of a participating employer, except for an employee that ~~has been exempted~~ is not eligible under a system or plan under this title, who:

(i) does not have any prior service credit on file with the office;

(ii) is covered by a retirement plan other than a retirement plan created under this title;

and

(iii) moves to a position with a participating employer that is covered by this title.

(29) (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.

HB0256S01 compared with HB0256

(30) "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.

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

(32) "Normal cost rate":

(a) means the percent of salary that is necessary for a retirement system that is fully funded to maintain its fully funded status; and

(b) is determined by the actuary based on the assumed rate of return established by the board.

(33) "Office" means the Utah State Retirement Office.

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

(35) "Participating employer" means a participating employer, as defined 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, and Chapter 18, Judges' Noncontributory Retirement Act, 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.

(36) "Pension" means monthly payments derived from participating employer contributions.

(37) "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, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under Section 49-11-801.

HB0256S01 compared with HB0256

(38) (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.

(39) "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.

(40) "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.

(41) "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.

(42) (a) "Reemployed," "reemploy," or "reemployment" means work or service performed after retirement, in exchange for compensation.

(b) Reemployment includes work or service performed on a contract if the retiree is:

(i) listed as the contractor; or

(ii) an owner, partner, or principle of the contractor.

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

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

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

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

HB0256S01 compared with HB0256

(47) "Retirement related contribution":

(a) means any employer payment to any type of retirement plan or program made on behalf of an employee; and

(b) does not include Social Security payments or Social Security substitute payments made on behalf of an employee.

(48) "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.

(49) "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, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

(50) "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.

(51) (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) the Tier II hybrid system established under:

(A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or

(B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and

(ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:

(A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or

HB0256S01 compared with HB0256

(B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

(52) "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.

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

Section 2. Section **49-11-505** is amended to read:

49-11-505. Reemployment of a retiree -- Restrictions.

(1) (a) For purposes of this section, "retiree":

(i) means a person who:

(A) retired from a participating employer; and

(B) begins reemployment on or after July 1, 2010, with a participating employer; ~~and~~

~~(ii) and~~

(ii) does not include a person:

(A) who was reemployed by a participating employer before July 1, 2010; and

(B) whose participating employer that reemployed the person under Subsection

(1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with Section 49-11-621 after July 1, 2010; and

[(ii)] (iii) does not include a [retiree] person who is reemployed as an active senior judge appointed to hear cases by the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

(b) (i) This section does not apply to employment as an elected official if the elected official's position is not full-time as certified by the participating employer.

(ii) The provisions of this section apply to an elected official whose elected position is full-time as certified by the participating employer.

(2) A retiree may not for the same period of reemployment:

(a) (i) earn additional service credit; or

(ii) receive any retirement related contribution from a participating employer; and

(b) receive a retirement allowance.

(3) (a) Except as provided under Subsection (3)(b), the office shall cancel the

HB0256S01 compared with HB0256

retirement allowance of a retiree if the reemployment with a participating employer begins within one year of the retiree's retirement date.

(b) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within one year of the retiree's retirement date if:

(i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;

(ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree does not receive any employer provided benefits, including:

(A) medical benefits;

(B) dental benefits;

(C) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act and withholdings required by federal or state law for Social Security, Medicare, and unemployment insurance; or

(D) paid time off, including sick, annual, or other type of leave; and

(iii) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of:

(A) \$15,000; or

(B) one-half of the retiree's final average salary upon which the retiree's retirement allowance is based.

(c) Beginning January 1, 2013, the board shall adjust the amount under Subsection (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(d) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitations under Subsection (3)(b)(iii).

(e) If a retiree is reemployed under the provisions of (3)(b), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Subsection (3)(a).

(4) If a reemployed retiree is not subject to Subsection (3)(a), the retiree may elect to:

HB0256S01 compared with HB0256

(a) earn additional service credit in accordance with this title and cancel the retiree's retirement allowance; or

(b) continue to receive the retiree's retirement allowance and forfeit any retirement related contribution from the participating employer who reemployed the retiree.

