

1 **RETIREMENT SYSTEMS AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Kraig Powell

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ clarifies retiree reporting provisions to the Utah State Retirement Office on the
14 status of the reemployment;
- 15 ▶ allows Utah Retirement Systems to make payments to a deceased member's
16 beneficiaries 30 days instead of three months after the date of death;
- 17 ▶ amends the definition of "final average salary" to specify that its basis is contract
18 year for educational institutions, state fiscal year for judges, and calendar year for all
19 other participating employers;
- 20 ▶ clarifies that a public safety employee who is transferred or promoted to an
21 administration position within the same department primarily to manage or
22 supervise public safety service employees will continue to earn public safety service
23 credit;
- 24 ▶ addresses references to death or disability;
- 25 ▶ provides that a person's retirement date is among the circumstances in which a
26 person qualified for a monthly disability benefit will no longer receive the benefit;
- 27 ▶ provides that for an elected official under Tier II retirement, the total amount
28 contributed by the participating employer and the total amount contributed by the
29 elected official vests immediately;

- 30 ▶ clarifies four-year vesting provisions for Tier II defined contribution benefits;
- 31 ▶ repeals provisions that require the Utah State Retirement Office to include accrued
- 32 earnings in Unused Sick Leave Retirement Program II; and
- 33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 **AMENDS:**

- 40 **49-11-505**, as last amended by Laws of Utah 2015, Chapters 243 and 256
- 41 **49-11-609**, as last amended by Laws of Utah 2005, Chapter 116
- 42 **49-12-102**, as last amended by Laws of Utah 2015, Chapter 243
- 43 **49-13-102**, as last amended by Laws of Utah 2014, Chapter 15
- 44 **49-14-102**, as last amended by Laws of Utah 2015, Chapter 463
- 45 **49-14-201**, as last amended by Laws of Utah 2015, Chapters 100 and 463
- 46 **49-15-102**, as last amended by Laws of Utah 2015, Chapter 463
- 47 **49-15-201**, as last amended by Laws of Utah 2015, Chapters 100 and 463
- 48 **49-16-102**, as last amended by Laws of Utah 2015, Chapter 254
- 49 **49-17-102**, as last amended by Laws of Utah 2008, Chapter 3
- 50 **49-18-102**, as last amended by Laws of Utah 2008, Chapter 3
- 51 **49-21-403**, as last amended by Laws of Utah 2013, Chapter 316
- 52 **49-22-102**, as last amended by Laws of Utah 2013, Chapters 109 and 127
- 53 **49-22-201**, as last amended by Laws of Utah 2015, Chapter 315
- 54 **49-22-205**, as enacted by Laws of Utah 2015, Chapter 315
- 55 **49-22-303**, as last amended by Laws of Utah 2015, Chapter 315
- 56 **49-22-401**, as last amended by Laws of Utah 2015, Chapter 315
- 57 **49-23-102**, as last amended by Laws of Utah 2015, Chapters 254 and 463

58 49-23-302, as last amended by Laws of Utah 2011, Chapter 439

59 49-23-401, as last amended by Laws of Utah 2015, Chapter 315

60 67-19-14.4, as last amended by Laws of Utah 2013, Chapter 277

61

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

63 Section 1. Section 49-11-505 is amended to read:

64 **49-11-505. Reemployment of a retiree -- Restrictions.**

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

66 (i) means a person who:

67 (A) retired from a participating employer; and

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

69 (ii) does not include a person:

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

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

72 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

73 Section 49-11-621 after July 1, 2010; and

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

75 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by

76 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.

77 (b) (i) This section does not apply to employment as an elected official if the elected

78 official's position is not full time as certified by the participating employer.

79 (ii) The provisions of this section apply to an elected official whose elected position is

80 full time as certified by the participating employer.

81 (c) (i) This section does not apply to employment as a part-time appointed board

82 member who does not receive any remuneration, stipend, or other benefit for the part-time

83 appointed board member's service.

84 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does

85 not include receipt of per diem and travel expenses up to the amounts established by the

86 Division of Finance in:

87 (A) Section 63A-3-106;

88 (B) Section 63A-3-107; and

89 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
90 63A-3-107.

