

Representative Don L. Ipson proposes the following substitute bill:

UTAH RETIREMENT SYSTEM AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending its provisions.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ amends retiree reemployment provisions by prohibiting a participating employer from making a retirement related contribution that exceeds the normal cost rate for all reemployed retirees, not just full-time employees;
- ▶ increases the amount that is required to be corrected in payments made by the office if an error is discovered that results in a modification of the benefit amount;
- ▶ amends provisions related to benefit information forms that must be signed by each employee;
- ▶ allows the retirement office to communicate with members, beneficiaries, participating employers, and others through electronic means;
- ▶ clarifies that an employee of an institution of higher education who participates in other retirement systems is excluded from membership in the Utah Retirement Systems until the participating employer ceases employer contributions;



- 26 ▶ repeals provisions that require death benefits to be provided through purchase of a
- 27 group insurance policy for Tier I public employees and for Tier II employees;
- 28 ▶ expands the offsets used in determining long-term disability benefits to include any
- 29 benefit earned for the same period of disability as the benefit was based;
- 30 ▶ clarifies the date of termination of long-term disability benefits for exempted
- 31 employees and volunteer firefighters;
- 32 ▶ establishes investment requirements for employer contributions made on behalf of
- 33 certain employees who are exempt from the four-year vesting requirements in the
- 34 Tier II systems;
- 35 ▶ provides that employees who are exempt from the four-year vesting requirement in
- 36 the Tier II systems and who terminate before the one-year election period are
- 37 entitled to all employer contributions and associated investment gains and losses;
- 38 and
- 39 ▶ makes technical changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 None

44 **Utah Code Sections Affected:**

45 **AMENDS:**

- 46 **49-11-102**, as last amended by Laws of Utah 2012, Chapter 298
- 47 **49-11-504**, as last amended by Laws of Utah 2011, Chapter 439
- 48 **49-11-607**, as last amended by Laws of Utah 2003, Chapter 240
- 49 **49-11-612**, as last amended by Laws of Utah 2012, Chapter 298
- 50 **49-11-616**, as last amended by Laws of Utah 2012, Chapter 298
- 51 **49-11-617**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 52 **49-12-203**, as last amended by Laws of Utah 2009, Chapter 51
- 53 **49-12-204**, as last amended by Laws of Utah 2010, Chapter 158
- 54 **49-12-501**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 55 **49-13-203**, as last amended by Laws of Utah 2010, Chapter 280
- 56 **49-13-204**, as last amended by Laws of Utah 2010, Chapter 158

- 57 **49-13-501**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 58 **49-21-102**, as last amended by Laws of Utah 2012, Chapter 55
- 59 **49-21-402**, as last amended by Laws of Utah 2012, Chapter 298
- 60 **49-21-403**, as last amended by Laws of Utah 2011, Chapters 366 and 439
- 61 **49-22-203**, as enacted by Laws of Utah 2010, Chapter 266
- 62 **49-22-401**, as last amended by Laws of Utah 2012, Chapter 298
- 63 **49-22-501**, as last amended by Laws of Utah 2011, Chapter 439
- 64 **49-23-401**, as last amended by Laws of Utah 2012, Chapter 298
- 65 **49-23-501**, as last amended by Laws of Utah 2011, Chapter 439



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

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

69 **49-11-102. Definitions.**

70 As used in this title:

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

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

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

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

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

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

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

83 (iii) a state college or university; or

84 (iv) any other participating employer.

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

87 (5) "Allowance" or "retirement allowance" means the pension plus the annuity,

88 including any cost of living or other authorized adjustments to the pension and annuity.

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

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

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

95 (9) "Appointive officer" means an employee appointed to a position for a definite and
96 fixed term of office by official and duly recorded action of a participating employer whose
97 appointed position is designated in the participating employer's charter, creation document, or
98 similar document, and:

99 (a) who earns \$500 or more per month, indexed as of January 1, 1990, as provided in
100 Section 49-12-407 for a Tier I appointive officer; and

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

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

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

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

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

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

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

118 (12) "Board" means the Utah State Retirement Board established under Section

119 49-11-202.

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

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

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

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

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

132 (18) "Current service" means covered service [~~as defined in Chapters 12, 13, 14, 15,~~
133 ~~16, 17, 18, and 19.~~] under:

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

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

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

137 (d) Chapter 15, Public Safety Noncontributory Retirement Act;

138 (e) Chapter 16, Firefighters' Retirement Act;

139 (f) Chapter 17, Judges' Contributory Retirement Act;

140 (g) Chapter 18, Judges' Noncontributory Retirement Act;

141 (h) Chapter 19, Governors' and Legislators' Retirement Act;

142 (i) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

143 (j) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

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

148 (a) years of service;

149 (b) final average monthly salary; or

150 (c) a retirement multiplier.

151 (20) "Defined contribution" or "defined contribution plan" means any defined
152 contribution plan or deferred compensation plan authorized under the Internal Revenue Code
153 and administered by the board.

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

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

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

159 (c) any school district and its instrumentalities;

160 (d) any vocational and technical school; and

161 (e) any entity arising out of a consolidation agreement between entities described under
162 this Subsection (21).

163 (22) "Elected official":

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

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

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

170 (23) (a) "Employer" means any department, educational institution, or political
171 subdivision of the state eligible to participate in a government-sponsored retirement system
172 under federal law.

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

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

176 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,
177 49-14-203, 49-15-203, or 49-16-203; and

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

180 (25) "Final average monthly salary" means the amount computed by dividing the

181 compensation received during the final average salary period under each system by the number
182 of months in the final average salary period.

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

185 (27) (a) "Inactive member" means a member who has not been employed by a
186 participating employer for a period of at least 120 days.

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

188 (28) (a) "Initially entering" means hired, appointed, or elected for the first time, in
189 current service as a member with any participating employer.

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

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

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

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

196 and

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

198 (29) "Institution of higher education" means an institution described in Section
199 53B-1-102.

200 [~~29~~] (30) (a) "Member" means a person, except a retiree, with contributions on
201 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,
202 Utah Governors' and Legislators' Retirement Act, or with a terminated system.

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

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

209 [~~30~~] (31) "Member contributions" means the sum of the contributions paid to a
210 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
211 allowed by a system, and which are made by:

212 (a) the member; and

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

215 [~~31~~] (32) "Nonelective contribution" means an amount contributed by a participating
216 employer into a participant's defined contribution account.

217 [~~32~~] (33) "Normal cost rate":

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

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

222 [~~33~~] (34) "Office" means the Utah State Retirement Office.

223 [~~34~~] (35) "Participant" means an individual with voluntary deferrals or nonelective
224 contributions on deposit with the defined contribution plans administered under this title.

