

## HB0205S01 compared with HB0205

~~text~~ shows text that was in HB0205 but was deleted in HB0205S01.

text shows text that was not in HB0205 but was inserted into HB0205S01.

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Representative Rich Cunningham proposes the following substitute bill:

### TIER II RETIREMENT AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rich Cunningham**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies the New Public Employees' Tier II Contributory Retirement Act and the New Public Safety and Firefighter Tier II Contributory Retirement Act by amending retirement benefits.

##### Highlighted Provisions:

This bill:

- ▶ increases the maximum contribution a participating employer pays toward retirement benefits for a Tier II public employee, public safety service employee, and firefighter;
- ▶ authorizes an increase to the defined benefit provided to a Tier II Hybrid Retirement System public employee, public safety service employee, or firefighter;
- ▶ increases the retirement multiplier for years of service credit accrued on and after

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July 1, 2017, for the Tier II Hybrid Retirement System for a public employee, public safety service employee, or firefighter;

- ▶ caps the number of years of service credit that may be accrued for a Tier II Hybrid Retirement System public employee at 35 years;
- ▶ caps the number of years of service credit that may be accrued for a Tier II Hybrid Retirement System public safety service employee or firefighter at 25 years;
- ▶ increases certain death benefits for an active member of the New Public Safety and Firefighter Tier II Contributory Retirement system if the death is classified as a line-of-duty death;
- ▶ requires the Retirement and Independent Entities Interim Committee to study additional revenue sources to fund benefit enhancements for a member covered under certain Tier II retirement systems; and
- ▶ make technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

### Utah Code Sections Affected:

AMENDS:

49-22-301, as last amended by Laws of Utah 2011, Chapter 439

49-22-303, as last amended by Laws of Utah 2015, Chapter 315

49-22-305, as last amended by Laws of Utah 2011, Chapter 439

49-22-310, as enacted by Laws of Utah 2011, Chapter 439

49-22-401, as last amended by Laws of Utah 2015, Chapter 315

49-23-301, as last amended by Laws of Utah 2015, Chapter 166

49-23-302, as last amended by Laws of Utah 2011, Chapter 439

49-23-304, as last amended by Laws of Utah 2011, Chapter 439

49-23-309, as enacted by Laws of Utah 2011, Chapter 439

49-23-401, as last amended by Laws of Utah 2015, Chapter 315

49-23-503, as last amended by Laws of Utah 2015, Chapters 166, 463, and 463

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### Uncodified Material Affected:

### ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **49-22-301** is amended to read:

**49-22-301. Contributions.**

(1) Participating employers and members shall pay the certified contribution rates to the office to maintain the defined benefit portion of this system on a financially and actuarially sound basis.

(2) (a) A participating employer shall pay up to [~~10%~~] 11% of compensation toward the certified contribution rate to the office for the defined benefit portion of this system.

(b) A member shall only pay to the office the amount, if any, of the certified contribution rate for the defined benefit portion of this system that exceeds the percent of compensation paid by the participating employer under Subsection (2)(a).

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

(3) A participating employer may not elect to pay all or part of the required member contributions under Subsection (2)(b), in addition to the required participating employer contributions.

(4) (a) A member contribution is credited by the office to the account of the individual member.

(b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) A member contribution is vested and nonforfeitable.

(5) (a) Each member is considered to consent to payroll deductions of member contributions.

(b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

(6) Benefits provided under the defined benefit portion of the Tier II Hybrid Retirement System created under this part:

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(a) except as provided under Subsection (7), may not be increased unless the actuarial funded ratios of all systems under this title reach 100%; and

(b) may be decreased only in accordance with the provisions of Section 49-22-310.

(7) The Legislature authorizes an increase to the defined benefit provided to a member covered under Title 49, Chapter 22, Part 3, Tier II Hybrid Retirement System, effective on July 1, 2017, as provided in this bill.

Section 2. Section **49-22-303** is amended to read:

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

(1) (a) A participating employer shall make a nonelective contribution on behalf of each regular full-time employee who is a member of this system in an amount equal to [~~+0%~~ 11% minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

(i) is sponsored by the board; and

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

(b) The member may make voluntary deferrals to:

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

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

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

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

(3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).

(b) A member may direct the investment of contributions made by a participating

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employer under Subsection (1)(a) only after the contributions have vested in accordance with Subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

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Section 3. Section 49-22-305 is amended to read:

### **49-22-305. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) The retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 35 years of service credit, the allowance is an amount equal to:

(i) 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011[-], and before July 1, 2017; plus

(ii) 1.72% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2017, up to a maximum of 35 years of service credit accrued under this Subsection (2)(a)(ii).