91 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
92 means a person who is employed by a participating employer and who performs emergency
93 services for another participating employer that is a different agency in which the person:

94 (A) has been trained in techniques and skills required for the service the person
95 provides to the participating employer;

96 (B) continues to receive regular training required for the service;

97 (C) is on the rolls as a trained affiliated emergency services worker of the participating
98 employer; and

99 (D) provides ongoing service for a participating employer, which service may include
100 service as a volunteer firefighter, reserve law enforcement officer, search and rescue personnel,
101 emergency medical technician, ambulance personnel, park ranger, or public utilities worker.

102 (ii) A person who performs work or service but does not meet the requirements of
103 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
104 Subsection (1)(d).

105 (iii) The office may not cancel the retirement allowance of a retiree who is employed as
106 an affiliated emergency services worker within one year of the retiree's retirement date if the
107 affiliated emergency services worker does not receive any compensation, except for:

108 (A) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money
109 or cash equivalent payment not tied to productivity and paid periodically for services;

110 (B) a length-of-service award;

111 (C) insurance policy premiums paid by the participating employer in the event of death
112 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

113 (D) reimbursement of expenses incurred in the performance of duties.

114 (iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any
115 discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

116 (v) Beginning January 1, 2016, the board shall adjust the amount under Subsection
117 (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year
118 as measured by a United States Bureau of Labor Statistics Consumer Price Index average as
119 determined by the board.

120 (vi) The office shall cancel the retirement allowance of a retiree for the remainder of
121 the calendar year if employment as an affiliated emergency services worker with a participating
122 employer exceeds the limitation under Subsection (1)(d)(iv).

123 (vii) If a retiree is employed as an affiliated emergency services worker under the
124 provisions of Subsection (1)(d), the termination date of the employment as an affiliated
125 emergency services worker, as confirmed in writing by the participating employer, is
126 considered the retiree's retirement date for the purpose of calculating the separation
127 requirement under Subsection (3)(a).

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

- 129 (a) (i) earn additional service credit; or
- 130 (ii) receive any retirement related contribution from a participating employer; and
- 131 (b) receive a retirement allowance.

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

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

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

139 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree
140 does not receive any employer provided benefits, including:

141 (A) medical benefits;

- 142 (B) dental benefits;
- 143 (C) other insurance benefits except for workers' compensation as provided under Title
- 144 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law
- 145 for Social Security, Medicare, and unemployment insurance; or
- 146 (D) paid time off, including sick, annual, or other type of leave; and
- 147 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in
- 148 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the
- 149 retiree's retirement allowance is based; or
- 150 (B) the retiree is reemployed as a judge as defined under Section [78A-11-102](#).
- 151 (c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection
- 152 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar
- 153 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average
- 154 as determined by the board.
- 155 (d) The office shall cancel the retirement allowance of a retiree for the remainder of the
- 156 calendar year if the reemployment with a participating employer exceeds the limitation under
- 157 Subsection (3)(b)(iii)(A).
- 158 (e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination
- 159 date of the reemployment, as confirmed in writing by the participating employer, is considered
- 160 the retiree's retirement date for the purpose of calculating the separation requirement under
- 161 Subsection (3)(a).
- 162 (f) If a retiree received a retirement allowance in error, due to reemployment in
- 163 violation of this section:
 - 164 (i) the office shall cancel the retiree's retirement allowance; and
 - 165 (ii) if the retiree applies for a future benefit, the office shall recover any overpayment in
 - 166 accordance with the provisions of Section [49-11-607](#).
- 167 (4) If a reemployed retiree has completed the one-year separation from employment
- 168 with a participating employer required under Subsection (3)(a), the retiree may elect to:
 - 169 (a) earn additional service credit in accordance with this title and cancel the retiree's

170 retirement allowance; or

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

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

177 (b) A participating employer who reemploys a retiree shall contribute to the office the
178 amortization rate if the reemployed retiree:

179 (i) has completed the one-year separation from employment with a participating
180 employer required under Subsection (3)(a); and

181 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
182 allowance while reemployed.

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

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

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

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

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

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

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

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

195 (i) the reemployment of a retiree in violation of Subsection (3); or

196 (ii) the election of a reemployed retiree under Subsection (4)(a).

197 (b) If the retiree is eligible for retirement coverage in the reemployed position, the

198 office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the
199 retiree to active member status on the first day of the month following the date of:

200 (i) reemployment if the retiree is subject to Subsection (3); or

201 (ii) an election by an employee under Subsection (4)(a).