225 [~~35~~] (36) "Participating employer" means a participating employer, as defined by
226 Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
227 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,
228 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'
229 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges'
230 Noncontributory Retirement Act, or an agency financed in whole or in part by public funds
231 which is participating in a system or plan as of January 1, 2002.

232 [~~36~~] (37) "Pension" means monthly payments derived from participating employer
233 contributions.

234 [~~37~~] (38) "Plan" means the Utah Governors' and Legislators' Retirement Plan created
235 by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees'
236 Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution
237 Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by
238 Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created
239 under Section 49-11-801.

240 [~~38~~] (39) (a) "Political subdivision" means any local government entity, including
241 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
242 legally separate and distinct from the state and only if its employees are not by virtue of their

243 relationship to the entity employees of the state.

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

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

248 [~~(39)~~] (40) "Program" means the Public Employees' Insurance Program created under
249 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'
250 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term
251 Disability Act.

252 [~~(40)~~] (41) "Public funds" means those funds derived, either directly or indirectly, from
253 public taxes or public revenue, dues or contributions paid or donated by the membership of the
254 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,
255 the governmental, educational, and social programs and systems of the state or its political
256 subdivisions.

257 [~~(41)~~] (42) "Qualified defined contribution plan" means a defined contribution plan
258 that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

259 [~~(42)~~] (43) (a) "Reemployed," "reemploy," or "reemployment" means work or service
260 performed after retirement, in exchange for compensation.

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

262 (i) listed as the contractor; or

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

264 [~~(43)~~] (44) "Refund interest" means the amount accrued on member contributions at a
265 rate adopted by the board.

266 [~~(44)~~] (45) "Retiree" means an individual who has qualified for an allowance under this
267 title.

268 [~~(45)~~] (46) "Retirement" means the status of an individual who has become eligible,
269 applies for, and is entitled to receive an allowance under this title.

270 [~~(46)~~] (47) "Retirement date" means the date selected by the member on which the
271 member's retirement becomes effective with the office.

272 [~~(47)~~] (48) "Retirement related contribution":

273 (a) means any employer payment to any type of retirement plan or program made on

274 behalf of an employee; and

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

277 [~~(48)~~] (49) "Service credit" means:

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

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

283 [~~(49)~~] (50) "System" means the individual retirement systems created by Chapter 12,
284 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
285 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,
286 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'
287 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges'
288 Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement
289 Act, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part
290 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid
291 Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

292 [~~(50)~~] (51) "Tier I" means a system or plan under this title for which an employee is
293 eligible to participate if the employee initially enters regular full-time employment before July
294 1, 2011.

295 [~~(51)~~] (52) (a) "Tier II" means a system or plan under this title provided in lieu of a
296 Tier I system or plan for which an employee is eligible to participate, if the employee initially
297 enters regular full-time employment on or after July 1, 2011.

298 (b) "Tier II" includes:

299 (i) the Tier II hybrid system established under:

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

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

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

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

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

305 [~~(52)~~] (53) "Unfunded actuarial accrued liability" or "UAAL":

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

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

309 [~~(53)~~] (54) "Voluntary deferrals" means an amount contributed by a participant into
310 that participant's defined contribution account.

311 Section 2. Section **49-11-504** is amended to read:

312 **49-11-504. Reemployment of a retiree -- Restrictions.**

313 (1) As used in this section, "full-time" means:

314 (a) employment requiring 20 or more hours of work per week; or

315 (b) at least a half-time teaching contract.

316 (2) (a) Except for the provisions of Subsection (3), the provisions of this section do not
317 apply to a person who is subject to the provisions of Section 49-11-505.

318 (b) This section does not apply to employment as an elected official.

319 (3) A person who is not a retiree under this title is not subject to any postretirement
320 restrictions under this title.

321 (4) A retiree of an agency who is reemployed may not earn additional service credit, if
322 the retiree is reemployed by:

323 (a) a different agency; or

324 (b) the same agency after six months from the retirement date.

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

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

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

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

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

335 (e) a reinstated retiree retiring after the two-year period shall be credited with the

336 service credit in the retiree's account at the time of the first retirement and from that time shall
337 be treated as a member of a system, including the accrual of additional service credit, but
338 subject to recalculation of the allowance under Subsection (9).

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

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

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

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

347 (d) any suspension of a retiree's allowance under this Subsection (6) shall be applied
348 on a calendar year basis.

349 (7) For six months immediately following retirement, the retiree and participating
350 employer who are subject to Subsection (6) shall:

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

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

353 (c) immediately notify the office in writing of any postretirement earnings under
354 Subsection (6); and

355 (d) immediately notify the office in writing whether postretirement earnings equal or
356 exceed the exempt earnings under Subsection (6).

357 (8) (a) If a participating employer hires a retiree, [~~on a full-time basis, who may not~~
358 ~~earn additional service credit under Subsection (4);~~] the participating employer may not make a
359 retirement related contribution in an amount that exceeds the normal cost rate as defined under
360 Section 49-11-102 on behalf of the retiree under Subsections (8)(b) and (c).

361 (b) The contributions under Subsection (8)(a) are not required, but if paid, shall be paid
362 to a retiree-designated:

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

365 (ii) qualified defined contribution plan offered by the participating employer if the
366 participating employer does not participate in a qualified defined contribution plan

367 administered by the board.

368 (c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not
369 participating in a qualified defined contribution plan administered by the board, the employer
370 may elect to pay the contributions under Subsection (8)(a) to a deferred compensation plan
371 administered by the board.

372 (9) A retiree who has returned to work, accrued additional service credit, and again
373 retires shall have the retiree's allowance recalculated using:

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

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

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

379 Section 3. Section **49-11-607** is amended to read:

380 **49-11-607. Determination of benefits -- Errors in records or calculations --**

381 **Correction of errors by the office.**

382 (1) After the retirement date, which shall be set by a member in the member's
383 application for retirement, no alteration, addition, or cancellation of a benefit may be made
384 except as provided in Subsections (2), (3), and (4) or other law.

385 (2) (a) Errors in the records or in the calculations of the office which result in an
386 incorrect benefit to any member, retiree, participant, covered individual, alternate payee, or
387 beneficiary shall be corrected by the office if the correction results in a modification of the
388 benefit amount of [~~\$1~~] \$5 or more.

389 (b) Future payments shall be made to any member, retiree, participant, covered
390 individual, alternate payee, or beneficiary to:

391 (i) pay the benefit to which the member or beneficiary was entitled; or

392 (ii) recover any overpayment.

393 (3) (a) Errors in the records or calculation of a participating employer which result in
394 an incorrect benefit to a member, retiree, participant, covered individual, alternate payee, or
395 beneficiary shall be corrected by the participating employer.

396 (b) If insufficient employer contributions have been received by the office, the
397 participating employer shall pay any delinquent employer contributions, plus interest under

398 Section 49-11-503, required by the office to maintain the system, plan, or program affected on
399 an actuarially sound basis.

