

1 **UTAH RETIREMENT SYSTEMS REVISIONS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Kraig Powell

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7 **LONG TITLE**

8 **Committee Note:**

9 The Retirement and Independent Entities Interim Committee recommended this bill.

10 **General Description:**

11 This bill modifies the Utah State Retirement and Insurance Benefit Act by amending  
12 provisions relating to the Utah Retirement Systems.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ clarifies that the maximum number of positions that a municipality, county, or  
16 political subdivision may exempt from participation with the Utah Retirement  
17 Systems applies to the total number of exempted positions for employees covered  
18 under both the Tier I and Tier II retirement systems;

19 ▶ specifies additional positions covered under the Tier II retirement system that are  
20 eligible to file for an exemption from participation in the Utah Retirement Systems;

21 ▶ amends the applicability of contribution vesting periods and the effect of system  
22 elections for individuals who elect to be exempt from participation in the Tier II  
23 Utah Retirement Systems;

24 ▶ provides that a full-time elected official or legislator initially entering office on or  
25 after July 1, 2011, who has service credit accrued in a Tier I retirement system or a  
26 Tier II hybrid retirement system before July 1, 2011, shall continue in the Tier I or  
27 Tier II system for which the full-time elected official or legislator is eligible;



- 28           ▶ provides that if an active member dies, employer nonelective contributions made on
- 29 behalf of the employee to a defined contribution plan are exempt from the vesting
- 30 requirements and vest to the member upon death; and
- 31           ▶ makes technical corrections.

32 **Money Appropriated in this Bill:**

33           None

34 **Other Special Clauses:**

35           None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38           **49-12-203**, as last amended by Laws of Utah 2014, Chapters 15, 201, and 365
- 39           **49-13-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365
- 40           **49-22-201**, as last amended by Laws of Utah 2014, Chapter 15
- 41           **49-22-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365
- 42           **49-22-303**, as last amended by Laws of Utah 2011, Chapter 439
- 43           **49-22-401**, as last amended by Laws of Utah 2013, Chapters 310 and 316
- 44           **49-23-201**, as last amended by Laws of Utah 2014, Chapter 15
- 45           **49-23-401**, as last amended by Laws of Utah 2013, Chapter 316

46 ENACTS:

- 47           **49-22-205**, Utah Code Annotated 1953
- 48           **49-22-503**, Utah Code Annotated 1953
- 49           **49-23-203**, Utah Code Annotated 1953
- 50           **49-23-504**, Utah Code Annotated 1953



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

53           Section 1. Section **49-12-203** is amended to read:

54           **49-12-203. Exclusions from membership in system.**

- 55           (1) The following employees are not eligible for service credit in this system:
- 56           (a) subject to the requirements of Subsection (2), an employee whose employment
- 57 status is temporary in nature due to the nature or the type of work to be performed;
- 58           (b) except as provided under Subsection (3)(a), an employee of an institution of higher

59 education who participates in a retirement system with a public or private retirement system,  
60 organization, or company designated by the State Board of Regents during any period in which  
61 required contributions based on compensation have been paid on behalf of the employee by the  
62 employer;

63 (c) an employee serving as an exchange employee from outside the state;

64 (d) an executive department head of the state, a member of the State Tax Commission,  
65 the Public Service Commission, and a member of a full-time or part-time board or commission  
66 who files a formal request for exemption;

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

69 (f) an employee who is employed on or after July 1, 2009, with an employer that has  
70 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection  
71 [49-12-202\(2\)\(c\)](#);

72 (g) an employee who is employed on or after July 1, 2014, with an employer that has  
73 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection  
74 [49-12-202\(2\)\(d\)](#); or

75 (h) an employee who is employed with a withdrawing entity that has elected, prior to  
76 January 1, 2017, to exclude new employees from participation in this system under Subsection  
77 [49-11-623\(3\)](#).

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

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

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

89 (3) (a) Upon cessation of the participating employer contributions, an employee under

90 Subsection (1)(b) is eligible for service credit in this system.

91 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service  
92 credit earned by an employee under this chapter before July 1, 2009 is not affected under  
93 Subsection (1)(f).

94 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service  
95 credit earned by an employee under this chapter before July 1, 2014, is not affected under  
96 Subsection (1)(g).