(b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within one-tenth of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be

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paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:

(i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or

(ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:

(i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or

(ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(5) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

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Section 4. Section **49-22-310** is amended to read:

**49-22-310. Defined benefit adjustments -- Conditions -- Process -- Future years accrual.**

(1) In accordance with this section, the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if:

(a) authorized under Subsection 49-22-301(7); or

(b) the member's contribution required under Subsection 49-22-301(2)(b) to the certified contribution rate for the defined benefit portion of this system exceeds 2% of the member's salary and:

~~(a)~~ (i) (A) the membership council created under Section 49-11-202 recommends an adjustment to the board in accordance with Subsection (2); and

~~(ii)~~ (B) the board recommends specific adjustments to the Legislature in accordance with Subsection (2); or

~~(b)~~ (ii) (i) an actuarial study that conforms with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board and requested or commissioned by the board or the Legislature concludes:

~~(i)~~ (A) there is a significant likelihood that contribution rates will continue to rise; and

~~(ii)~~ (B) that participating employers are liable for system costs above the contribution rate established under Subsection 49-22-301(2)(a).

(2) If the conditions under Subsection (1)~~(a) or (b)~~ are met, the Legislature may adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued or applied for future years of service including:

(a) the final average salary calculation provided under Section 49-22-102;

(b) the years of service required to be eligible to receive a retirement allowance under Section 49-22-304;

(c) the years of service credit multiplier established under Subsection 49-22-305(2)(a);

(d) the annual cost-of-living adjustment under Section 49-22-308; or

(e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement System.



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(3) (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if an actuarial study described under Subsection (1)(b)(ii) concludes, due to current and projected economic conditions, member participation levels, and system structure, that the system:

- (i) cannot reasonably be sustained under its current provisions;
  - (ii) is critically underfunded; and
  - (iii) has become unstable and is in risk of collapse.
- (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:
- (i) conversion to a different type of retirement plan;
  - (ii) equitable distribution of system assets to retirees and members; and
  - (iii) a closure of the system.

Section 5. Section **49-22-401** is amended to read:

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

(1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of [~~10%~~] 11% of the participant's compensation to a defined contribution plan.

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

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

(b) The member may make voluntary deferrals to:

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

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

(c) In addition to the percent specified under Subsection [~~(2)(a)~~] (1), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.

(3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the

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participating employer under Subsection [~~(2)(a)~~] (1) vests to the member upon accruing four years employment as a regular full-time employee under this title.

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

(c) Upon filing a written request for exemption with the office, an eligible employee is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section 49-22-205.

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

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

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

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

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

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

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

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

(ii) the length of time that the member worked with the previous employer shall be

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included in determining whether the member has completed the vesting period under Subsection (3)(a).

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

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

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

Section 6. Section **49-23-301** is amended to read:

### **49-23-301. Contributions.**

(1) Participating employers and members shall pay the certified contribution rates to the office to maintain the defined benefit portion of this system on a financially and actuarially sound basis in accordance with Subsection (2).

(2) (a) A participating employer shall pay up to [~~12%~~] 14% of compensation toward the certified contribution rate to the office for the defined benefit portion of this system.

(b) A member shall only pay to the office the amount, if any, of the certified contribution rate for the defined benefit portion of this system that exceeds the percent of compensation paid by the participating employer under Subsection (2)(a).

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

(3) A participating employer may not elect to pay all or part of the required member contributions under Subsection (2)(b), in addition to the required participating employer contributions.

(4) (a) A member contribution is credited by the office to the account of the individual member.

(b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.

(c) A member contribution is vested and nonforfeitable.

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(5) (a) Each member is considered to consent to payroll deductions of member contributions.

(b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

(6) Except as provided under ~~[Subsection]~~ Subsections (7) and (8), benefits provided under the defined benefit portion of the Tier II hybrid retirement system created under this part:

(a) may not be increased unless the actuarial funded ratios of all systems under this title reach 100%; and

(b) may be decreased only in accordance with the provisions of Section 49-23-309.

(7) The Legislature authorizes an increase to the death benefit provided to a Tier II public safety service employee or firefighter member's surviving spouse at the time of death effective on May 12, 2015, as provided in Section 49-23-503.

(8) The Legislature authorizes an increase to the defined benefit provided to a member covered under Title 49, Chapter 23, Part 3, Tier II Hybrid Retirement System, effective on July 1, 2017, as provided in this bill.

Section 7. Section **49-23-302** is amended to read:

**49-23-302. Defined contribution benefit established -- Contribution by employer and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.**

(1) (a) A participating employer shall make a nonelective contribution on behalf of each public safety service employee or firefighter service employee who is a member of this system in an amount equal to ~~[12%]~~ 14% minus the contribution rate paid by the employer pursuant to Subsection 49-23-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

(i) is sponsored by the board; and

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

(b) The member may make voluntary deferrals to:

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

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

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

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

(3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).

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

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

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

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

(6) (a) Except as provided in Subsection (6)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a), all contributions, including associated investment gains and losses, made by a participating employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

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

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

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

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

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

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

Section 8. Section **49-23-304** is amended to read:

**49-23-304. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) The retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 25 years of service credit, the allowance is an amount equal to:

(i) 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011[-], and before July 1, 2017; plus

(ii) 2% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2017, up to a maximum of 25 years of service credit accrued under this Subsection (2)(a)(ii).