400 (c) If excess contributions have been received by the office, the contributions shall be
401 refunded to the participating employer or member which paid the contributions.

402 (4) If a dispute exists between a participating employer and a member at the time of the
403 member's retirement which will affect the member's benefit calculation, and notice of the
404 dispute is given to the office prior to the calculation of a member's benefit, the benefit may be
405 paid based on the member's retirement date and the records available and then recalculated
406 upon settlement of the dispute.

407 Section 4. Section **49-11-612** is amended to read:

408 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**
409 **payments -- Exemption from legal process.**

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

411 (a) an allowance;

412 (b) a defined contribution account established under:

413 (i) Part 8, Defined Contribution Plans;

414 (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

415 (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement

416 Act;

417 (c) a continuing monthly death benefit established under:

418 (i) Chapter 14, Part 5, Death Benefit;

419 (ii) Chapter 15, Part 5, Death Benefit;

420 (iii) Chapter 16, Part 5, Death Benefit;

421 (iv) Chapter 17, Part 5, Death Benefit;

422 (v) Chapter 18, Part 5, Death Benefit; or

423 (vi) Chapter 19, Part 5, Death Benefit;

424 (d) a lump sum death benefit provided [~~under a group insurance policy~~] under:

425 (i) Chapter 12, Part 5, Death Benefit;

426 (ii) Chapter 13, Part 5, Death Benefit;

427 (iii) Chapter 22, Part 5, Death Benefit; or

428 (iv) Chapter 23, Part 5, Death Benefit; or

429 (e) a refund of member contributions upon termination.

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

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

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

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

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

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

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

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

453 (d) To be valid, a court order under this section must be received by the office within
454 12 months of the death of the member.

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

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

460 Section 5. Section **49-11-616** is amended to read:

461 **49-11-616. Benefits information.**

462 (1) ~~(a)~~ The office shall provide [~~written general information~~] a form to each
463 participating employer [~~concerning~~] providing:

464 (i) general information on the benefits available under this title[-]; and

465 (ii) a place for each employee to sign verifying that the employee has received the
466 form.

467 (2) (a) A participating employer shall provide the [~~information~~] form under Subsection
468 (1) to each eligible employee immediately upon:

469 (i) termination of service;

470 (ii) leave of absence;

471 (iii) commencement of long-term disability benefits; or

472 (iv) retirement.

473 (b) When received from a participating employer under this section, an employee shall
474 sign the form under Subsection (1) verifying that the employee has received it.

475 [~~(b)~~] ~~(c)~~ (i) Each participating employer shall maintain the records necessary to
476 demonstrate that each employee has received the [~~information outlined in~~] form under
477 Subsection (1).

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

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

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

484 Section 6. Section **49-11-617** is amended to read:

485 **49-11-617. Original documents.**

486 (1) At the reasonable discretion of the office, any document relating to this title may be
487 treated as an original, whether created by photocopy, facsimile, e-mail, electronic transmission,
488 imaging, or other technology.

489 (2) The office may communicate with participating employers, members, beneficiaries,
490 and others through electronic means as determined appropriate by the office.

491 Section 7. Section **49-12-203** is amended to read:

492 **49-12-203. Exclusions from membership in system.**

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

494 (a) subject to the requirements of Subsection (2), an employee whose employment
495 status is temporary in nature due to the nature or the type of work to be performed~~[-; provided~~
496 ~~that:]~~;

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

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

506 (b) ~~[(i) A current or future employee of a two-year or four-year college or university~~
507 ~~who holds, or is entitled to hold, under Section 49-12-204, a retirement annuity contract]~~
508 except as provided under Subsection (3)(a), an employee of an institution of higher education
509 who participates in a retirement system with the Teachers' Insurance and Annuity Association
510 of America or with any other public or private retirement system, organization, or company
511 during any period in which required contributions based on compensation have been paid on
512 behalf of the employee by the employer~~[-:]~~;

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

515 (c) an employee serving as an exchange employee from outside the state~~[-:]~~;

516 (d) an executive department head of the state, a member of the State Tax Commission,
517 the Public Service Commission, and a member of a full-time or part-time board or commission
518 who files a formal request for exemption~~[-:]~~;

519 (e) an employee of the Department of Workforce Services who is covered under
520 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act~~[-:]~~; or

521 (f) ~~[(f)]~~ an employee who is employed on or after July 1, 2009 with an employer that

522 has elected, prior to July 1, 2009, to be excluded from participation in this system under
523 Subsection 49-12-202(2)(c).

524 (2) If an employee whose status is temporary in nature due to the nature of type of
525 work to be performed:

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

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

535 (3) (a) Upon cessation of the participating employer contributions, an employee under
536 Subsection (1)(b) is eligible for service credit in this system.

537 ~~[(ti)]~~ (b) Notwithstanding the provisions of ~~[this]~~ Subsection (1)(f), any eligibility for
538 service credit earned by an employee under this chapter before July 1, 2009 is not affected
539 under ~~[this]~~ Subsection (1)(f).

540 ~~[(2)]~~ (4) Upon filing a written request for exemption with the office, the following
541 employees shall be exempt from coverage under this system:

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

544 (b) an elected official;

545 (c) an executive department head of the state, a member of the State Tax Commission,
546 a member of the Public Service Commission, and a member of a full-time or part-time board or
547 commission;

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

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

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

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

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

553 (i) an employee of the State Treasurer's Office;
 554 (j) any other member who is permitted to make an election under Section 49-11-406;
 555 (k) a person appointed as a city manager or chief city administrator or another person
 556 employed by a municipality, county, or other political subdivision, who is an at-will employee;
 557 and

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

561 ~~[(3)]~~ (5) (a) Each participating employer shall prepare a list designating those positions
 562 eligible for exemption under Subsection ~~[(2)]~~ (4).

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

565 ~~[(4)]~~ (6) (a) In accordance with this section, a municipality, county, or political
 566 subdivision may not exempt more than 50 positions or a number equal to 10% of the
 567 employees of the municipality, county, or political subdivision whichever is lesser.

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

570 ~~[(5)]~~ (7) Each participating employer shall:

- 571 (a) file employee exemptions annually with the office; and
- 572 (b) update the employee exemptions in the event of any change.

573 ~~[(6)]~~ (8) The office may make rules to implement this section.

574 Section 8. Section **49-12-204** is amended to read:

575 **49-12-204. Higher education employees' eligibility requirements -- Election**
 576 **between different retirement plans -- Classification requirements -- Transfer between**
 577 **systems -- One-time election window -- Rulemaking.**

578 (1) (a) A regular full-time employee of an institution of higher education who is
 579 eligible to participate in either this system or ~~[in a retirement annuity contract]~~ with the
 580 Teachers' Insurance and Annuity Association of America or with any other public or private
 581 retirement system, organization, or company, designated by the Board of Regents, shall, not
 582 later than January 1, 1979, elect to participate exclusively in this system or in an annuity
 583 contract allowed under this Subsection (1).