(5) If a retiree makes an election under Subsection (4)(b) to continue to receive a retirement allowance while reemployed, the participating employer shall contribute to the office the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree.

(6) (a) A participating employer shall immediately notify the office:

(i) if the participating employer reemploys a retiree;

(ii) whether the reemployment is subject to Subsection (3) or (4) of this section; and

(iii) of any election by the retiree under Subsection (4).

(b) A participating employer shall certify to the office whether the position of an elected official is or is not full-time.

(c) A participating employer is liable to the office for a payment or failure to make a payment in violation of this section.

(d) If a participating employer fails to notify the office in accordance with this section, the participating employer is immediately subject to a compliance audit by the office.

(7) (a) The office shall immediately cancel the retirement allowance of a retiree in accordance with Subsection (7)(b) if the office receives notice or learns of:

(i) the reemployment of a retiree in violation of Subsection (3); or

(ii) the election of a reemployed retiree under Subsection (4)(a).

(b) ~~[The]~~ If the retiree is eligible for retirement coverage in the reemployed position, the office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the retiree to active member status on the first day of the month following the date of:

(i) reemployment if the retiree is subject to Subsection (3); or

(ii) an election by an employee under Subsection (4)(a).

(c) If the retiree is not otherwise eligible for retirement coverage in the reemployed position:

(i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

(ii) the participating employer shall pay the amortization rate to the office on behalf of

HB0256S01 compared with HB0256

the retiree.

(8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date of reemployment:

- (i) is not entitled to a recalculated retirement benefit; and
- (ii) will resume the allowance that was being paid at the time of cancellation.

(b) Subject to Subsection (2), a retiree who is re-instated to active membership under Subsection (7) and who retires two or more years after the date of re-instatement to active membership shall:

- (i) resume receiving the allowance that was being paid at the time of cancellation; and
- (ii) receive an additional allowance based on the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

(9) (a) A retiree subject to this section shall report to the office the status of the reemployment under Subsection (3) or (4).

(b) If the retiree fails to inform the office of an election under Subsection (9)(a), the office shall withhold one month's benefit for each month the retiree fails to inform the office under Subsection (9)(a).

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

Section 3. Section **49-11-612** is amended to read:

49-11-612. Domestic relations order benefits -- Nonassignability of benefits or payments -- Exemption from legal process.

(1) As used in this section, "domestic relations order benefits" means:

- (a) an allowance;
- (b) a defined contribution account established under:
 - (i) [~~Chapter 11,~~] Part 8, Defined Contribution Plans;
 - (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
 - (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement

Act;

(c) a continuing monthly death benefit established under:

- (i) Chapter 14, Part 5, Death Benefit;
- (ii) Chapter 15, Part 5, Death Benefit;

HB0256S01 compared with HB0256

- (iii) Chapter 16, Part 5, Death Benefit;
- (iv) Chapter 17, Part 5, Death Benefit;
- (v) Chapter 18, Part 5, Death Benefit; or
- (vi) Chapter 19, Part 5, Death Benefit;
- (d) a death benefit provided under a group insurance policy under:
 - (i) Chapter 12, Part 5, Death Benefit;
 - (ii) Chapter 13, Part 5, Death Benefit;
 - (iii) Chapter 22, Part 5, Death Benefit; or
 - (iv) Chapter 23, Part 5, Death Benefit; or
 - (e) a refund of member contributions upon termination.

(2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree, participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or any other retirement right accrued or accruing under this title and the assets of the funds created by this title are not subject to alienation or assignment by the member, retiree, participant, or their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal or equitable process.

(3) The office may, upon the request of the retiree, deduct from the retiree's allowance insurance premiums or other dues payable on behalf of the retiree, but only to those entities that have received the deductions prior to February 1, 2002.

(4) (a) The office shall provide for the division of domestic relations order benefits with former spouses and family members under an order of a court of competent jurisdiction with respect to domestic relations matters on file with the office.