202 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
203 position:

204 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

205 (ii) the participating employer shall pay the amortization rate to the office on behalf of
206 the retiree.

207 (8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date
208 of reemployment:

209 (i) is not entitled to a recalculated retirement benefit; and

210 (ii) will resume the allowance that was being paid at the time of cancellation.

211 (b) Subject to Subsection (2), a retiree who is reinstated to active membership under
212 Subsection (7) and who retires two or more years after the date of reinstatement to active
213 membership shall:

214 (i) resume receiving the allowance that was being paid at the time of cancellation; and

215 (ii) receive an additional allowance based on the formula in effect at the date of the
216 subsequent retirement for all service credit accrued between the first and subsequent retirement
217 dates.

218 (9) (a) A retiree subject to this section shall report to the office the status of the
219 reemployment under Subsection (1)(d), (3), or (4).

220 (b) If the retiree fails to inform the office of an election under Subsection (4), the office
221 shall withhold one month's benefit for each month the retiree fails to inform the office under
222 Subsection (9)(a).

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

225 (a) before retiring:

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

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

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

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

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

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

241 Section 2. Section 49-11-609 is amended to read:

242 **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**
243 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**
244 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**
245 **expenses.**

246 (1) As used in this section, "member" includes a member, retiree, participant, covered
247 individual, a spouse of a retiree participating in the insurance benefits created by Sections
248 49-12-404 and 49-13-404, or an alternate payee under a domestic relations order dividing a
249 defined contribution account.

250 (2) The most recent beneficiary designations signed by the member and filed with the
251 office, including electronic records, at the time of the member's death are binding in the
252 payment of any benefits due under this title.

253 (3) (a) Except where an optional continuing benefit is chosen, or the law makes a

254 specific benefit designation to a dependent spouse, a member may revoke a beneficiary
255 designation at any time and may execute and file a different beneficiary designation with the
256 office.

257 (b) A change of beneficiary designation shall be completed on forms provided by the
258 office.

259 (4) (a) All benefits payable by the office may be paid or applied to the benefit of the
260 surviving next of kin of the deceased in the order of precedence established under Title 75,
261 Chapter 2, Intestate Succession and Wills, if:

262 (i) no beneficiary is designated or if all designated beneficiaries have predeceased the
263 member;

264 (ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by
265 the office within 12 months of the date a reasonable attempt is made by the office to locate the
266 beneficiaries; or

267 (iii) the beneficiary has not completed the forms necessary to pay the benefits within
268 six months of the date that beneficiary forms are sent to the beneficiary's last-known address.

269 (b) (i) A payment may not be made to a person included in any of the groups referred
270 to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups
271 preceding it.

272 (ii) Payment to a person in any group based upon receipt from the person of an
273 affidavit in a form satisfactory to the office that:

274 (A) there are no living individuals in the group preceding it;

275 (B) the probate of the estate of the deceased has not been commenced; and

276 (C) more than [~~three months~~] 30 days have elapsed since the date of death of the
277 decedent.

278 (5) Benefits paid under this section shall be:

279 (a) a full satisfaction and discharge of all claims for benefits under this title; and

280 (b) payable by reason of the death of the decedent.

281 Section 3. Section **49-12-102** is amended to read:

282 **49-12-102. Definitions.**

283 As used in this chapter:

284 (1) "Benefits normally provided":

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

286 (i) a leave benefit of any kind;

287 (ii) insurance coverage of any kind if the employer pays some or all of the premium for
288 the coverage;

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

291 (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the
292 benefit; and

293 (b) does not include:

294 (i) a payment for Social Security;

295 (ii) workers' compensation insurance;

296 (iii) unemployment insurance;

297 (iv) a payment for Medicare;

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

300 (vi) any other benefit that state or federal law requires an employer to provide an
301 employee who would not otherwise be eligible to receive the benefit; or

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

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

309 (i) bonuses;

