

**FIREFIGHTER RETIREMENT AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Don L. Ipson**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending retirement eligibility provisions for firefighters.

**Highlighted Provisions:**

This bill:

- ▶ provides that a person employed as the state fire marshal or a deputy state fire marshal is eligible to earn service credit in the Firefighters' Retirement System or the New Public Safety and Firefighter Tier II Contributory Retirement System; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**49-16-102**, as last amended by Laws of Utah 2013, Chapter 40

**49-16-201**, as last amended by Laws of Utah 2014, Chapter 15

**49-23-102**, as last amended by Laws of Utah 2013, Chapter 40

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



28 Section 1. Section **49-16-102** is amended to read:

29 **49-16-102. Definitions.**

30 As used in this chapter:

31 (1) (a) "Compensation" means the total amount of payments that are includable as  
32 gross income which are received by a firefighter service employee as base income for the  
33 regularly scheduled work period. The participating employer shall establish the regularly  
34 scheduled work period. Base income shall be determined prior to the deduction of member  
35 contributions or any amounts the firefighter service employee authorizes to be deducted for  
36 salary deferral or other benefits authorized by federal law.

37 (b) "Compensation" includes performance-based bonuses and cost-of-living  
38 adjustments.

39 (c) "Compensation" does not include:

40 (i) overtime;

41 (ii) sick pay incentives;

42 (iii) retirement pay incentives;

43 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,  
44 or similar payments;

45 (v) a lump-sum payment or special payments covering accumulated leave; and

46 (vi) all contributions made by a participating employer under this system or under any  
47 other employee benefit system or plan maintained by a participating employer for the benefit of  
48 a member or participant.

49 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed  
50 under Section 401(a)(17), Internal Revenue Code [~~Section 401(a)(17)~~].

51 (2) (a) "Disability" means a physical or mental condition that, in the judgment of the  
52 office, is total and presumably permanent, and prevents a member from performing firefighter  
53 service.

54 (b) The determination of disability is based upon medical and other evidence  
55 satisfactory to the office.

56 (3) "Final average salary" means the amount computed by averaging the highest three  
57 years of annual compensation preceding retirement subject to Subsections (3)(a) and (b).

58 (a) Except as provided in Subsection (3)(b), the percentage increase in annual

59 compensation in any one of the years used may not exceed the previous year's compensation by  
60 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
61 of the dollar during the previous year, as measured by a United States Bureau of Labor  
62 Statistics Consumer Price Index average as determined by the board.

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

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

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

67 (4) (a) "Firefighter service" means employment normally requiring an average of 2,080  
68 hours of regularly scheduled employment per year rendered by a member who is:

69 (i) a firefighter service employee trained in firefighter techniques and assigned to a  
70 position of hazardous duty with a regularly constituted fire department~~[, but];~~ or

71 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire  
72 marshal.

73 (b) "Firefighter service" does not include secretarial staff or other similar employees.

74 (5) "Firefighter service employee" means an employee of a participating employer who  
75 provides firefighter service under this chapter. An employee of a regularly constituted fire  
76 department who does not perform firefighter service is not a firefighter service employee.

77 (6) (a) "Line-of-duty death or disability" means a death or any physical or mental  
78 disability resulting from:

79 (i) external force, violence, or disease directly resulting from firefighter service; or

80 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous  
81 training or another strenuous activity required as an act of duty as a firefighter service  
82 employee.

83 (b) "Line-of-duty death or disability" does not include a death or any physical or mental  
84 disability that:

85 (i) occurs during an activity that is required as an act of duty as a firefighter service  
86 employee if the activity is not a strenuous activity, including an activity that is clerical,  
87 administrative, or of a nonmanual nature;

88 (ii) occurs during the commission of a crime committed by the employee;

89 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or

90 nonprescribed, contributes to the employee's death; or

91 (iv) occurs in a manner other than as described in Subsection (6)(a).