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

585 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired
586 by an institution of higher education after January 1, 1979, may participate only in the
587 retirement plan which attaches to the person's employment classification.

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

591 (i) this system;

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

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

595 (c) Notwithstanding a person's employment classification assignment under Subsection
596 (2)(b), a regular full-time employee who begins employment with an institution of higher
597 education on or after May 11, 2010, has a one-time irrevocable election to continue
598 participation in this system, if the employee has service credit in this system before the date of
599 employment.

600 (3) Notwithstanding an employment classification assignment change made under
601 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after
602 January 1, 1979, whose employment classification requires participation in this system may
603 elect to continue participation in this system.

604 (4) A regular full-time employee hired by an institution of higher education after
605 January 1, 1979, whose employment classification requires participation in this system shall
606 participate in this system.

607 (5) (a) Notwithstanding any other provision of this section, a regular full-time
608 employee of an institution of higher education shall have a one-time irrevocable election to
609 participate in this system if the employee:

610 (i) was hired after January 1, 1979;

611 (ii) whose employment classification assignment under Subsection (2)(b) required
612 participation in a retirement program other than this system; and

613 (iii) has service credit in a system under this title.

614 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

615 (c) All forms required by the office must be completed and received by the office no
616 later than June 30, 2010, for the election to participate in this system to be effective.

617 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher
618 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue
619 service credit in this system.

620 (6) A regular full-time employee of an institution of higher education who elects to be
621 covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment
622 while covered under another retirement program sponsored by the institution of higher
623 education by complying with the requirements of Section 49-11-403.

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

625 Section 9. Section **49-12-501** is amended to read:

626 **49-12-501. Death benefit -- Eligibility for death benefit -- Benefit calculation --**

627 **Payment of claim -- Exclusion.**

628 (1) The office shall provide a death benefit [~~through the purchase of a group insurance~~
629 ~~policy~~] for members of this system.

630 (2) The board shall make rules to administer the death benefit provided by this section
631 and may, in accordance with federal law, establish:

632 (a) benefit levels;

633 (b) classes of members; and

634 (c) a living benefit option.

635 (3) This death benefit is payable when:

636 (a) the member dies prior to the member's retirement date or dies under circumstances
637 which Section 49-12-402 requires to be treated as the death of a member before retirement;

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

639 (c) benefits are not payable under Section 49-12-404.

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

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

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

645 (5) Any amount of a living benefit option paid to the member prior to death shall be

646 deducted from the benefit payable to the beneficiary.

647 (6) The cost of the death benefit shall be paid by the participating employer as a
648 portion of the contribution rate established under Section 49-12-301.

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

651 (a) that member has 10 or more years of accrued service credit prior to July 1, 1987; or

652 (b) the death of the member occurs either:

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

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

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

660 (9) The death benefit paid to the beneficiary of an inactive member, except as
661 otherwise provided under Subsection (7), is a lump-sum return of the member's member
662 contributions.

663 (10) Payment of the death benefit by the office constitutes a full settlement of any
664 beneficiary's claim against the office, and the office is not liable for any further or additional
665 claims or assessments on behalf of the member.

666 (11) Unless otherwise specified in a written document filed with the office, death
667 benefits payable to beneficiaries shall be in accordance with the order of precedence
668 established under Title 75, Chapter 2, Intestate Succession and Wills.

669 (12) A death benefit under this section may not be paid to a beneficiary of a retiree
670 under this system.

671 Section 10. Section **49-13-203** is amended to read:

672 **49-13-203. Exclusions from membership in system.**

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

674 (a) subject to the requirements of Subsection (2), an employee whose employment
675 status is temporary in nature due to the nature or the type of work to be performed~~[, provided~~
676 ~~that:]~~;

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

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

686 (b) (i) ~~[A current or future employee of a two-year or four-year college or university~~
687 ~~who holds, or is entitled to hold, under Section 49-13-204, a retirement annuity contract]~~
688 except as provided under Subsection (3)(a), an employee of an institution of higher education
689 who participates in a retirement system with the Teachers' Insurance and Annuity Association
690 of America or with any other public or private retirement system, organization, or company
691 during any period in which required contributions based on compensation have been paid on
692 behalf of the employee by the employer[-];

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

695 (c) an employee serving as an exchange employee from outside the state[-];

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

700 (e) an employee of the Department of Workforce Services who is covered under
701 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act[-]; or

702 (f) ~~[(†)]~~ an employee who is employed with an employer that has elected to be excluded
703 from participation in this system under Subsection 49-13-202(5), effective on or after the date
704 of the employer's election under Subsection 49-13-202(5).

705 (2) If an employee whose status is temporary in nature due to the nature of type of
706 work to be performed:

707 (a) is employed for a term that exceeds six months and the employee otherwise

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

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

716 (3) (a) Upon cessation of the participating employer contributions, an employee under
717 Subsection (1)(b) is eligible for service credit in this system.

718 ~~[(f)]~~ (b) Notwithstanding the provisions of ~~[this]~~ Subsection (1)(f), any eligibility for
719 service credit earned by an employee under this chapter before the date of the election under
720 Subsection 49-13-202(5) is not affected under ~~[this]~~ Subsection (1)(f).

721 ~~[(2)]~~ (4) Upon filing a written request for exemption with the office, the following
722 employees shall be exempt from coverage under this system:

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

725 (b) an elected official;

726 (c) an executive department head of the state, a member of the State Tax Commission,
727 a member of the Public Service Commission, and a member of a full-time or part-time board or
728 commission;

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

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

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

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

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

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

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

736 (k) a person appointed as a city manager or chief city administrator or another person
737 employed by a municipality, county, or other political subdivision, who is an at-will employee;

738 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,

739 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
 740 membership in a labor organization that provides retirement benefits to its members; and

741 (m) an employee of the Utah Science Technology and Research Initiative created under
 742 Title 63M, Chapter 2, Utah Science Technology and Research [~~and~~] Governing Authority Act.

743 [~~(3)~~] (5) (a) Each participating employer shall prepare a list designating those positions
 744 eligible for exemption under Subsection [~~(2)~~] (4).

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

747 [~~(4)~~] (6) (a) In accordance with this section, a municipality, county, or political
 748 subdivision may not exempt more than 50 positions or a number equal to 10% of the
 749 employees of the municipality, county, or political subdivision, whichever is lesser.

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

752 [~~(5)~~] (7) Each participating employer shall:

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

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

755 [~~(6)~~] (8) The office may make rules to implement this section.