(b) The court order shall specify the manner in which the domestic relations order benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

(c) Domestic relations order benefits split under a domestic relations order are subject to the following:

(i) the amount to be paid or the period for which payments shall be made under the original domestic relations order may not be altered if the alteration affects the actuarial calculation of the allowance;

(ii) payments to an alternate payee shall begin at the time the member or beneficiary begins receiving payments; and

HB0256S01 compared with HB0256

(iii) the alternate payee shall receive payments in the same form as allowances received by the member or beneficiary.

(d) ~~[A] To be valid, a court order under this section [may not be issued more than] must be received by the office within 12 months [after] of the death of the member.~~

(5) In accordance with federal law, the board may deduct the required amount from any benefit, payment, or other right accrued or accruing to any member or beneficiary of a system, plan, or program under this title to offset any amount that member or beneficiary owes to a system, plan, or program administered by the board.

(6) The board shall make rules to implement this section.

Section 4. Section **49-11-616** is amended to read:

49-11-616. Benefits information.

(1) The office shall provide written general information to each participating employer concerning benefits available under this title.

(2) (a) A participating employer shall provide the information under Subsection (1) to each eligible employee immediately upon:

- (i) termination of service;
- (ii) leave of absence;
- (iii) commencement of long-term disability benefits; or
- (iv) retirement.

(b) (i) Each participating employer shall maintain the records necessary to demonstrate that each employee has received the information outlined in Subsection (1).

(ii) The records shall be made available to the office upon request.

(3) (a) The office shall provide each participating employer with a form to be signed by each employee which verifies that the employee has been given the information required by this section.

(b) A copy of the signed form shall be immediately forwarded to the office by the participating employer or the employee.

~~[(4) The dissemination of information to the employer by the office under this section constitutes presentment by the policyholder under Title 31A, Chapter 22, Contracts in Specific Lines, and other law.]~~

Section 5. Section **49-12-102** is amended to read:

HB0256S01 compared with HB0256

49-12-102. Definitions.

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) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections (2)(a), (b), (c), and (d).

HB0256S01 compared with HB0256

(a) Except as provided in Subsection (2)(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 (2)(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.

(3) "Participating employer" means an employer which meets the participation requirements of Sections 49-12-201 and 49-12-202.

(4) (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 per month, indexed as of January 1, 1990, as provided in Section 49-12-407;

HB0256S01 compared with HB0256

(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 (4) who performs services for a participating employer through a professional employer organization or similar arrangement.

(5) "System" means the Public Employees' Contributory Retirement System created under this chapter.

(6) "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 6. Section **49-13-102** is amended to read:

49-13-102. Definitions.

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; and

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

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

HB0256S01 compared with HB0256

(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) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to the following:

(a) Except as provided in Subsection (2)(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 (2)(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 and for purposes of computing the member's final average salary only, the member is considered to have been in service at his last rate of pay from the date of the termination of employment to the effective date of retirement.

(3) "Participating employer" means an employer which meets the participation requirements of Sections 49-13-201 and 49-13-202.

(4) (a) "Regular full-time employee" means an employee whose term of employment

HB0256S01 compared with HB0256

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 per month, indexed as of January 1, 1990, as provided in Section 49-13-407;

(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 (4) who performs services for a participating employer through a professional employer organization or similar arrangement.

(5) "System" means the Public Employees' Noncontributory Retirement System.

(6) "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 7. Section **49-13-202** is amended to read:

49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements -- Service credit purchases.

(1) (a) Unless excluded under Subsection (2), an employer is a participating employer

HB0256S01 compared with HB0256

and may not withdraw from participation in this system.

(b) In addition to their participation in this 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.

(2) The following employers may be excluded from participation in this system:

(a) an employer not initially admitted or included as a participating employer in this system before January 1, 1982, if:

(i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or

(ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;

(b) an employer that is a charter school sponsored by the State Board of Education or a school district that 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);

(c) an employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, that makes an election of nonparticipation in accordance with Subsection (5); or

(d) an employer that is a risk management association initially created by interlocal agreement before 1986 for the purpose of implementing a self-insurance joint protection program for the benefit of member municipalities of the association.