97 (4) Upon filing a written request for exemption with the office, the following  
98 employees shall be exempt from coverage under this system:

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

101 (b) an elected official;

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

105 (d) an employee of the Governor's Office of Management and Budget;

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

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

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

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

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

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

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

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

118 (5) (a) Each participating employer shall prepare a list designating those positions  
119 eligible for exemption under Subsection (4).

120 (b) An employee may not be exempted unless the employee is employed in an

121 exempted position designated by the participating employer.

122 (6) (a) In accordance with this section, [Section 49-13-203](#), and [Section 49-22-205](#), a  
123 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
124 or a number equal to 10% of the employees of the municipality, county, or political  
125 subdivision, whichever is [~~tesser~~] less.

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

128 (7) Each participating employer shall:

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

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

131 (8) The office may make rules to implement this section.

132 Section 2. Section **49-13-203** is amended to read:

133 **49-13-203. Exclusions from membership in system.**

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

135 (a) subject to the requirements of Subsection (2), an employee whose employment  
136 status is temporary in nature due to the nature or the type of work to be performed;

137 (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
138 education who participates in a retirement system with a public or private retirement system,  
139 organization, or company designated by the State Board of Regents during any period in which  
140 required contributions based on compensation have been paid on behalf of the employee by the  
141 employer;

142 (c) an employee serving as an exchange employee from outside the state;

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

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

149 (f) an employee who is employed with an employer that has elected to be excluded  
150 from participation in this system under [Subsection 49-13-202\(5\)](#), effective on or after the date  
151 of the employer's election under [Subsection 49-13-202\(5\)](#); or

152 (g) an employee who is employed with a withdrawing entity that has elected, prior to  
153 January 1, 2017, to exclude new employees from participation in this system under Subsection  
154 49-11-623(3).

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

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

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

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

168 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service  
169 credit earned by an employee under this chapter before the date of the election under  
170 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

171 (4) Upon filing a written request for exemption with the office, the following  
172 employees shall be exempt from coverage under this system:

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

175 (b) an elected official;

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

179 (d) an employee of the Governor's Office of Management and Budget;

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

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

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

- 183 (h) an employee of the State Auditor's Office;
- 184 (i) an employee of the State Treasurer's Office;
- 185 (j) any other member who is permitted to make an election under Section [49-11-406](#);
- 186 (k) a person appointed as a city manager or chief city administrator or another person  
187 employed by a municipality, county, or other political subdivision, who is an at-will employee;
- 188 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,  
189 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through  
190 membership in a labor organization that provides retirement benefits to its members; and
- 191 (m) an employee of the Utah Science Technology and Research Initiative created under  
192 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- 193 (5) (a) Each participating employer shall prepare a list designating those positions  
194 eligible for exemption under Subsection (4).
- 195 (b) An employee may not be exempted unless the employee is employed in a position  
196 designated by the participating employer.
- 197 (6) (a) In accordance with this section, [Section 49-12-203](#), and [Section 49-22-205](#), a  
198 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
199 or a number equal to 10% of the employees of the municipality, county, or political  
200 subdivision, whichever is [~~lesser~~] less.
- 201 (b) A municipality, county, or political subdivision may exempt at least one regular  
202 full-time employee.
- 203 (7) Each participating employer shall:
- 204 (a) file employee exemptions annually with the office; and
- 205 (b) update the employee exemptions in the event of any change.
- 206 (8) The office may make rules to implement this section.
- 207 Section 3. Section **49-22-201** is amended to read:
- 208 **49-22-201. System membership -- Eligibility.**
- 209 (1) Beginning July 1, 2011, a participating employer shall participate in this system.
- 210 (2) (a) A person initially entering regular full-time employment with a participating  
211 employer on or after July 1, 2011, who does not have service credit accrued before July 1,  
212 2011, in a Tier I system or plan administered by the board, is eligible:
- 213 (i) as a member for service credit and defined contributions under the Tier II hybrid

214 retirement system established by Part 3, Tier II Hybrid Retirement System; or

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

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

219 (i) make an election to participate in the system created under this chapter [~~within 30~~  
220 ~~days from the date of eligibility for accrual of benefits~~]:

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

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

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

227 (c) An election made by a person initially entering regular full-time employment with a  
228 participating employer under this Subsection (2) is irrevocable beginning one year from the  
229 date of eligibility for accrual of benefits.

