

1                                   **UTAH RETIREMENT SYSTEM AMENDMENTS**

2   2015 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Kraig Powell**

5                                   Senate Sponsor: Todd Weiler

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies the Utah State Retirement and Insurance Benefit Act by amending  
10 certain retirement provisions.

11 **Highlighted Provisions:**

12           This bill:

13           ▶ clarifies that a member may receive service credit for military service covered under  
14 the provisions of the federal Uniformed Services Employment and Reemployment  
15 Rights Act of 1994 (USERRA) instead of only member or participating employer  
16 purchases of service credit;

17           ▶ allows a purchase of public service credit for employment with a participating  
18 employer in a qualifying position for which the individual filed a written request for  
19 exclusion from membership in a system;

20           ▶ allows the Utah State Retirement Office to recover any overpayment to a retiree  
21 who receives a retirement allowance in violation of postretirement employment  
22 restrictions;

23           ▶ provides that, upon request, an insurance premium may be deducted from a  
24 retirement allowance for certain retirees;

25           ▶ requires a participating employer who reemploys a retiree to contribute the  
26 amortization rate to the system that would have covered the retiree regardless of  
27 whether the position is retirement eligible;

28           ▶ amends the deadline from 60 days to 30 days for a participating employer to submit  
29 to the office required contributions and submit service credit reports for employees

30 after the end of each pay period;

31       ▶ amends penalty provisions for delinquent contributions from 12% per annum to  
32 equal to the greater of \$250 or 50% of the total contributions for the employees for  
33 the period of the reporting error;

34       ▶ provides that a court for a domestic relations order may not require the Utah State  
35 Retirement Office to provide any type of benefit that is not otherwise provided by  
36 statute;

37       ▶ repeals the requirement for a participating employer to forward to the office certain  
38 documentation relating to terminated employees and requires the employers to  
39 maintain the records and make them available to the office upon request;

40       ▶ clarifies that the definition of "benefits normally provided" includes employer  
41 contributions to a health savings account, health reimbursement account, health  
42 reimbursement arrangement, or medical expense reimbursement plan; and

43       ▶ makes technical changes.

44 **Money Appropriated in this Bill:**

45       None

46 **Other Special Clauses:**

47       None

48 **Utah Code Sections Affected:**

49 AMENDS:

50       **49-11-402**, as renumbered and amended by Laws of Utah 2002, Chapter 250

51       **49-11-403**, as last amended by Laws of Utah 2014, Chapter 15

52       **49-11-505**, as last amended by Laws of Utah 2014, Chapters 15, 175, and 311

53       **49-11-601**, as last amended by Laws of Utah 2014, Chapter 201

54       **49-11-603**, as last amended by Laws of Utah 2014, Chapter 15

55       **49-11-612**, as last amended by Laws of Utah 2013, Chapter 316

56       **49-11-616**, as last amended by Laws of Utah 2013, Chapters 109, 316 and last amended  
57 by Coordination Clause, Laws of Utah 2013, Chapter 109

58 **49-12-102**, as last amended by Laws of Utah 2013, Chapters 109 and 127



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

61 Section 1. Section **49-11-402** is amended to read:

62 **49-11-402. Purchase of military service credit.**

63 (1) [A] Except as provided under Subsection (7), a member who is absent from  
64 employment with a participating employer by reason of an official call to full-time United  
65 States military service may receive service credit for that military service as follows:

66 (a) the member, the participating employer, or the member and participating employer  
67 jointly shall make the required payments, as determined by the office, to the system in which  
68 the member participated at the time of the official call, according to the law governing that  
69 particular system;

70 (b) prior to a member's retirement date, the required payments shall be made:

71 (i) during the period of full-time United States military service;

72 (ii) after the military service, but within a period not to exceed three times the period of  
73 military service up to a maximum of five years; or

74 (iii) as otherwise allowed by federal law;

75 (c) required payments shall be based on the member's compensation at the time of the  
76 official military call;

77 (d) if a required payment is not made within the time allowed under Subsection (1)(b),  
78 the member or participating employer may purchase the service credit as allowed in Subsection  
79 (2); and

80 (e) the member shall return to employment with the participating employer upon  
81 receiving an honorable discharge from military service and there may not be intervening  
82 employment outside of the employment with the participating employer.