- 310 (ii) cost-of-living adjustments;
- 311 (iii) other payments currently includable in gross income and that are subject to Social
- 312 Security deductions, including any payments in excess of the maximum amount subject to
- 313 deduction under Social Security law;
- 314 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
- 315 or other benefits authorized by federal law; and
- 316 (v) member contributions.
- 317 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
- 318 under Internal Revenue Code, Section 401(a)(17).
- 319 (c) "Compensation" does not include:
- 320 (i) the monetary value of remuneration paid in kind, including a residence or use of
- 321 equipment;
- 322 (ii) the cost of any employment benefits paid for by the participating employer;
- 323 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
- 324 otherwise ineligible for service credit;
- 325 (iv) any payments upon termination, including accumulated vacation, sick leave
- 326 payments, severance payments, compensatory time payments, or any other special payments; or
- 327 (v) any allowances or payments to a member for costs or expenses paid by the
- 328 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
- 329 housing costs, insurance costs, equipment costs, and dependent care costs.
- 330 (d) The executive director may determine if a payment not listed under this Subsection
- 331 (2) falls within the definition of compensation.
- 332 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
- 333 highest five years of annual compensation preceding retirement subject to Subsections (3)(a),
- 334 (b), (c), [~~and~~] (d), and (e).
- 335 (a) Except as provided in Subsection (3)(b), the percentage increase in annual
- 336 compensation in any one of the years used may not exceed the previous year's compensation by
- 337 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power

338 of the dollar during the previous year, as measured by a United States Bureau of Labor
339 Statistics Consumer Price Index average as determined by the board.

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

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

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

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

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

351 (e) The annual compensation used to calculate final average salary shall be based on:

352 (i) a calendar year for a member employed by a participating employer that is not an
353 educational institution; or

354 (ii) a contract year for a member employed by an educational institution.

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

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

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

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

365 (ii) a classified school employee:

- 366 (A) who is hired before July 1, 2013; and
- 367 (B) whose employment normally requires an average of 20 hours per week or more for
368 a participating employer, regardless of benefits provided;
- 369 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
370 of January 1, 1990, as provided in Section [49-12-407](#);
- 371 (iv) a faculty member or employee of an institution of higher education who is
372 considered full-time by that institution of higher education; and
- 373 (v) an individual who otherwise meets the definition of this Subsection (5) who
374 performs services for a participating employer through a professional employer organization or
375 similar arrangement.
- 376 (c) "Regular full-time employee" does not include a classified school employee:
- 377 (i) (A) who is hired on or after July 1, 2013; and
- 378 (B) who does not receive benefits normally provided by the participating employer
379 even if the employment normally requires an average of 20 hours per week or more for a
380 participating employer; or
- 381 (ii) (A) who is hired before July 1, 2013;
- 382 (B) who did not qualify as a regular full-time employee before July 1, 2013;
- 383 (C) who does not receive benefits normally provided by the participating employer;
- 384 and
- 385 (D) whose employment hours are increased on or after July 1, 2013, to require an
386 average of 20 hours per week or more for a participating employer.
- 387 (6) "System" means the Public Employees' Contributory Retirement System created
388 under this chapter.
- 389 (7) "Years of service credit" means:
- 390 (a) a period consisting of 12 full months as determined by the board;
- 391 (b) a period determined by the board, whether consecutive or not, during which a
392 regular full-time employee performed services for a participating employer, including any time
393 the regular full-time employee was absent on a paid leave of absence granted by a participating

394 employer or was absent in the service of the United States government on military duty as
395 provided by this chapter; or

396 (c) the regular school year consisting of not less than eight months of full-time service
397 for a regular full-time employee of an educational institution.

398 Section 4. Section **49-13-102** is amended to read:

399 **49-13-102. Definitions.**

400 As used in this chapter:

401 (1) "Benefits normally provided" has the same meaning as defined in Section
402 [49-12-102](#).

403 (2) (a) Except as provided in Subsection (2)(c), "compensation" means the total
404 amount of payments made by a participating employer to a member of this system for services
405 rendered to the participating employer, including:

406 (i) bonuses;

407 (ii) cost-of-living adjustments;

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

411 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
412 or other benefits authorized by federal law.

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

415 (c) "Compensation" does not include:

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

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

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

421 (iv) any payments upon termination, including accumulated vacation, sick leave

422 payments, severance payments, compensatory time payments, or any other special payments; or

423 (v) any allowances or payments to a member for costs or expenses paid by the
424 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
425 housing costs, insurance costs, equipment costs, and dependent care costs.