756 Section 11. Section **49-13-204** is amended to read:

757 **49-13-204. Higher education employees' eligibility requirements -- Election**
 758 **between different retirement plans -- Classification requirements -- Transfer between**
 759 **systems -- One-time election window -- Rulemaking.**

760 (1) (a) A regular full-time employee of an institution of higher education who is
 761 eligible to participate in either this system or in a retirement [~~annuity contract~~] system with the
 762 Teachers' Insurance and Annuity Association of America or with any other public or private
 763 retirement system, organization, or company, designated by the Board of Regents, shall, not
 764 later than January 1, 1979, elect to participate exclusively in this system or in an annuity
 765 contract allowed under this Subsection (1)(a).

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

767 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired
 768 by an institution of higher education after January 1, 1979, may participate only in the
 769 retirement plan which attaches to the person's employment classification.

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

- 773 (i) this system;
- 774 (ii) the Teachers' Insurance and Annuity Association of America; or
- 775 (iii) another public or private system, organization, or company designated by the
776 Board of Regents.

777 (c) Notwithstanding a person's employment classification assignment under Subsection
778 (2)(b), a regular full-time employee who begins employment with an institution of higher
779 education on or after May 11, 2010, has a one-time irrevocable election to continue
780 participation in this system, if the employee has service credit in this system before the date of
781 employment.

782 (3) Notwithstanding an employment classification assignment change made under
783 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after
784 January 1, 1979, whose employment classification requires participation in this system may
785 elect to continue participation in this system.

786 (4) A regular full-time employee hired by an institution of higher education after
787 January 1, 1979, whose employment classification requires participation in this system shall
788 participate in this system.

789 (5) (a) Notwithstanding any other provision of this section, a regular full-time
790 employee of an institution of higher education whose employment classification assignment
791 under Subsection (2)(b) required participation in a retirement program other than this system
792 shall have a one-time irrevocable election to participate in this system.

793 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

794 (c) All forms required by the office must be completed and received by the office no
795 later than June 30, 2010, for the election to participate in this system to be effective.

796 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher
797 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue
798 service credit in this system.

799 (6) A regular full-time employee of an institution of higher education who elects to be
800 covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment

801 while covered under another retirement program by complying with the requirements of
802 Section 49-11-403.

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

804 Section 12. Section **49-13-501** is amended to read:

805 **49-13-501. Death benefit -- Eligibility for death benefit -- Benefit calculation --**
806 **Payment of claim.**

807 (1) The office shall provide a death benefit [~~through the purchase of a group insurance~~
808 ~~policy~~] for members of this system.

809 (2) The board shall make rules to administer the death benefit provided by this section
810 and may, in accordance with federal law, establish:

811 (a) benefit levels;

812 (b) classes of members; and

813 (c) a living benefit option.

814 (3) This death benefit is payable when:

815 (a) the member dies prior to the member's retirement date or dies under circumstances
816 which Section 49-13-402 requires to be treated as the death of a member before retirement;

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

818 (c) benefits are not payable under Section 49-13-404.

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

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

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

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

826 (6) The cost of the death benefit shall be paid by the participating employer as a
827 portion of the contribution rate established under Section 49-13-301.

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

830 (a) that member has 10 or more years of service credit prior to July 1, 1987; or

831 (b) the death of the member occurs either:

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

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

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

839 (9) The death benefit paid to the beneficiary of an inactive member, except as
840 otherwise provided under Subsection (7), is a lump-sum return of the member's member
841 contributions.

842 (10) Payment of the death benefit by the office constitutes a full settlement of any
843 beneficiary's claim against the office and the office is not liable for any further or additional
844 claims or assessments on behalf of the member.

845 (11) Unless otherwise specified in a written document filed with the office, death
846 benefits payable to beneficiaries shall be in accordance with the order of precedence
847 established under Title 75, Chapter 2, Intestate Succession and Wills.

848 (12) A death benefit under this section may not be paid on behalf of a retiree under this
849 system.

850 Section 13. Section **49-21-102** is amended to read:

851 **49-21-102. Definitions.**

852 As used in this chapter:

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

855 (2) (a) "Eligible employee" means the following employee whose employer provides
856 coverage under this chapter:

857 (i) (A) any regular full-time employee as defined under Section 49-12-102, 49-13-102,
858 or 49-22-102;

859 (B) any public safety service employee as defined under Section 49-14-102, 49-15-102,
860 or 49-23-102;

861 (C) any firefighter service employee or volunteer firefighter as defined under Section
862 49-23-102 who began firefighter service on or after July 1, 2011;

- 863 (D) any judge as defined under Section 49-17-102 or 49-18-102; or
864 (E) the governor of the state;
- 865 (ii) an employee who is exempt from participating in a retirement system under
866 Subsection 49-12-203~~(2)~~(4), 49-13-203~~(2)~~(4), 49-14-203(1), or 49-15-203(1); and
867 (iii) an employee who is covered by a retirement program offered by the Teachers'
868 Insurance and Annuity Association of America.
- 869 (b) "Eligible employee" does not include:
- 870 (i) any employee that is exempt from coverage under Section 49-21-201; or
871 (ii) a retiree.
- 872 (3) "Elimination period" means the three months at the beginning of each continuous
873 period of total disability for which no benefit will be paid. The elimination period begins on
874 the nearest first day of the month from the date of disability. The elimination period may
875 include a one-time trial return to work period of less than 15 consecutive calendar days.
- 876 (4) "Maximum benefit period" means the maximum period of time the monthly
877 disability income benefit will be paid under Section 49-21-403 for any continuous period of
878 total disability.
- 879 (5) "Monthly disability benefit" means the monthly payments and accrual of service
880 credit under Section 49-21-401.
- 881 (6) "Objective medical impairment" means an impairment resulting from an injury or
882 illness which is diagnosed by a physician and which is based on accepted objective medical
883 tests or findings rather than subjective complaints.
- 884 (7) "Physician" means a licensed physician.
- 885 (8) "Regular monthly salary" means the amount certified by the participating employer
886 as the monthly salary of the eligible employee, unless there is a discrepancy between the
887 certified amount and the amount actually paid, in which case the office shall determine the
888 regular monthly salary.
- 889 (9) "Regular occupation" means either the primary duties performed by the eligible
890 employee for the 12 months preceding the date of disability, or a permanent assignment of duty
891 to the eligible employee.
- 892 (10) "Rehabilitative employment" means any occupation or employment for wage or
893 profit, for which the eligible employee is reasonably qualified to perform based on education,

894 training, or experience.

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

898 (b) (i) "Total disability" means, after the elimination period and the first 24 months of
899 disability benefits, the complete inability, as determined under Subsection (11)(b)(ii), to engage
900 in any gainful occupation which is reasonable, considering the eligible employee's education,
901 training, and experience.

902 (ii) For purposes of Subsection (11)(b)(i), inability is determined:

903 (A) based solely on physical objective medical impairment; and

904 (B) regardless of the existence or absence of any mental impairment.