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

233 (3) Notwithstanding the provisions of this section and except as provided in Subsection  
234 (4), an elected official initially entering office on or after July 1, 2011:

235 (a) is only eligible to participate in the Tier II defined contribution plan established  
236 under [~~Chapter 22,~~] Part 4, Tier II Defined Contribution Plan; and

237 (b) is not eligible to participate in the Tier II hybrid retirement system established  
238 under [~~Chapter 22,~~] Part 3, Tier II Hybrid Retirement System.

239 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected  
240 official initially entering office on or after July 1, 2011, who has service credit accrued before  
241 July 1, 2011:

242 (a) in a Tier I retirement system or plan administered by the board shall continue in the  
243 Tier I system or plan for which the legislator or full-time elected official is eligible; or

244 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which



245 the legislator or full-time elected official is eligible.

246 Section 4. Section **49-22-203** is amended to read:

247 **49-22-203. Exclusions from membership in system.**

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

249 (a) subject to the requirements of Subsection (2), an employee whose employment  
250 status is temporary in nature due to the nature or the type of work to be performed;

251 (b) except as provided under Subsection (3), an employee of an institution of higher  
252 education who participates in a retirement system with a public or private retirement system,  
253 organization, or company designated by the State Board of Regents during any period in which  
254 required contributions based on compensation have been paid on behalf of the employee by the  
255 employer;

256 (c) an employee serving as an exchange employee from outside the state;

257 (d) an employee of the Department of Workforce Services who is covered under  
258 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; ~~or~~

259 (e) an employee who is employed with a withdrawing entity that has elected, prior to  
260 January 1, 2017, to exclude new employees from participation in this system under Subsection  
261 [49-11-623\(3\)](#)~~[-];~~ or

262 (f) a person who files a written request for exemption with the office under Section  
263 [49-22-205](#).

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

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

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

275 (3) Upon cessation of the participating employer contributions, an employee under

276 Subsection (1)(b) is eligible for service credit in this system.

277 Section 5. Section **49-22-205** is enacted to read:

278 **49-22-205. Exemptions from participation in system.**

279 (1) Upon filing a written request for exemption with the office, the following  
280 employees are exempt from participation in the system as provided in this section:

281 (a) an elected official;

282 (b) an executive department head of the state;

283 (c) a member of the State Tax Commission;

284 (d) a member of the Public Service Commission;

285 (e) a member of a full-time or part-time board or commission;

286 (f) an employee of the Governor's Office of Management and Budget;

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

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

289 (i) an employee of the Governor's Office;

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

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

292 (l) any other member who is permitted to make an election under Section [49-11-406](#);

293 (m) a person appointed as a city manager or appointed as a city administrator or

294 another at-will employee of a municipality, county, or other political subdivision;

295 (n) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,

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

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

300 (2) (a) A participating employer shall prepare a list designating those positions eligible  
301 for exemption under Subsection (1).

302 (b) An employee may not be exempted unless the employee is employed in a position  
303 designated by the participating employer under Subsection (1).

304 (3) (a) In accordance with this section, Section [49-12-203](#), and Section [49-13-203](#), a  
305 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
306 or a number equal to 10% of the employees of the municipality, county, or political

307 subdivision, whichever is less.

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

310 (4) Each participating employer shall:

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

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

313 (5) Beginning on the effective date of the exemption for an employee who elects to be  
314 exempt in accordance with Subsection (1):

315 (a) for a member of the Tier II defined contribution plan:

316 (i) the participating employer shall contribute the nonelective contribution and the  
317 amortization rate described in Section 49-22-401, except that the nonelective contribution is  
318 exempt from the vesting requirements of Subsection 49-22-401(3)(a); and

319 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

320 (b) for a member of the Tier II hybrid retirement system:

321 (i) the participating employer shall contribute the nonelective contribution and the  
322 amortization rate described in Section 49-22-401, except that the contribution is exempt from  
323 the vesting requirements of Subsection 49-22-401(3)(a);

324 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

325 (iii) the member is not eligible for additional service credit in the system.