83 (2) (a) A member, a participating employer, or a member and a participating employer  
84 jointly, may purchase service credit for full-time United States military service, resulting from  
85 an official call to duty, if the member has four or more years of service credit and the military

86 service does not otherwise qualify for service credit under this title.

87 (b) Payment to the office for a military service credit purchase shall be made to the  
88 system under which the member is currently covered in an amount determined by the office  
89 based on a formula recommended by the actuary and adopted by the board.

90 (c) The purchase shall be made through payroll deductions or through a lump sum  
91 deposit based upon the present value of future payments.

92 (d) If total payment is not completed prior to retirement, service credit shall be prorated  
93 in accordance with the amount paid.

94 (3) For purposes of Subsection (2), full-time United States military service does not  
95 include any regularly scheduled or annual military service that is required by a reserve unit,  
96 National Guard unit, or any other United States military unit.

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

99 (b) If the recalculated cost exceeds the amount paid for the purchase, the member may:

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

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

102 (5) If the recalculated cost under Subsection (4) is less than the amount paid for the  
103 purchase, the office shall refund the excess payment to the member or participating employer  
104 who paid for the purchase.

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

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

109 (7) Notwithstanding the provisions under Subsection (1), a member may receive  
110 service credit for military service covered under the provisions of the federal Uniformed  
111 Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. Sec. 4301  
112 et seq., under the terms and conditions provided under that law.

113 Section 2. Section **49-11-403** is amended to read:

114 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

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

118 (a) United States federal employment;

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

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

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

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

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

128 (i) the member was receiving:

129 (A) long-term disability benefits;

130 (B) short-term disability benefits; or

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

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

134 (g) employment covered by a retirement plan offered by a public or private system,  
135 organization, or company designated by the State Board of Regents, if the member forfeits any  
136 retirement benefit from that retirement plan for the period of employment to be purchased  
137 under this Subsection (1)(g); ~~or~~

138 (h) employment in a charter school located within the state if the member forfeits any  
139 retirement benefit under any other retirement system or plan for the period of employment to be  
140 purchased under this Subsection (1)(h)~~[-]; or~~

141 (i) employment with a participating employer that is exempt from coverage under this

142 title under a written request for exemption with the office, if the member forfeits any retirement  
143 benefit under any other retirement system or plan for the period of employment to be purchased  
144 under this Subsection (1)(i).

145 (2) A member shall:

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

148 (b) forfeit service credit and any defined contribution balance based on employer  
149 contributions under any other retirement system or plan based on the period of employment for  
150 which service credit is being purchased.

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

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

156 (i) recommended by the actuary; and

157 (ii) adopted by the board.

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

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

162 (6) (a) For a purchase made before July 1, 2010, if any of the factors used to determine  
163 the cost of a service credit purchase change at or before the member's retirement date, the cost  
164 of the purchase shall be recalculated at the time of retirement.

165 (b) For a purchase made before July 1, 2010, if the recalculated cost exceeds the  
166 amount paid for the purchase, the member, a participating employer, or a member and a  
167 participating employer jointly may:

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

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

170 (c) For a purchase made on or after July 1, 2010:  
171 (i) the purchase shall be made in accordance with rules:  
172 (A) adopted by the board based on recommendations by the board's actuary; and  
173 (B) in effect at the time the purchase is completed; and  
174 (ii) the cost of the service credit purchase shall not be recalculated at the time of  
175 retirement.

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

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

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

183 (9) An employee who elects to participate exclusively in the defined contribution plan  
184 under Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II  
185 Defined Contribution Plan, may not purchase service credit for that period of employment.

186 Section 3. Section **49-11-505** is amended to read:

187 **49-11-505. Reemployment of a retiree -- Restrictions.**

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

189 (i) means a person who:

190 (A) retired from a participating employer; and

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

192 (ii) does not include a person:

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

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

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

197 (iii) does not include a person who is reemployed as an active senior judge or an active

198 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by  
199 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

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

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

204 (c) (i) This section does not apply to employment as a part-time appointed board  
205 member who does not receive any remuneration, stipend, or other benefit for the part-time  
206 appointed board member's service.

207 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does  
208 not include receipt of per diem and travel expenses up to the amounts established by the  
209 Division of Finance in:

210 (A) Section [63A-3-106](#);

211 (B) Section [63A-3-107](#); and

212 (C) rules made by the Division of Finance according to Sections [63A-3-106](#) and  
213 [63A-3-107](#).