905 Section 14. Section **49-21-402** is amended to read:

906 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**
907 **Application for other benefits required.**

908 (1) A monthly disability benefit may be terminated unless:

909 (a) the eligible employee is under the ongoing care and treatment of a physician other
910 than the eligible employee; and

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

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

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

920 (b) workers' compensation indemnity benefits;

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

923 (d) unemployment compensation benefits;

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

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

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

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

932 (a) any [~~employer-sponsored retirement programs~~] retirement payment earned through
933 or provided by public or private employment; and

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

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

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

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

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

947 Section 15. Section **49-21-403** is amended to read:

948 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

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

953 (a) the date of the eligible employee's death;

954 (b) the date the eligible employee no longer has a disability;

955 (c) the date the eligible employee has accumulated or would have accumulated, if the

956 employee had not chosen the Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan,
957 Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan, been a volunteer firefighter, or
958 exempted from a retirement system or plan:

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

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

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

967 (iv) 35 years of service credit if the eligible employee is covered by the defined benefit
968 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the
969 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

970 (v) 25 years of service credit if the eligible employee is covered by the defined benefit
971 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the
972 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; or

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

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

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

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

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

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

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

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

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

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

999 (4) An eligible employee receiving a monthly disability benefit who has service credit
1000 from two or more systems may not combine service credits under Section 49-11-405 in
1001 qualifying for retirement, unless the eligible employee would receive a greater allowance by
1002 combining the service credits.

1003 (5) An eligible employee covered by this chapter who is a participant in the Tier II
1004 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or
1005 Chapter 23, Part 4, Tier II Defined Contribution Plan, who applies and is qualified for a
1006 monthly disability benefit, shall receive a monthly disability benefit until the earlier of:

1007 (a) the date of the eligible employee's death;

1008 (b) the date the eligible employee no longer has a disability;

1009 (c) (i) 35 years from the date the eligible employee began participation in the Tier II
1010 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan; or

1011 (ii) 25 years from the date the eligible employee began participation in the Tier II
1012 Defined Contribution Plan created in Chapter 23, Part 4, Tier II Defined Contribution Plan; or

1013 (d) the date the eligible employee has received a monthly disability benefit for the
1014 following applicable time periods:

1015 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
1016 until age 65;

1017 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the

1018 monthly disability benefit is payable for five years;

1019 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1020 monthly disability benefit is payable for four years;

1021 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1022 monthly disability benefit is payable for three years;

1023 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1024 monthly disability benefit is payable for two years; and

1025 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
1026 monthly disability benefit is payable for one year.

1027 Section 16. Section ~~49-22-203~~ is amended to read:

1028 **49-22-203. Exclusions from membership in system.**

1029 (1) The following employees are not eligible for service credit in this system:

1030 ~~[(1) An]~~ (a) subject to the requirements of Subsection (2), an employee whose
1031 employment status is temporary in nature due to the nature or the type of work to be
1032 performed~~[, provided that:]~~;

1033 ~~[(a) if the term of employment exceeds six months and the employee otherwise~~
1034 ~~qualifies for service credit in this system, the participating employer shall report and certify to~~
1035 ~~the office that the employee is a regular full-time employee effective the beginning of the~~
1036 ~~seventh month of employment; and]~~

1037 ~~[(b) if an employee, previously terminated prior to becoming eligible for service credit~~
1038 ~~in this system, is reemployed within three months of termination by the same participating~~
1039 ~~employer, the participating employer shall report and certify to the office that the member is a~~
1040 ~~regular full-time employee when the total of the periods of employment equals six months and~~
1041 ~~the employee otherwise qualifies for service credit in this system.]~~

1042 ~~[(2) (a) A current or future]~~

1043 (b) except as provided under Subsection (3), an employee of an institution of higher
1044 education who ~~[holds, or is entitled to hold, under Section 49-22-204, a retirement annuity~~
1045 ~~contract]~~ participates in a retirement system with the Teachers' Insurance and Annuity
1046 Association of America or with any other public or private retirement system, organization, or
1047 company during any period in which required contributions based on compensation have been
1048 paid on behalf of the employee by the employer~~[-:]~~;

1049 ~~[(b) The employee, upon cessation of the participating employer contributions, shall~~
1050 ~~immediately become eligible for service credit in this system.]~~

1051 ~~[(3) An] (c) an~~ employee serving as an exchange employee from outside the state[-]; or

1052 ~~[(4) An] (d) an~~ employee of the Department of Workforce Services who is covered
1053 under another retirement system allowed under Title 35A, Chapter 4, Employment Security
1054 Act.

1055 (2) If an employee whose status is temporary in nature due to the nature of type of
1056 work to be performed:

1057 (a) is employed for a term that exceeds six months and the employee otherwise
1058 qualifies for service credit in this system, the participating employer shall report and certify to
1059 the office that the employee is a regular full-time employee effective the beginning of the
1060 seventh month of employment; or

1061 (b) was previously terminated prior to being eligible for service credit in this system
1062 and is reemployed within three months of termination by the same participating employer, the
1063 participating employer shall report and certify that the member is a regular full-time employee
1064 when the total of the periods of employment equals six months and the employee otherwise
1065 qualifies for service credits in this system.

1066 (3) Upon cessation of the participating employer contributions, an employee under
1067 Subsection (1)(b) is eligible for service credit in this system.

1068 Section 17. Section **49-22-401** is amended to read:

1069 **49-22-401. Contributions -- Rates.**

1070 (1) Up to the amount allowed by federal law, the participating employer shall make a
1071 nonelective contribution of 10% of the participant's compensation to a defined contribution
1072 plan.

1073 (2) (a) The participating employer shall contribute the 10% nonelective contribution
1074 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1075 Internal Revenue Code which:

1076 (i) is sponsored by the board; and

1077 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1078 (b) The member may make voluntary deferrals to:

1079 (i) the qualified 401(k) plan which receives the employer contribution described in this

1080 Subsection (2); or

1081 (ii) at the member's option, another defined contribution plan established by the
1082 participating employer.

1083 (c) In addition to the percent specified under Subsection (2)(a), the participating
1084 employer shall pay the corresponding Tier I system amortization rate of the employee's
1085 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1086 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1087 participating employer under Subsection (2)(a) vests to the member upon accruing four years
1088 employment as a regular full-time employee under this title.

1089 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1090 member's benefit immediately and is nonforfeitable.