326 (6) If an employee who is a member of the Tier II hybrid retirement system

327 subsequently revokes the election of exemption made under Subsection (1), the provisions  
328 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee  
329 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

330 (7) (a) All employer contributions made on behalf of an employee shall be invested in  
331 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election  
332 period under Subsection 49-22-201(2)(c) is expired if the employee:

333 (i) elects to be exempt in accordance with Subsection (1); and

334 (ii) continues employment with the participating employer through the one-year  
335 election period under Subsection 49-22-201(2)(c).

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

338 (i) elects to be exempt in accordance with Subsection (1); and  
339 (ii) terminates employment prior to the one-year election period under Subsection  
340 49-22-201(2)(c).

341 (8) (a) The office shall make rules to implement this section.

342 (b) The rules made under this Subsection (8) shall include provisions to allow the  
343 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
344 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
345 8, 2012.

346 Section 6. Section 49-22-303 is amended to read:

347 **49-22-303. Defined contribution benefit established -- Contribution by employer**  
348 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**  
349 **plans.**

350 (1) (a) A participating employer shall make a nonelective contribution on behalf of  
351 each regular full-time employee who is a member of this system in an amount equal to 10%  
352 minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a) of the  
353 member's compensation to a defined contribution plan qualified under Section 401(k) of the  
354 Internal Revenue Code which:

355 (i) is sponsored by the board; and  
356 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

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

358 (i) the qualified 401(k) plan which receives the employer contribution described in this  
359 Subsection (1); or

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

362 (2) (a) The total amount contributed by the participating employer under Subsection  
363 (1)(a), including associated investment gains and losses, vests to the member upon accruing  
364 four years of service credit under this title.

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

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

369 Subsection (2)(a).

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

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

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

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

379 (6) (a) Except as provided in Subsection (6)(b) and [Section 49-22-205](#), if a member  
380 terminates employment with a participating employer prior to the vesting period described in  
381 Subsection (2)(a), all contributions, including associated investment gains and losses, made by  
382 a participating employer on behalf of the member under Subsection (1)(a) are subject to  
383 forfeiture.

384 (b) If a member who terminates employment with a participating employer prior to the  
385 vesting period described in Subsection (2)(a) subsequently enters employment with the same or  
386 another participating employer within 10 years of the termination date of the previous  
387 employment:

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

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

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

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

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

402 Section 7. Section ~~49-22-401~~ is amended to read:

403 **49-22-401. Contributions -- Rates.**

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

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

410 (i) is sponsored by the board; and

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

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

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

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

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

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

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

425 (c) Upon filing a written request for exemption with the office, [~~the following~~  
426 ~~employees are~~] an eligible employee is exempt from the vesting requirements of Subsection  
427 (3)(a)[:] in accordance with Section [49-22-205](#).

428 [~~(i) an executive department head of the state;~~]

429 [~~(ii) a member of the State Tax Commission;~~]

430 [~~(iii) a member of the Public Service Commission;~~]

- 431 ~~[(iv) an employee of the Governor's Office of Management and Budget;]~~  
432 ~~[(v) an employee of the Governor's Office of Economic Development;]~~  
433 ~~[(vi) an employee of the Commission on Criminal and Juvenile Justice;]~~  
434 ~~[(vii) an employee of the Governor's Office;]~~  
435 ~~[(viii) an employee of the State Auditor's Office;]~~  
436 ~~[(ix) an employee of the State Treasurer's Office;]~~  
437 ~~[(x) a person appointed as a city manager or appointed as a city administrator or~~  
438 ~~another at-will employee of a municipality, county, or other political subdivision;]~~  
439 ~~[(xi) an employee of an interlocal cooperative agency created under Title 11, Chapter~~  
440 ~~13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided~~  
441 ~~through membership in a labor organization that provides retirement benefits to its members;~~  
442 ~~and]~~  
443 ~~[(xii) an employee of the Utah Science Technology and Research Initiative created~~  
444 ~~under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.]~~  
445 ~~[(d) (i) A participating employer shall prepare a list designating those positions eligible~~  
446 ~~for exemption under Subsection (3)(c).]~~  
447 ~~[(ii) An employee may not be exempted unless the employee is employed in a position~~  
448 ~~designated by the participating employer under Subsection (3)(c).]~~  
449 ~~[(e) (i) All employer contributions made on behalf of an employee shall be invested in~~  
450 ~~accordance with Subsection 49-22-303(3)(a) until the one-year election period under~~  
451 ~~Subsection 49-22-201(2)(c) is expired if the employee:]~~  
452 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~  
453 ~~[(B) continues employment with the participating employer through the one-year~~  
454 ~~election period under Subsection 49-22-201(2)(c).]~~  
455 ~~[(ii) An employee is entitled to receive a distribution of the employer contributions~~  
456 ~~made on behalf of the employee and all associated investment gains and losses if the~~  
457 ~~employee:]~~  
458 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~  
459 ~~[(B) terminates employment prior to the one-year election period under Subsection~~  
460 ~~49-22-201(2)(c).]~~  
461 ~~[(f) (i) In accordance with this section, a municipality, county, or political subdivision~~