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

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

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

217 (b) receive a retirement allowance.

218 (3) (a) Except as provided under Subsection (3)(b) or (10), the office shall cancel the  
219 retirement allowance of a retiree if the reemployment with a participating employer begins  
220 within one year of the retiree's retirement date.

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

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

225 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree



226 does not receive any employer provided benefits, including:

227       (A) medical benefits;

228       (B) dental benefits;

229       (C) other insurance benefits except for workers' compensation as provided under Title

230 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law

231 for Social Security, Medicare, and unemployment insurance; or

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

233       (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in

234 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the

235 retiree's retirement allowance is based; or

236       (B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).

237       (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection

238 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar

239 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average

240 as determined by the board.

241       (d) The office shall cancel the retirement allowance of a retiree for the remainder of the

242 calendar year if the reemployment with a participating employer exceeds the limitation under

243 Subsection (3)(b)(iii)(A).

244       (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination

245 date of the reemployment, as confirmed in writing by the participating employer, is considered

246 the retiree's retirement date for the purpose of calculating the separation requirement under

247 Subsection (3)(a).

248       (f) If a retiree received a retirement allowance in error, due to reemployment in

249 violation of this section:

250       (i) the office shall cancel the retiree's retirement allowance; and

251       (ii) if the retiree applies for a future benefit, the office shall recover any overpayment in

252 accordance with the provisions of Section [49-11-607](#).

253       (4) If a reemployed retiree has completed the one-year separation from employment

254 with a participating employer required under Subsection (3)(a), the retiree may elect to:

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

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

259 (5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate,  
260 as defined in Section 49-11-102, to be applied to the system that would have covered the retiree  
261 if the retiree's reemployed position were deemed to be an eligible, full-time position within that  
262 system.

263 ~~[(5)] (b)~~ A participating employer who reemploys a retiree shall contribute to the office  
264 the amortization rate~~[-as defined in Section 49-11-102, to be applied to the system that would~~  
265 ~~have covered the retiree,]~~ if the reemployed retiree:

266 ~~[(a)] (i)~~ has completed the one-year separation from employment with a participating  
267 employer required under Subsection (3)(a); and

268 ~~[(b)] (ii)~~ makes an election under Subsection (4)(b) to continue to receive a retirement  
269 allowance while reemployed.

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

271 (i) if the participating employer reemploys a retiree;

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

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

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

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

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

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

282 (i) the reemployment of a retiree in violation of Subsection (3); or  
283 (ii) the election of a reemployed retiree under Subsection (4)(a).  
284 (b) If the retiree is eligible for retirement coverage in the reemployed position, the  
285 office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the  
286 retiree to active member status on the first day of the month following the date of:  
287 (i) reemployment if the retiree is subject to Subsection (3); or  
288 (ii) an election by an employee under Subsection (4)(a).  
289 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed  
290 position:  
291 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and  
292 (ii) the participating employer shall pay the amortization rate to the office on behalf of  
293 the retiree.  
294 (8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date  
295 of reemployment:  
296 (i) is not entitled to a recalculated retirement benefit; and  
297 (ii) will resume the allowance that was being paid at the time of cancellation.  
298 (b) Subject to Subsection (2), a retiree who is reinstated to active membership under  
299 Subsection (7) and who retires two or more years after the date of reinstatement to active  
300 membership shall:  
301 (i) resume receiving the allowance that was being paid at the time of cancellation; and  
302 (ii) receive an additional allowance based on the formula in effect at the date of the  
303 subsequent retirement for all service credit accrued between the first and subsequent retirement  
304 dates.  
305 (9) (a) A retiree subject to this section shall report to the office the status of the  
306 reemployment under Subsection (3) or (4).  
307 (b) If the retiree fails to inform the office of an election under Subsection (4), the office  
308 shall withhold one month's benefit for each month the retiree fails to inform the office under  
309 Subsection (9)(a).