(3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system regardless of whether the employer has applied for admission under Subsection (4).

(4) (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.

HB0256S01 compared with HB0256

(5) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, may make an election of nonparticipation as an employer for retirement programs under this chapter.

(ii) On or before July 1, 2010, an employer described in Subsection (2)(d) may make an election of nonparticipation as an employer for retirement programs under this chapter.

(b) An election provided under Subsection (5)(a):

(i) is a one-time election made no later than the time specified under Subsection (5)(a);

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

(iii) is irrevocable; and

(iv) applies to the employer described in Subsection (5)(a) and to all employees of that employer.

(c) The employer making an election under Subsection (5)(a) 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.

(6) 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 8. Section 49-14-203 is amended to read:

49-14-203. Exemption of certain employees from coverage.

(1) A public safety service employee is excluded from coverage under this system if the employee:

(a) is serving:

(i) as the Commissioner of Public Safety~~[-or];~~

(ii) as the executive director of the Department of Corrections; or

(iii) as the elected or appointed sheriff or chief of police of a public safety organization~~[-is excluded from coverage under this system if that public safety service~~

HB0256S01 compared with HB0256

employee]; and

(b) files a formal written request seeking the exemption.

(2) Except as provided in Subsection (3), the public safety service employee may not continue employment with the same participating employer and receive an allowance from the office based on public safety service at the same time.

(3) (a) The Commissioner of Public Safety or an elected sheriff who is eligible to retire under Section 49-14-401 may until July 1, 2010:

- (i) retire from this system and receive an allowance;
- (ii) continue in the elected or appointed position; and
- (iii) file for the exemption under Subsection (1).

(b) A person who makes an election under Subsection (3)(a) may continue under the terms of the election.

Section 9. Section 49-15-203 is amended to read:

49-15-203. Exemption of certain employees from coverage.

(1) A public safety service employee is excluded from coverage under this system if the employee:

(a) is serving:

(i) as the Commissioner of Public Safety [~~or~~];

(ii) as the executive director of the Department of Corrections; or

(iii) as the elected or appointed sheriff or chief of police of a public safety organization]; is excluded from coverage under this system if that public safety service employee]; and

(b) files a formal written request seeking the exemption.

(2) Except as provided in Subsection (3), the public safety service employee may not continue employment with the same participating employer and receive an allowance from the office based on public safety service at the same time.

(3) (a) The Commissioner of Public Safety, an elected sheriff, or an appointed chief of police who is eligible to retire under Section 49-15-401 may until July 1, 2010:

- (i) retire from this system and receive an allowance;
- (ii) continue in the elected or appointed position; and
- (iii) file for the exemption under Subsection (1).

HB0256S01 compared with HB0256

(b) A person who makes an election under Subsection (3)(a) may continue under the terms of the election.

Section ~~8~~10. Section **49-20-404** is amended to read:

49-20-404. Governors' and legislative benefit.

(1) The state shall pay the percentage described in Subsection (3) of the cost of providing paid-up group health coverage policy for members and their surviving spouses covered under Chapter 19, Utah Governors' and Legislators' Retirement Act, or governors and legislators, as defined in Section 49-19-102, and their surviving spouses covered under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, who:

- (a) retire after January 1, 1998;
- (b) are at least 62 but less than 65 years of age;
- (c) elect to receive and apply for this benefit to the program; and
- (d) are active members at the time of retirement or have continued coverage with the

program until the date of eligibility for the benefit under this Subsection (1).

(2) The state shall pay the percentage described in Subsection (3) of the cost of providing Medicare supplemental coverage for members and their surviving spouses covered under Chapter 19, Utah Governors' and Legislators' Retirement Act who:

- (a) retire after January 1, 1998;
- (b) are at least 65 years of age; and
- (c) elect to receive and apply for this benefit to the program.

(3) The following percentages apply to the benefit described in Subsections (1) and (2):

- (a) 100% if the member has accrued 10 or more years of service credit;
- (b) 80% if the member has accrued 8 or more years of service credit;
- (c) 60% if the member has accrued 6 or more years of service credit; and
- (d) 40% if the member has accrued 4 or more years of service credit.