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

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

466 [~~(g) Each participating employer shall:~~]

467 [~~(i) file each employee exemption annually with the office; and]~~

468 [~~(ii) update an employee exemption in the event of any change.~~]

469 [~~(h) (i) The office shall make rules to implement this Subsection (3).]~~

470 [~~(ii) The rules made under Subsection (3)(h)(i) shall include provisions to allow the  
471 exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or  
472 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
473 8, 2012.~~]

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

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

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

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

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

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

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



493 employment:

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

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

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

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

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

508 Section 8. Section **49-22-503** is enacted to read:

509 **49-22-503. Death of members -- Exemption from vesting requirements for**  
510 **employer nonelective contributions to defined contribution plan.**

511 (1) (a) If an active member dies, employer nonelective contributions made on behalf of  
512 the employee to a defined contribution plan under Section [49-22-303](#) or [49-22-401](#) are exempt  
513 from the vesting requirements of Subsections [49-22-303\(2\)\(a\)](#) and [49-22-401\(3\)\(a\)](#).

514 (b) The total amount of nonelective contributions made by the participating employer  
515 vests to the member upon death and the member's beneficiary is entitled to receive a  
516 distribution of the employer contributions made on behalf of the employee and all associated  
517 investment gains and losses.

518 (2) Employer contributions vested and distributed under this section are in addition to  
519 and separate from the benefits payable under Sections [49-22-501](#) and [49-22-502](#).

520 Section 9. Section **49-23-201** is amended to read:

521 **49-23-201. System membership -- Eligibility.**

522 (1) Beginning July 1, 2011, a participating employer that employs public safety service  
523 employees or firefighter service employees shall participate in this system.

524 (2) (a) A public safety service employee or a firefighter service employee initially  
525 entering employment with a participating employer on or after July 1, 2011, who does not have  
526 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,  
527 is eligible:

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

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

532 (b) A public safety service employee or a firefighter service employee initially entering  
533 employment with a participating employer on or after July 1, 2011, shall:

534 (i) make an election to participate in the system created under this chapter [~~within 30~~  
535 ~~days from the date of eligibility for accrual of benefits~~]:

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

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

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

542 (c) An election made by a public safety service employee or firefighter service  
543 employee initially entering employment with a participating employer under this Subsection (2)  
544 is irrevocable beginning one year from the date of eligibility for accrual of benefits.

545 (d) If no election is made under Subsection (2)(b)(i), the public safety service employee  
546 or firefighter service employee shall become a member eligible for service credit and defined  
547 contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid  
548 Retirement System.

549 Section 10. Section **49-23-203** is enacted to read:

550 **49-23-203. Exemptions from participation in system.**

551 (1) Upon filing a written request for exemption with the office, the following  
552 employees are exempt from participation in the system as provided in this section if the  
553 employee is a public safety service employee and is:

554 (a) an executive department head of the state;