310 (10) A retiree shall be considered as having completed the one-year separation from  
311 employment with a participating employer required under Subsection (3)(a), if the retiree:

312 (a) before retiring:

313 (i) was employed with a participating employer as a public safety service employee as  
314 defined in Section 49-14-102, 49-15-102, or 49-23-102;

315 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury  
316 resulting from external force or violence while performing the duties of the employment, and  
317 for which injury the retiree would have been approved for total disability in accordance with  
318 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if  
319 years of service are not considered;

320 (iii) had less than 30 years of service credit but had sufficient service credit to retire,  
321 with an unreduced allowance making the public safety service employee ineligible for  
322 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term  
323 Disability Act, or a substantially similar long-term disability program; and

324 (iv) does not receive any long-term disability benefits from any participating employer;  
325 and

326 (b) is reemployed by a different participating employer.

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

328 Section 4. Section 49-11-601 is amended to read:

329 **49-11-601. Payment of employer contributions -- Penalties for failure to comply --**  
330 **Adjustments to be made.**

331 (1) The employer contributions, fees, premium taxes, contribution adjustments, and  
332 other required payments shall be paid to the office by the participating employer as determined  
333 by the executive director.

334 (2) A participating employer that fails to withhold the amount of any member  
335 contributions, as soon as administratively possible, shall also pay the member contributions to  
336 the office out of its own funds.

337 (3) Except as limited by Subsections (6) and (7), if a participating employer does not

338 make the contributions required by this title within ~~[60]~~ 30 days of the end of the pay period,  
339 the participating employer is liable to the office as provided in Section [49-11-604](#) for:

- 340 (a) delinquent contributions;
- 341 (b) interest on the delinquent contributions as calculated under Section [49-11-503](#); and
- 342 (c) a ~~[12% per annum penalty on delinquent contributions.]~~ penalty equal to the greater  
343 of:

- 344 (i) \$250; or
- 345 (ii) 50% of the total contributions for the employees for the period of the reporting  
346 error.

347 (4) The executive director may waive all or any part of the interest, penalties, expenses,  
348 and fees if the executive director finds there were extenuating circumstances surrounding the  
349 participating employer's failure to comply with this section.

350 (5) Contributions made in error will be refunded to the participating employer or  
351 member that made the contributions.

352 (6) (a) An employer described in Subsection [49-12-202\(2\)\(c\)](#) or (d), or Subsection  
353 [49-13-202\(2\)\(c\)](#), (d), or (e) that paid retirement benefits to an employee or retiree that were not  
354 required by this title may offer the retirement benefits paid to the employee as a substantial  
355 substitute to service credit and retirement benefits that may have been earned by the employee  
356 under this title.

357 (b) An employee who received retirement benefits under Subsection (6)(a) may sign an  
358 affidavit that:

359 (i) acknowledges the substantial substitute received by the employee under Subsection  
360 (6)(a); and

361 (ii) irrevocably relinquishes service credit and retirement benefits that may have  
362 accrued to the employee under this title effective from the employee's date of employment with  
363 the employer described in Subsection (6)(a) to the date of the employer's election under Section  
364 [49-12-202](#) or [49-13-202](#).

365 (c) Nothing in this section shall be construed to diminish an employer's right to recover

366 past retirement benefits other than Social Security, paid to an employee or retiree, in error or  
367 under mistaken belief that the employer was not a participating employer.

368 (7) If the employer files with the office an irrevocable written relinquishment of service  
369 credit signed by the member or retiree:

370 (a) the office shall proportionally reduce any delinquent contributions, penalties, fees,  
371 or interest assessed against a participating employer in connection with a member or retiree  
372 described in Subsection (6)(a); and

373 (b) the system has no liability to the employee for benefits relinquished under  
374 Subsection (6)(b).

375 Section 5. Section **49-11-603** is amended to read:

376 **49-11-603. Participating employer to report and certify -- Time limit -- Penalties**  
377 **for failure to comply.**

378 (1) As soon as administratively possible, but in no event later than [~~60~~] 30 days after  
379 the end of each pay period, a participating employer shall report and certify to the office:

380 (a) the eligibility for service credit accrual of:

381 (i) each current employee;

382 (ii) each new employee as the new employee begins employment; and

383 (iii) any changes to eligibility for service credit accrual of each employee;

384 (b) the compensation of each current employee eligible for service credit; and

385 (c) other factors relating to the proper administration of this title as required by the  
386 executive director.

387 (2) Each participating employer shall submit the reports required under Subsection (1)  
388 in a format approved by the office.