92 (c) "Line-of-duty death or disability" includes the death of a paid firefighter resulting  
93 from heart disease, lung disease, or a respiratory tract condition if the paid firefighter has five  
94 years of firefighter service credit.

95 (7) "Participating employer" means an employer which meets the participation  
96 requirements of Section 49-16-201.

97 (8) "Regularly constituted fire department" means a fire department that employs a fire  
98 chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid  
99 employment per year.

100 (9) (a) "Strenuous activity" means engagement involving a difficult, stressful, or  
101 vigorous fire suppression, rescue, hazardous material response, emergency medical service,  
102 physical law enforcement, prison security, disaster relief, or other emergency response activity.

103 (b) "Strenuous activity" includes participating in a participating employer sanctioned  
104 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

105 (10) "System" means the Firefighters' Retirement System created under this chapter.

106 (11) (a) "Volunteer firefighter" means any individual that is not regularly employed as  
107 a firefighter service employee, but who:

108 (i) has been trained in firefighter techniques and skills;

109 (ii) continues to receive regular firefighter training; and

110 (iii) is on the rolls of a legally organized volunteer fire department which provides  
111 ongoing training and serves a political subdivision of the state.

112 (b) An individual that volunteers assistance but does not meet the requirements of  
113 Subsection (11)(a) is not a volunteer firefighter for purposes of this chapter.

114 (12) "Years of service credit" means the number of periods, each to consist of 12 full  
115 months as determined by the board, whether consecutive or not, during which a firefighter  
116 service employee was employed by a participating employer or received full-time pay while on  
117 sick leave, including any time the firefighter service employee was absent in the service of the  
118 United States on military duty.

119 Section 2. Section 49-16-201 is amended to read:

120 **49-16-201. System membership -- Eligibility.**

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

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

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

128 (c) the date the firefighter service employee is hired to perform firefighter services for a  
129 participating employer, if the firefighter:

130 (i) initially enters employment before July 1, 2011; or

131 (ii) has service credit accrued before July 1, 2011, in a Tier I system or plan  
132 administered by the board.

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

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

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

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

141 (3) (a) A person hired by a regularly constituted fire department on or after July 1,  
142 1971, who does not perform firefighter service is not eligible for service credit in this system.

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

145 (c) The service credit exclusion under this Subsection (3) may not be interpreted to  
146 prohibit the assignment of a firefighter with a disability or partial disability to a nonfirefighter  
147 service position.

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

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

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

153 (6) An employer [~~that maintains a regularly constituted fire department~~] is eligible to  
154 participate in this system if the employer:

155 (a) maintains a regularly constituted fire department; or

156 (b) is the Department of Public Safety created in Section 53-1-103 that employs the  
157 state fire marshal appointed under Section 53-7-103.

158 (7) Beginning July 1, 2011, a person who is initially entering employment with a  
159 participating employer and who does not have service credit accrued before July 1, 2011, in a  
160 Tier I system or plan administered by the board may not participate in this system.

161 Section 3. Section 49-23-102 is amended to read:

162 **49-23-102. Definitions.**

163 As used in this chapter:

164 (1) (a) "Compensation" means the total amount of payments that are includable in  
165 gross income received by a public safety service employee or a firefighter service employee as  
166 base income for the regularly scheduled work period. The participating employer shall  
167 establish the regularly scheduled work period. Base income shall be determined prior to the  
168 deduction of any amounts the public safety service employee or firefighter service employee  
169 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

170 (b) "Compensation" includes performance-based bonuses and cost-of-living  
171 adjustments.

172 (c) "Compensation" does not include:

173 (i) overtime;

174 (ii) sick pay incentives;

175 (iii) retirement pay incentives;

176 (iv) the monetary value of remuneration paid in kind, as in a residence, use of  
177 equipment or uniform, travel, or similar payments;

178 (v) a lump-sum payment or special payment covering accumulated leave; and

179 (vi) all contributions made by a participating employer under this system or under any  
180 other employee benefit system or plan maintained by a participating employer for the benefit of  
181 a member or participant.