(b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 25 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for

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retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:

(i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or

(ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month:

(i) following the month in which the spouse died, if the application is received by the office within 90 days of the spouse's death; or

(ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the spouse's death.

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(4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(5) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

Section 9. Section **49-23-309** is amended to read:

**49-23-309. Defined benefit adjustments -- Conditions -- Process -- Future years accrual.**

(1) In accordance with this section, the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if:

(a) authorized under Subsection 49-23-301(8); or

(b) the member's contribution required under Subsection 49-23-301(2)(b) to the certified contribution rate for the defined benefit portion of this system exceeds 2% of the member's salary and:

~~[(a)]~~ (i) (A) the membership council created under Section 49-11-202 recommends an adjustment to the board in accordance with Subsection (2); and

~~[(ii)]~~ (B) the board recommends specific adjustments to the Legislature in accordance with Subsection (2); or

~~[(b)]~~ (ii) an actuarial study that conforms with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board and requested or commissioned by the board or the Legislature concludes:

~~[(i)]~~ (A) there is a significant likelihood that contribution rates will continue to rise; and

~~[(ii)]~~ (B) that participating employers are liable for system costs above the contribution rate established under Subsection 49-23-301(2)(a).

(2) If the conditions under Subsection (1)~~[(a) or (b)]~~ are met, the Legislature may adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued



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or applied for future years of service including:

- (a) the final average salary calculation provided under Section 49-23-102;
- (b) the years of service required to be eligible to receive a retirement allowance under Section 49-23-303;
- (c) the years of service credit multiplier established under Subsection 49-23-304(2)(a);
- (d) the annual cost-of-living adjustment under Section 49-23-307; or
- (e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement System.

(3) (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if an actuarial study described under Subsection (1)(b)(ii) concludes, due to current and projected economic conditions, member participation levels, and system structure, that the system:

- (i) cannot reasonably be sustained under its current provisions;
  - (ii) is critically underfunded; and
  - (iii) has become unstable and is in risk of collapse.
- (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:
- (i) conversion to a different type of retirement plan;
  - (ii) equitable distribution of system assets to retirees and members; and
  - (iii) a closure of the system.

Section 10. Section **49-23-401** is amended to read:

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

(1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of [~~12%~~] 14% of the participant's compensation to a defined contribution plan.

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

- (i) is sponsored by the board; and
  - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
- (b) The member may make voluntary deferrals to:

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

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

(c) In addition to the percent specified under Subsection [~~(2)(a)~~] (1), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.

(3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection [~~(2)(a)~~] (1) vests to the member upon accruing four years of service credit under this title.

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

(c) Upon filing a written request for exemption with the office, an eligible employee is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section 49-23-203.

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. Section 49-23-503 is amended to read:

49-23-503. Death of active member in line of duty -- Payment of benefits.

If an active member of this system dies, benefits are payable as follows:

(1) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:

(a) If the member has accrued less than 20 years of public safety service or firefighter service credit, the spouse at the time of death shall receive a lump sum equal to six months of the active member's final average salary and an allowance equal to [30%] 40% of the member's final average monthly salary.

(b) If the member has accrued 20 or more years of public safety service or firefighter service credit, the member shall be considered to have retired with an Option One allowance calculated without an actuarial reduction under Section 49-23-304 and the spouse at the time of death shall receive the allowance that would have been payable to the member.

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(2) (a) A volunteer firefighter is eligible for a line-of-duty death benefit under this section if the death results from external force, violence, or disease directly resulting from firefighter service.

(b) The lowest monthly compensation of firefighters of a city of the first class in this state at the time of death shall be considered to be the final average monthly salary of a volunteer firefighter for purposes of computing these benefits.

(c) Each volunteer fire department shall maintain a current roll of all volunteer firefighters which meet the requirements of Subsection 49-23-102(13) to determine the eligibility for this benefit.

(3) (a) If the death is classified as a line-of-duty death by the office, death benefits are payable under this section and the spouse at the time of death is not eligible for benefits under Section 49-23-502.

(b) If the death is not classified as a line-of-duty death by the office, benefits are payable in accordance with Section 49-23-502.

(4) (a) A spouse who qualifies for a monthly benefit under this section shall apply in writing to the office.

(b) The allowance shall begin on the first day of the month following the month in which the:

(i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or

(ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

### Section 12. Study.

During the 2016 interim, the Retirement and Independent Entities Interim Committee of the Legislature shall study additional revenue sources to fund benefit enhancements for a member covered under Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Title 49, Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

### Section ~~{11}~~13. **Effective date.**

This bill takes effect on July 1, 2017, except that uncodified Section 12, Study, takes effect on May 10, 2016.

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Section ~~{12}~~14. **Revisor instructions.**

It is the intent of the Legislature that, in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the language "this bill" in Subsections 49-22-301(7) and 49-23-301(8) to the bill's designated chapter and section number in the Laws of Utah.

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**Legislative Review Note**

**~~Office of Legislative Research and General Counsel~~**