389 (3) A participating employer shall be liable to the office for:

390 (a) any liabilities and expenses, including administrative expenses and the cost of  
391 increased benefits to employees, resulting from the participating employer's failure to correctly  
392 report and certify records under this section;

393 (b) a penalty equal to the greater of:

- 394 (i) \$250; or
- 395 (ii) 50% of the total contributions for the employees for the period of the reporting
- 396 error[~~-, whichever is greater~~]; and
- 397 (c) attorney fees.
- 398 (4) The executive director may waive all or any part of the interest, penalties, expenses,
- 399 and fees if the executive director finds there were extenuating circumstances surrounding the
- 400 participating employer's failure to comply with this section.
- 401 (5) The executive director may estimate the length of service, compensation, or age of
- 402 any employee, if that information is not contained in the records.

403 Section 6. Section **49-11-612** is amended to read:

404 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**  
405 **payments -- Exemption from legal process.**

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

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

412 Act;

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

- 414 (i) Chapter 14, Part 5, Death Benefit;
- 415 (ii) Chapter 15, Part 5, Death Benefit;
- 416 (iii) Chapter 16, Part 5, Death Benefit;
- 417 (iv) Chapter 17, Part 5, Death Benefit;
- 418 (v) Chapter 18, Part 5, Death Benefit; or
- 419 (vi) Chapter 19, Part 5, Death Benefit;

420 (d) a lump sum death benefit provided under:

- 421 (i) Chapter 12, Part 5, Death Benefit;

- 422 (ii) Chapter 13, Part 5, Death Benefit;
- 423 (iii) Chapter 22, Part 5, Death Benefit; or
- 424 (iv) Chapter 23, Part 5, Death Benefit; or
- 425 (e) a refund of member contributions upon termination.
- 426 (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree,
- 427 participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or
- 428 any other retirement right accrued or accruing under this title and the assets of the funds created
- 429 by this title are not subject to alienation or assignment by the member, retiree, participant, or
- 430 their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal
- 431 or equitable process.
- 432 (3) (a) The office may, upon the request of the retiree, deduct from the retiree's
- 433 allowance, insurance premiums or other dues payable on behalf of the retiree, but only to those
- 434 entities that have received the deductions prior to February 1, 2002.
- 435 (b) The office may, upon the request of a retiree of a public safety or firefighter system,
- 436 deduct insurance premiums from the retiree's allowance.
- 437 (4) (a) The office shall provide for the division of domestic relations order benefits
- 438 with former spouses and family members under an order of a court of competent jurisdiction
- 439 with respect to domestic relations matters on file with the office.
- 440 (b) The court order shall specify the manner in which the domestic relations order
- 441 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.
- 442 (c) Domestic relations order benefits split under a domestic relations order are subject
- 443 to the following:
- 444 (i) the amount to be paid or the period for which payments shall be made under the
- 445 original domestic relations order may not be altered if the alteration affects the actuarial
- 446 calculation of the allowance;
- 447 (ii) payments to an alternate payee shall begin at the time the member or beneficiary
- 448 begins receiving payments; and
- 449 (iii) the alternate payee shall receive payments in the same form as allowances received



450 by the member or beneficiary.

451 (d) To be valid, a court order under this section must be received by the office within  
452 12 months of the death of the member.

453 (e) A court order under this section may not require and may not be interpreted in any  
454 way to require the office to provide any type of benefit or any option not otherwise provided  
455 under this title.

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

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

461 Section 7. Section **49-11-616** is amended to read:

462 **49-11-616. Benefits information.**

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

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

467 (i) immediately upon termination of service, leave of absence, commencement of  
468 long-term disability benefits, or retirement; and

469 (ii) in person or, if the employee is unavailable to receive the information in person, by  
470 mailing the information to the employee's last known address.

471 (b) (i) Each participating employer shall maintain the records necessary to demonstrate  
472 that the employer has provided the information outlined in Subsection (1) as required in  
473 Subsection (2)(a).

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

475 (3) (a) The office shall provide each participating employer with a form to be signed by  
476 each employee to verify that the employee has been given in person the information required by  
477 this section.

478 (b) ~~[A copy of the signed form shall be immediately forwarded to the office by the~~  
479 ~~participating employer or the employee. (c)]~~ If an employer provides information under  
480 Subsection (1) by mail as provided in Subsection (2)(a)(ii), the employer shall:

481 (i) indicate on the form that the information was mailed to the employee and the  
482 address to which the information was mailed; ~~[and]~~

483 (ii) ~~[immediately forward the form to the office.]~~ maintain the records necessary to  
484 demonstrate that the employer complied with the requirements under this Subsection (3); and

485 (iii) make the records available to the office upon request.