1091 (c) Upon filing a written request for exemption with the office, the following
1092 employees are exempt from the vesting requirements of Subsection (3)(a):

1093 (i) an executive department head of the state;

1094 (ii) a member of the State Tax Commission;

1095 (iii) a member of the Public Service Commission;

1096 (iv) an employee of the Governor's Office of Planning and Budget;

1097 (v) an employee of the Governor's Office of Economic Development;

1098 (vi) an employee of the Commission on Criminal and Juvenile Justice;

1099 (vii) an employee of the Governor's Office;

1100 (viii) an employee of the State Auditor's Office;

1101 (ix) an employee of the State Treasurer's Office;

1102 (x) a person appointed as a city manager or appointed as a city administrator or another
1103 at-will employee of a municipality, county, or other political subdivision;

1104 (xi) an employee of an interlocal cooperative agency created under Title 11, Chapter
1105 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided
1106 through membership in a labor organization that provides retirement benefits to its members;
1107 and

1108 (xii) an employee of the Utah Science Technology and Research Initiative created
1109 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

1110 (d) (i) A participating employer shall prepare a list designating those positions eligible

1111 for exemption under Subsection (3)(c).

1112 (ii) An employee may not be exempted unless the employee is employed in a position
1113 designated by the participating employer under Subsection (3)(c).

1114 (e) (i) All employer contributions made on behalf of an employee shall be invested in
1115 accordance with Subsection 49-22-303(3)(a) until the one-year election period under
1116 Subsection 49-22-201(2)(c) is expired if the employee:

1117 (A) elects to be exempt in accordance with Subsection (3)(c); and

1118 (B) continues employment with the participating employer through the one-year
1119 election period under Subsection 49-22-201(2)(c).

1120 (ii) An employee is entitled to receive a distribution of the employer contributions
1121 made on behalf of the employee and all associated investment gains and losses if the employee:

1122 (A) elects to be exempt in accordance with Subsection (3)(c); and

1123 (B) terminates employment prior to the one-year election period under Subsection
1124 49-22-201(2)(c).

1125 ~~(e)~~ (f) (i) In accordance with this section, a municipality, county, or political
1126 subdivision may not exempt more than 50 positions or a number equal to 10% of the
1127 employees of the municipality, county, or political subdivision, whichever is less.

1128 (ii) A municipality, county, or political subdivision may exempt at least one regular
1129 full-time employee.

1130 ~~(f)~~ (g) Each participating employer shall:

1131 (i) file each employee exemption annually with the office; and

1132 (ii) update an employee exemption in the event of any change.

1133 ~~(g)~~ (h) (i) The office shall make rules to implement this Subsection (3).

1134 (ii) The rules made under Subsection ~~[(3)(g)(i)]~~ (3)(h)(i) shall include provisions to
1135 allow the exemption provided under Subsection (3)(c) to apply to all contributions made
1136 beginning on or after July 1, 2011, on behalf of an exempted employee who began the
1137 employment before May 8, 2012.

1138 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1139 invested in a default option selected by the board until the member is vested in accordance with
1140 Subsection (3)(a).

1141 (b) A member may direct the investment of contributions including associated

1142 investment gains and losses made by a participating employer under Subsection (2)(a) only
1143 after the contributions have vested in accordance with Subsection (3)(a).

1144 (c) A member may direct the investment of contributions made by the member under
1145 Subsection (3)(b).

1146 (5) No loans shall be available from contributions made by a participating employer
1147 under Subsection (2)(a).

1148 (6) No hardship distributions shall be available from contributions made by a
1149 participating employer under Subsection (2)(a).

1150 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1151 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1152 contributions made by a participating employer on behalf of the member including associated
1153 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1154 (b) If a member who terminates employment with a participating employer prior to the
1155 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1156 another participating employer within 10 years of the termination date of the previous
1157 employment:

1158 (i) all contributions made by the previous participating employer on behalf of the
1159 member including associated investment gains and losses shall be reinstated upon the member's
1160 employment as a regular full-time employee; and

1161 (ii) the length of time that the member worked with the previous employer shall be
1162 included in determining whether the member has completed the vesting period under
1163 Subsection (3)(a).

1164 (c) The office shall establish a forfeiture account and shall specify the uses of the
1165 forfeiture account, which may include an offset against administrative costs or employer
1166 contributions made under this section.

1167 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1168 any relevant information pertaining to the maintenance of its tax qualification under the
1169 Internal Revenue Code.

1170 (9) The office may take any action which in its judgment is necessary to maintain the
1171 tax-qualified status of its 401(k) defined contribution plan under federal law.

1172 Section 18. Section **49-22-501** is amended to read:

1173 **49-22-501. Death benefit -- Eligibility for death benefit -- Benefit calculation --**
1174 **Payment of claim.**

1175 (1) The office shall provide a death benefit [~~through the purchase of a group insurance~~
1176 ~~policy~~] for members of this system.

1177 (2) The board shall make rules to administer the death benefit provided by this section
1178 and may, in accordance with federal law, establish:

1179 (a) benefit levels;

1180 (b) classes of members; and

1181 (c) a living benefit option.

1182 (3) This death benefit is payable when:

1183 (a) the member dies prior to the member's retirement date or dies under circumstances
1184 which Subsection 49-22-305(4) requires to be treated as the death of a member before
1185 retirement;

1186 (b) the office receives acceptable proof of death; and

1187 (c) benefits are not payable under Section 49-22-307.

1188 (4) The death benefit payable to the beneficiary under this section is a lump-sum
1189 payment consisting of:

1190 (a) the return of any member contributions under this chapter; plus

1191 (b) a percentage of the final average salary of the member to be determined by the
1192 board.

1193 (5) Any amount of a living benefit option paid to the member prior to death shall be
1194 deducted from the benefit payable to the beneficiary.

1195 (6) The cost of the death benefit shall be paid by the participating employer in addition
1196 to the contribution rate established under Section 49-22-301 or 49-22-401.

1197 (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid
1198 to the beneficiary of an inactive member unless the death of the member occurs either:

1199 (a) within a period of 120 days after the last day of work for which the person received
1200 compensation; or

1201 (b) while the member is still physically or mentally incapacitated from performance of
1202 duties, if the incapacity has been continuous since the last day of work for which compensation
1203 was received.

1204 (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance
1205 with Sections 49-11-609 and 49-11-610.

1206 (9) The death benefit paid to the beneficiary of an inactive member, except as
1207 otherwise provided under Subsection (7), is a lump-sum return of the member's member
1208 contributions.

1209 (10) Payment of the death benefit by the office constitutes a full settlement of any
1210 beneficiary's claim against the office and the office is not liable for any further or additional
1211 claims or assessments on behalf of the member.

1212 (11) Unless otherwise specified in a written document filed with the office, death
1213 benefits payable to beneficiaries shall be in accordance with the order of precedence
1214 established under Title 75, Chapter 2, Intestate Succession and Wills.

1215 (12) A death benefit under this section may not be paid on behalf of a retiree under this
1216 system.

1217 Section 19. Section **49-23-401** is amended to read:

1218 **49-23-401. Contributions -- Rates.**

1219 (1) Up to the amount allowed by federal law, the participating employer shall make a
1220 nonelective contribution of 12% of the participant's compensation to a defined contribution
1221 plan.