Section ~~9~~11. Section **49-21-201** is amended to read:

49-21-201. Program membership -- Eligibility.

(1) The state shall cover all of its eligible employees under this chapter.

(2) Public safety service employees, as defined in Sections 49-14-102, 49-15-102, and 49-23-102 shall be covered under this chapter or a substantially similar long-term disability program in accordance with the provisions of Section 49-14-601, 49-15-601, or 49-23-601.

HB0256S01 compared with HB0256

(3) Beginning on July 1, 2011, firefighter service employees, as defined in Section 49-23-102, initially entering employment on or after July 1, 2011, and volunteer firefighters, as defined in Section 49-23-102, shall be covered under this chapter [~~or a substantially similar long-term disability program~~] in accordance with the provisions of Section 49-23-601.

(4) Except as provided under Subsection (5), all other employers may provide coverage for their eligible employees under this chapter.

(5) If an employer elects to cover any of its eligible employees under this chapter, all of its eligible employees shall be covered.

(6) Except as provided under Subsections (1) and (2), nothing in this chapter requires any employer to cover its eligible employees under this chapter.

(7) The following employees are not eligible for coverage under this chapter:

(a) firefighter service employees, as defined under Section 49-16-102, that initially entered employment prior to July 1, 2011; and

(b) legislators.

Section ~~49-12~~12. Section **49-21-401** is amended to read:

49-21-401. Disability benefits -- Application -- Eligibility.

(1) An eligible employee shall apply for long-term disability benefits under this chapter by:

(a) completing an application form prepared by the office;

(b) signing a consent form allowing the office access to the eligible employee's medical records; and

(c) providing any documentation or information reasonably requested by the office.

(2) (a) If an eligible employee is unable to apply on the employee's own behalf, the application may be made by a person who is:

(i) the attorney for an eligible employee; or

(ii) appointed as a conservator or guardian of the eligible employee.

(b) A person described in Subsection (2)(a), may not make an application for a deceased employee.

(3) Upon request by the office, the participating employer of the eligible employee shall provide to the office documentation and information concerning the eligible employee.

(4) The office shall review all relevant information and determine whether or not the

HB0256S01 compared with HB0256

eligible employee has a total disability.

(5) If the office determines that the eligible employee has a total disability due to accidental bodily injury or physical illness which is not the result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to two-thirds of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.

(6) If the office determines that the eligible employee has a total disability due to psychiatric illness, the eligible employee shall receive:

(a) a maximum of two years of monthly disability benefits equal to two-thirds of the eligible employee's regular monthly salary for each month the total disability continues beyond the elimination period;

(b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses preauthorized by the office's consultants, paid during the period of monthly disability benefits; and

(c) payment of monthly disability benefits according to contractual provisions for a period not to exceed five years if the eligible employee is institutionalized due to psychiatric illness.

(7) If the office determines that the eligible employee has a total disability due to a physical injury resulting from external force or violence as a result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to 100% of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.

(8) (a) Successive periods of disability are considered as a continuous period of disability if the period of disability:

(i) results from the same or related causes;

(ii) is separated by less than six months of continuous full-time work at the individual's usual place of employment; and

(iii) commences while the individual is an eligible employee covered by this chapter.

(b) The inability to work for a period of less than 15 consecutive calendar days is not considered as a period of disability.

(c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are

HB0256S01 compared with HB0256

considered as separate periods of disability.

(9) The office may, at any time, have any eligible employee claiming to have a disability examined by a physician chosen by the office to determine if the eligible employee has a total disability.

(10) A claim brought by an eligible employee for long-term disability benefits under the Public Employee's Long-Term Disability Program is barred if it is not commenced within [~~one year~~] six months from the eligible employee's date of disability, unless the office determines that under the surrounding facts and circumstances, the eligible employee's failure to comply with the time limitations was reasonable.

(11) Medical or psychiatric conditions which existed prior to eligibility may not be a basis for disability benefits until the eligible employee has had one year of continuous eligibility in the Public Employees Long-Term Disability Program.