486 Section 8. Section **49-12-102** is amended to read:

487 **49-12-102. Definitions.**

488 As used in this chapter:

489 (1) "Benefits normally provided":

490 (a) means a benefit offered by an employer, including:

491 (i) a leave benefit of any kind;

492 (ii) insurance coverage of any kind if the employer pays some or all of the premium for  
493 the coverage; ~~[and]~~

494 (iii) employer contributions to a health savings account, health reimbursement account,  
495 health reimbursement arrangement, or medical expense reimbursement plan; and

496 ~~[(iii)]~~ (iv) a retirement benefit of any kind if the employer pays some or all of the cost  
497 of the benefit; and

498 (b) does not include:

499 (i) a payment for Social Security;

500 (ii) workers' compensation insurance;

501 (iii) unemployment insurance;

502 (iv) a payment for Medicare;

503 (v) a payment or insurance required by federal or state law that is similar to a payment  
504 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

505 (vi) any other benefit that state or federal law requires an employer to provide an

506 employee who would not otherwise be eligible to receive the benefit; or

507 (vii) any benefit that an employer provides an employee in order to avoid a penalty or  
508 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health  
509 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal  
510 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

511 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total  
512 amount of payments made by a participating employer to a member of this system for services  
513 rendered to the participating employer, including:

514 (i) bonuses;

515 (ii) cost-of-living adjustments;

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

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

521 (v) member contributions.

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

524 (c) "Compensation" does not include:

525 (i) the monetary value of remuneration paid in kind, including a residence or use of  
526 equipment;

527 (ii) the cost of any employment benefits paid for by the participating employer;

528 (iii) compensation paid to a temporary employee, an exempt employee, or an employee  
529 otherwise ineligible for service credit;

530 (iv) any payments upon termination, including accumulated vacation, sick leave  
531 payments, severance payments, compensatory time payments, or any other special payments; or

532 (v) any allowances or payments to a member for costs or expenses paid by the  
533 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,

534 housing costs, insurance costs, equipment costs, and dependent care costs.

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

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

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

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

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

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

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

553 (d) If the member has less than five years of service credit in this system, final average  
554 salary means the average annual compensation paid to the member during the full period of  
555 service credit.

556 (4) "Participating employer" means an employer which meets the participation  
557 requirements of Sections [49-12-201](#) and [49-12-202](#).

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

562 participating employer.

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

564 (i) a teacher whose term of employment for a participating employer contemplates  
565 continued employment during a school year and who teaches half-time or more;

566 (ii) a classified school employee:

567 (A) who is hired before July 1, 2013; and

568 (B) whose employment normally requires an average of 20 hours per week or more for  
569 a participating employer, regardless of benefits provided;

570 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as  
571 of January 1, 1990, as provided in Section [49-12-407](#);

572 (iv) a faculty member or employee of an institution of higher education who is  
573 considered full-time by that institution of higher education; and

574 (v) an individual who otherwise meets the definition of this Subsection (5) who  
575 performs services for a participating employer through a professional employer organization or  
576 similar arrangement.

577 (c) "Regular full-time employee" does not include a classified school employee:

578 (i) (A) who is hired on or after July 1, 2013; and

579 (B) who does not receive benefits normally provided by the participating employer  
580 even if the employment normally requires an average of 20 hours per week or more for a  
581 participating employer; or

582 (ii) (A) who is hired before July 1, 2013;

583 (B) who did not qualify as a regular full-time employee before July 1, 2013;

584 (C) who does not receive benefits normally provided by the participating employer;

585 and

586 (D) whose employment hours are increased on or after July 1, 2013, to require an  
587 average of 20 hours per week or more for a participating employer.

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

- 590           (7) "Years of service credit" means:
- 591           (a) a period consisting of 12 full months as determined by the board;
- 592           (b) a period determined by the board, whether consecutive or not, during which a
- 593 regular full-time employee performed services for a participating employer, including any time
- 594 the regular full-time employee was absent on a paid leave of absence granted by a participating
- 595 employer or was absent in the service of the United States government on military duty as
- 596 provided by this chapter; or
- 597           (c) the regular school year consisting of not less than eight months of full-time service
- 598 for a regular full-time employee of an educational institution.