1222 (2) (a) The participating employer shall contribute the 12% nonelective contribution
1223 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1224 Internal Revenue Code which:

1225 (i) is sponsored by the board; and

1226 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1227 (b) The member may make voluntary deferrals to:

1228 (i) the qualified 401(k) plan which receives the employer contribution described in this
1229 Subsection (2); or

1230 (ii) at the member's option, another defined contribution plan established by the
1231 participating employer.

1232 (c) In addition to the percent specified under Subsection (2)(a), the participating
1233 employer shall pay the corresponding Tier I system amortization rate of the employee's
1234 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1235 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
 1236 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
 1237 service credit under this title.

1238 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
 1239 member's benefit immediately and is nonforfeitable.

1240 (c) Upon filing a written request for exemption with the office, the following
 1241 employees are exempt from the vesting requirements of Subsection (3)(a) if the employee is a
 1242 public safety service employee and is:

- 1243 (i) an executive department head of the state;
- 1244 (ii) an elected or appointed sheriff of a county; or
- 1245 (iii) an elected or appointed chief of police of a municipality.

1246 (d) (i) A participating employer shall prepare a list designating those positions eligible
 1247 for exemption under Subsection (3)(c).

1248 (ii) An employee may not be exempted unless the employee is employed in a position
 1249 designated by the participating employer under Subsection (3)(c).

1250 (e) (i) All employer contributions made on behalf of an employee shall be invested in
 1251 accordance with Subsection 49-23-302(3)(a) until the one-year election period under
 1252 Subsection 49-23-201(2)(c) is expired if the employee:

- 1253 (A) elects to be exempt in accordance with Subsection (3)(c); and
- 1254 (B) continues employment with the participating employer through the one-year
 1255 election period under Subsection 49-23-201(2)(c).

1256 (ii) An employee is entitled to receive a distribution of the employer contributions
 1257 made on behalf of the employee and all associated investment gains and losses if the employee:

- 1258 (A) elects to be exempt in accordance with Subsection (3)(c); and
- 1259 (B) terminates employment prior to the one-year election period under Subsection
 1260 49-23-201(2)(c).

1261 [~~e~~] (f) Each participating employer shall:

- 1262 (i) file each employee exemption annually with the office; and
- 1263 (ii) update an employee exemption in the event of any change.

1264 [~~f~~] (g) (i) The office shall make rules to implement this Subsection (3).

1265 (ii) The rules made under Subsection [~~(3)(f)(i)~~] (3)(g)(i) shall include provisions to

1266 allow the exemption provided under Subsection (3)(c) to apply to all contributions made
1267 beginning on or after July 1, 2011, on behalf of an exempted employee who began the
1268 employment before May 8, 2012.

1269 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1270 invested in a default option selected by the board until the member is vested in accordance with
1271 Subsection (3)(a).

1272 (b) A member may direct the investment of contributions, including associated
1273 investment gains and losses, made by a participating employer under Subsection (2)(a) only
1274 after the contributions have vested in accordance with Subsection (3)(a).

1275 (c) A member may direct the investment of contributions made by the member under
1276 Subsection (3)(b).

1277 (5) No loans shall be available from contributions made by a participating employer
1278 under Subsection (2)(a).

1279 (6) No hardship distributions shall be available from contributions made by a
1280 participating employer under Subsection (2)(a).

1281 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1282 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1283 contributions made by a participating employer on behalf of the member under Subsection
1284 (2)(a), including associated investment gains and losses are subject to forfeiture.

1285 (b) If a member who terminates employment with a participating employer prior to the
1286 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1287 another participating employer within 10 years of the termination date of the previous
1288 employment:

1289 (i) all contributions made by the previous participating employer on behalf of the
1290 member, including associated investment gains and losses, shall be reinstated upon the
1291 member's employment as a regular full-time employee; and

1292 (ii) the length of time that the member worked with the previous employer shall be
1293 included in determining whether the member has completed the vesting period under
1294 Subsection (3)(a).

1295 (c) The office shall establish a forfeiture account and shall specify the uses of the
1296 forfeiture account, which may include an offset against administrative costs of employer

1297 contributions made under this section.

1298 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1299 any relevant information pertaining to the maintenance of its tax qualification under the
1300 Internal Revenue Code.

1301 (9) The office may take any action which in its judgment is necessary to maintain the
1302 tax-qualified status of its 401(k) defined contribution plan under federal law.

1303 Section 20. Section **49-23-501** is amended to read:

1304 **49-23-501. Death benefit -- Eligibility for death benefit -- Benefit calculation --**
1305 **Payment of claim.**

1306 (1) The office shall provide a death benefit [~~through the purchase of a group insurance~~
1307 ~~policy~~] for members of this system.

1308 (2) The board shall make rules to administer the death benefit provided by this section
1309 and may, in accordance with federal law, establish:

1310 (a) benefit levels;

1311 (b) classes of members; and

1312 (c) a living benefit option.

1313 (3) This death benefit is payable when:

1314 (a) the member dies prior to the member's retirement date or dies under circumstances
1315 which Subsection 49-23-304(4) requires to be treated as the death of a member before
1316 retirement;

1317 (b) the office receives acceptable proof of death; and

1318 (c) benefits are not payable under Section 49-23-306.

1319 (4) The death benefit payable to the beneficiary under this section is a lump-sum
1320 payment consisting of:

1321 (a) the return of any member contributions under this chapter; plus

1322 (b) a percentage of the final average salary of the member to be determined by the
1323 board.

1324 (5) Any amount of a living benefit option paid to the member prior to death shall be
1325 deducted from the benefit payable to the beneficiary.

1326 (6) The cost of the death benefit shall be paid by the participating employer in addition
1327 to the contribution rate established under Section 49-23-301 or 49-23-401.

1328 (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid
1329 to the beneficiary of an inactive member unless the death of the member occurs either:

1330 (a) within a period of 120 days after the last day of work for which the person received
1331 compensation; or

1332 (b) while the member is still physically or mentally incapacitated from performance of
1333 duties, if the incapacity has been continuous since the last day of work for which compensation
1334 was received.

1335 (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance
1336 with Sections 49-11-609 and 49-11-610.

1337 (9) The death benefit paid to the beneficiary of an inactive member, except as
1338 otherwise provided under Subsection (7), is a lump-sum return of the member's member
1339 contributions.

1340 (10) Payment of the death benefit by the office constitutes a full settlement of any
1341 beneficiary's claim against the office and the office is not liable for any further or additional
1342 claims or assessments on behalf of the member.

1343 (11) Unless otherwise specified in a written document filed with the office, death
1344 benefits payable to beneficiaries shall be in accordance with the order of precedence
1345 established under Title 75, Chapter 2, Intestate Succession and Wills.

1346 (12) A death benefit under this section may not be paid on behalf of a retiree under this
1347 system.