(12) If there is a valid benefit protection contract, service credit shall accrue during the period of total disability, unless the disabled eligible employee is exempted from a system, or is otherwise ineligible for service credit.

(13) Regardless of any medical evidence provided by the employee to support the application for disability, an employee is not eligible for long-term disability benefits during any period in which the employee:

(a) makes a claim that the employee is able to work; or

(b) has a pending action in a court or before any federal, state, or local administrative body in which the employee has made a claim that the employee is able to work.

(14) Notwithstanding the provisions of Section 49-11-618, upon written request by an employer, information obtained under this part may, upon an order of a court or an administrative law judge, be released to an employer who is a party in an action under Subsection (13).

Section ~~49-21-13~~13. Section **49-21-402** is amended to read:

49-21-402. Reduction or reimbursement of benefit -- Circumstances --

Application for other benefits required.

(1) A monthly disability benefit may [~~not be paid for any period of total disability~~] be terminated unless:

(a) the eligible employee is under the ongoing care and treatment of a physician other

HB0256S01 compared with HB0256

than the eligible employee[-]; and

(b) the eligible employee provides the information and documentation requested by the office.

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

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

(b) workers' compensation indemnity benefits;

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

(d) unemployment compensation benefits;

(e) automobile no-fault, medical payments, or similar insurance payments; ~~and~~

(f) any money received by a judgment, settlement, or other payment as a result of a claim against an employer[-]; and

(g) any payments made for sick leave, annual leave, or similar payments.

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

(a) any employer-sponsored retirement programs; and

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

(4) After the date of disability, cost-of-living increases to any of the benefits listed in Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability benefit.

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

HB0256S01 compared with HB0256

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

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

Section ~~{12}~~14. Section 49-22-202 is amended to read:

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

(1) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.

~~[(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).]~~

(2) The following employers may be excluded from participation in this system:

(a) an employer not initially admitted or included as a participating employer in this system before January 1, 1982, if:

(i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or

(ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;

(b) an employer that is a charter school sponsored by the State Board of Education or a school district that 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); or

(c) an employer that is a risk management association initially created by interlocal agreement before 1986 for the purpose of implementing a self-insurance joint protection program for the benefit of member municipalities of the association.

(3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to

HB0256S01 compared with HB0256

provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system regardless of whether the employer has applied for admission under Subsection (4).

~~(3)~~ (4) (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)~~ (5) If a participating employer purchases service credit on behalf of a regular full-time ~~[employees]~~ employee for service rendered prior to the participating employer's admission to this system, ~~[the service credit shall be purchased]~~ the participating employer:

(a) shall purchase credit 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~~[-]; and~~

(b) shall comply with the provisions of Section 49-11-403.

Section ~~13~~ 15. Section **49-22-401** is amended to read:

49-22-401. Contributions -- Rates.

(1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 10% of the participant's compensation to a defined contribution plan.

(2) (a) The participating employer shall contribute the 10% 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 voluntary deferrals to:

(i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (2); or

(ii) at the member's option, another defined contribution plan established by the participating employer.

(c) In addition to the percent specified under Subsection (2)(a), the participating

HB0256S01 compared with HB0256

employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.

(3) (a) [The] Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years employment as a regular full-time employee under this title.

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

(c) Upon filing a written request for exemption with the office, the following employees are exempt from the vesting requirements of Subsection (3)(a):

(i) an executive department head of the state;

(ii) a member of the State Tax Commission;

(iii) a member of the Public Service Commission;

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

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

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

(vii) an employee of the Governor's Office;

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

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

(x) a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision;

(xi) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members;

and

(xii) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

(d) (i) A participating employer shall prepare a list designating those positions eligible for exemption under Subsection (3)(c).

(ii) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (3)(c).

(e) (i) In accordance with this section, a municipality, county, or political subdivision

HB0256S01 compared with HB0256

may not exempt more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.

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

(f) Each participating employer shall:

(i) file each employee exemption annually with the office; and

(ii) update an employee exemption in the event of any change.