- 555           (b) an elected or appointed sheriff of a county; or  
556           (c) an elected or appointed chief of police of a municipality.  
557           (2) (a) A participating employer shall prepare a list designating those positions eligible  
558 for exemption under Subsection (1).  
559           (b) An employee may not be exempted unless the employee is employed in a position  
560 designated by the participating employer under Subsection (1).  
561           (3) Each participating employer shall:  
562           (a) file each employee exemption annually with the office; and  
563           (b) update an employee exemption in the event of any change.  
564           (4) Beginning on the effective date of the exemption for an employee who elects to be  
565 exempt in accordance with Subsection (1):  
566           (a) for a member of the Tier II defined contribution plan:  
567           (i) the participating employer shall contribute the nonelective contribution and the  
568 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
569 the vesting requirements of Subsection 49-23-401(3)(a); and  
570           (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and  
571           (b) for a member of the Tier II hybrid retirement system:  
572           (i) the participating employer shall contribute the nonelective contribution and the  
573 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
574 the vesting requirements of Subsection 49-23-401(3)(a);  
575           (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and  
576           (iii) the member is not eligible for additional service credit in the system.  
577           (5) If an employee who is a member of the Tier II hybrid retirement system  
578 subsequently revokes the election of exemption made under Subsection (1), the provisions  
579 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee  
580 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.  
581           (6) (a) All employer contributions made on behalf of an employee shall be invested in  
582 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election  
583 period under Subsection 49-23-201(2)(c) is expired if the employee:  
584           (i) elects to be exempt in accordance with Subsection (1); and  
585           (ii) continues employment with the participating employer through the one-year

586 election period under Subsection 49-23-201(2)(c).

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

589 (i) elects to be exempt in accordance with Subsection (1); and

590 (ii) terminates employment prior to the one-year election period under Subsection  
591 49-23-201(2)(c).

592 (7) (a) The office shall make rules to implement this section.

593 (b) The rules made under this Subsection (7) shall include provisions to allow the  
594 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
595 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
596 8, 2012.

597 Section 11. Section **49-23-401** is amended to read:

598 **49-23-401. Contributions -- Rates.**

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

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

605 (i) is sponsored by the board; and

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

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

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

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

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

615 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the  
616 participating employer under Subsection (2)(a) vests to the member upon accruing four years of

617 service credit under this title.

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

620 (c) Upon filing a written request for exemption with the office, [~~the following~~  
621 ~~employees are~~] an eligible employee is exempt from the vesting requirements of Subsection  
622 (3)(a) [if the employee is a public safety service employee and is:] in accordance with Section  
623 49-23-203.

624 [~~(i) an executive department head of the state;~~]

625 [~~(ii) an elected or appointed sheriff of a county; or~~]

626 [~~(iii) an elected or appointed chief of police of a municipality;~~]

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

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

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

634 [~~(A) elects to be exempt in accordance with Subsection (3)(c); and]~~

635 [~~(B) continues employment with the participating employer through the one-year~~  
636 ~~election period under Subsection 49-23-201(2)(c).]~~

637 [~~(ii) An employee is entitled to receive a distribution of the employer contributions~~  
638 ~~made on behalf of the employee and all associated investment gains and losses if the~~  
639 ~~employee:]~~

640 [~~(A) elects to be exempt in accordance with Subsection (3)(c); and]~~

641 [~~(B) terminates employment prior to the one-year election period under Subsection~~  
642 ~~49-23-201(2)(c).]~~

643 [~~(f) Each participating employer shall:]~~

644 [~~(i) file each employee exemption annually with the office; and]~~

645 [~~(ii) update an employee exemption in the event of any change.]~~

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

647 [~~(ii) The rules made under Subsection (3)(g)(i) shall include provisions to allow the~~

648 ~~exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or~~  
649 ~~after July 1, 2011, on behalf of an exempted employee who began the employment before May~~  
650 ~~8, 2012.]~~

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

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

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

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

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

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

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

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

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

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

679 contributions made under this section.

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

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

685 Section 12. Section **49-23-504** is enacted to read:

686 **49-23-504. Death of members -- Exemption from vesting requirements for**  
687 **employer nonelective contributions to defined contribution plan.**

688 (1) (a) If an active member dies, employer nonelective contributions made on behalf of  
689 the employee to a defined contribution plan under Section [49-23-302](#) or [49-23-401](#) are exempt  
690 from the vesting requirements of Subsections [49-23-302\(2\)\(a\)](#) and [49-23-401\(3\)\(a\)](#).

691 (b) The total amount of nonelective contributions made by the participating employer  
692 vests to the member upon death and the member's beneficiary is entitled to receive a  
693 distribution of the employer contributions made on behalf of the employee and all associated  
694 investment gains and losses.

695 (2) Employer contributions vested and distributed under this section are in addition to  
696 and separate from the benefits payable under Sections [49-23-501](#), [49-23-502](#), and [49-23-503](#).

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**Legislative Review Note**  
**as of 11-13-14 2:20 PM**

**Office of Legislative Research and General Counsel**