182 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed

183 under Section 401(a)(17) Internal Revenue Code [~~Section 401(a)(17)~~].

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

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

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

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

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

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

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

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

205 (4) (a) "Firefighter service" means employment normally requiring an average of 2,080  
206 hours of regularly scheduled employment per year rendered by a member who is:

207 (i) a firefighter service employee trained in firefighter techniques and assigned to a  
208 position of hazardous duty with a regularly constituted fire department~~[-but]; or~~

209 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire  
210 marshal.

211 (b) "Firefighter service" does not include secretarial staff or other similar employees.

212 (5) "Firefighter service employee" means an employee of a participating employer who  
213 provides firefighter service under this chapter. An employee of a regularly constituted fire

214 department who does not perform firefighter service is not a firefighter service employee.

215 (6) (a) "Line-of-duty death" means a death resulting from:

216 (i) external force, violence, or disease occasioned by an act of duty as a public safety  
217 service or firefighter service employee; or

218 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous  
219 training or another strenuous activity required as an act of duty as a public safety service or  
220 firefighter service employee.

221 (b) "Line-of-duty death" does not include a death that:

222 (i) occurs during an activity that is required as an act of duty as a public safety service  
223 or firefighter service employee if the activity is not a strenuous activity, including an activity  
224 that is clerical, administrative, or of a nonmanual nature;

225 (ii) occurs during the commission of a crime committed by the employee;

226 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or  
227 nonprescribed, contributes to the employee's death; or

228 (iv) occurs in a manner other than as described in Subsection (6)(a).

229 (7) "Participating employer" means an employer which meets the participation  
230 requirements of:

231 (a) Sections [49-14-201](#) and [49-14-202](#);

232 (b) Sections [49-15-201](#) and [49-15-202](#);

233 (c) Sections [49-16-201](#) and [49-16-202](#); or

234 (d) Sections [49-23-201](#) and [49-23-202](#).

235 (8) (a) "Public safety service" means employment normally requiring an average of  
236 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

237 (i) law enforcement officer in accordance with Section [53-13-103](#);

238 (ii) correctional officer in accordance with Section [53-13-104](#);

239 (iii) special function officer approved in accordance with Sections [49-15-201](#) and  
240 [53-13-105](#); and

241 (iv) full-time member of the Board of Pardons and Parole created under Section  
242 [77-27-2](#).

243 (b) Except as provided under Subsection (8)(a)(iv), "public safety service" also requires  
244 that in the course of employment the employee's life or personal safety is at risk.



245 (9) "Public safety service employee" means an employee of a participating employer  
246 who performs public safety service under this chapter.

247 (10) (a) "Strenuous activity" means engagement involving a difficult, stressful, or  
248 vigorous fire suppression, rescue, hazardous material response, emergency medical service,  
249 physical law enforcement, prison security, disaster relief, or other emergency response activity.

250 (b) "Strenuous activity" includes participating in a participating employer sanctioned  
251 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

252 (11) "System" means the New Public Safety and Firefighter Tier II Contributory  
253 Retirement System created under this chapter.

254 (12) (a) "Volunteer firefighter" means any individual that is not regularly employed as  
255 a firefighter service employee, but who:

256 (i) has been trained in firefighter techniques and skills;

257 (ii) continues to receive regular firefighter training; and

258 (iii) is on the rolls of a legally organized volunteer fire department which provides  
259 ongoing training and serves a political subdivision of the state.

260 (b) An individual that volunteers assistance but does not meet the requirements of  
261 Subsection (12)(a) is not a volunteer firefighter for purposes of this chapter.

262 (13) "Years of service credit" means:

263 (a) a period, consisting of 12 full months as determined by the board; or

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

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**Legislative Review Note**  
**as of 1-14-15 8:54 AM**

**Office of Legislative Research and General Counsel**