(g) (i) The office ~~may~~ shall make rules to implement this Subsection (3).

(ii) The rules made under Subsection (3)(g)(i) shall include provisions to allow the exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or after July 1, 2011 on behalf an exempted employee who began the employment before May 8, 2012.

(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 including associated investment gains and losses 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 including associated investment gains and losses 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 10 years of the termination date of the previous

HB0256S01 compared with HB0256

employment:

(i) all contributions made by the previous participating employer on behalf of the member including associated investment gains and losses shall be reinstated upon the member's employment as a regular full-time employee; 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 office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.

(8) The office 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 office 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 ~~14~~16. Section **49-23-202** is amended to read:

49-23-202. Participation of employers -- Admission requirements.

(1) (a) An employer is a participating employer and may not withdraw from participation in this system.

(b) A participating employer shall cover its:

(i) public safety service employees in accordance with Section 49-15-202; and

(ii) firefighter service employees in accordance with Section 49-16-202.

(2) (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.

(3) If a participating employer purchases service credit on behalf of public safety service employees or firefighter service 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 public safety service employees or firefighter service employees who were eligible for service credit at the time service was

HB0256S01 compared with HB0256

rendered.

Section ~~{15}~~17. Section 49-23-401 is amended to read:

49-23-401. Contributions -- Rates.

(1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 12% of the participant's compensation to a defined contribution plan.

(2) (a) The participating employer shall contribute the 12% 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 voluntary deferrals to:

(i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (2); or

(ii) at the member's option, another defined contribution plan established by the participating employer.

(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 to be applied to the employer's corresponding Tier I system liability.

(3) (a) ~~[The]~~ Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years of ~~[employment as a regular full-time employee under this chapter]~~ service credit under this title.

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

(c) Upon filing a written request for exemption with the office, the following employees are exempt from the vesting requirements of Subsection (3)(a) if employee is a public safety service employee and is:

(i) an executive department head of the state;

(ii) an elected or appointed sheriff of a county; or

(iii) an elected or appointed chief of police of a municipality.

HB0256S01 compared with HB0256

(d) (i) A participating employer shall prepare a list designating those positions eligible for exemption under Subsection (3)(c).

(ii) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (3)(c).

(e) Each participating employer shall:

(i) file each employee exemption annually with the office; and

(ii) update an employee exemption in the event of any change.

(f) (i) The office shall make rules to implement this Subsection (3).

(ii) The rules made under Subsection (3)(f)(i) shall include provisions to allow the exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or after July 1, 2011 on behalf an exempted employee who began the employment before May 8, 2012.

(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, including associated investment gains and losses, 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), including associated investment gains and losses [~~under Subsection (2)(a)~~ ⁽³⁾] 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

HB0256S01 compared with HB0256

another participating employer within 10 years of the termination date of the previous employment:

(i) all contributions made by the previous participating employer on behalf of the member, including associated investment gains and losses, shall be reinstated upon the member's employment as a regular full-time employee; 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 office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs of employer contributions made under this section.

(8) The office 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 office 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 ~~†16~~18. Section **49-23-601** is amended to read:

49-23-601. Long-term disability coverage.

(1) A participating employer shall cover a public safety employee who initially enters employment on or after July 1, 2011, under [~~Title 49;~~] Chapter 21, Public Employees' Long-Term Disability Act ~~††~~, or a substantially similar long-term disability program ~~††~~.

(2) (a) A participating employer shall cover a firefighter employee who initially enters employment on or after July 1, 2011, under [~~Title 49;~~] Chapter 21, Public Employees' Long-Term Disability Act.

(b) In accordance with this section, a participating employer shall provide long-term disability benefit coverage for a volunteer firefighter as provided under Section 49-16-701.

(c) The office shall ensure that the cost of the long-term disability benefit coverage provided under Subsections (2)(a) and (b) is funded with revenue received under Section 49-11-901.5.

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HB0256S01 compared with HB0256

Legislative Review Note

~~_____ as of 1-6-12 9:14 AM~~

~~_____ Office of Legislative Research and General Counsel}~~