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

428 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
429 highest three years of annual compensation preceding retirement subject to [~~the following:~~]
430 Subsections (3)(a), (b), (c), and (d).

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

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

- 438 (i) the member has transferred from another agency; or
- 439 (ii) the member has been promoted to a new position.

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

444 (d) The annual compensation used to calculate final average salary shall be based on:

445 (i) a calendar year for a member employed by a participating employer that is not an
446 educational institution; or

447 (ii) a contract year for a member employed by an educational institution.

448 (4) "Participating employer" means an employer which meets the participation
449 requirements of Sections 49-13-201 and 49-13-202.

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

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

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

458 (ii) a classified school employee:

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

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

462 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
463 of January 1, 1990, as provided in Section [49-13-407](#);

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

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

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

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

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

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

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

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

477 and

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

480 (6) "System" means the Public Employees' Noncontributory Retirement System.

481 (7) "Years of service credit" means:

482 (a) a period consisting of 12 full months as determined by the board;

483 (b) a period determined by the board, whether consecutive or not, during which a
484 regular full-time employee performed services for a participating employer, including any time
485 the regular full-time employee was absent on a paid leave of absence granted by a participating
486 employer or was absent in the service of the United States government on military duty as
487 provided by this chapter; or

488 (c) the regular school year consisting of not less than eight months of full-time service
489 for a regular full-time employee of an educational institution.

490 Section 5. Section **49-14-102** is amended to read:

491 **49-14-102. Definitions.**

492 As used in this chapter:

493 (1) (a) "Compensation" means the total amount of payments that are includable in
494 gross income which are received by a public safety service employee as base income for the
495 regularly scheduled work period. The participating employer shall establish the regularly
496 scheduled work period. Base income shall be determined prior to the deduction of member
497 contributions or any amounts the public safety service employee authorizes to be deducted for
498 salary deferral or other benefits authorized by federal law.

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

501 (c) "Compensation" does not include:

502 (i) overtime;

503 (ii) sick pay incentives;

504 (iii) retirement pay incentives;

505 (iv) the monetary value of remuneration paid in kind, including a residence, use of

506 equipment or uniform, travel, or similar payments;

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

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

511 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
512 under Internal Revenue Code Section 401(a)(17).

513 (2) "Dispatcher" means the same as that term is defined in Section 53-6-102.

514 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
515 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
516 [~~and~~], (b), and (c).

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

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

524 (i) the public safety service employee has transferred from another agency; or

525 (ii) the public safety service employee has been promoted to a new position.

526 (c) The annual compensation used to calculate final average salary shall be based on:

527 (i) a calendar year for a member employed by a participating employer that is not an
528 educational institution; or

529 (ii) a contract year for a member employed by an educational institution.

530 (4) (a) "Line-of-duty death" means a death resulting from:

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

533 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous

534 training or another strenuous activity required as an act of duty as a public safety service
535 employee.

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

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

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

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

543 (iv) occurs in a manner other than as described in Subsection (4)(a).

544 (5) "Participating employer" means an employer which meets the participation
545 requirements of Section 49-14-201.

546 (6) (a) "Public safety service" means employment normally requiring an average of
547 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

548 (i) law enforcement officer in accordance with Section 53-13-103;

549 (ii) correctional officer in accordance with Section 53-13-104;

550 (iii) special function officer approved in accordance with Sections 49-14-201 and
551 53-13-105;

552 (iv) dispatcher who is certified in accordance with Section 53-6-303; or

553 (v) full-time member of the Board of Pardons and Parole created under Section
554 77-27-2.

555 (b) Except as provided under Subsections (6)(a)(iv) and (v), "public safety service"
556 also requires that in the course of employment the employee's life or personal safety is at risk.

557 (c) Except for the minimum hour requirement, Subsections (6)(a) and (b) do not apply
558 to any person who was eligible for service credit in this system before January 1, 1984.

559 (7) "Public safety service employee" means an employee of a participating employer
560 who performs public safety service under this chapter.

561 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or

562 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
563 physical law enforcement, prison security, disaster relief, or other emergency response activity.

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

566 (9) "System" means the Public Safety Contributory Retirement System created under
567 this chapter.

568 (10) "Years of service credit" means the number of periods, each to consist of 12 full
569 months as determined by the board, whether consecutive or not, during which a public safety
570 service employee was employed by a participating employer, including time the public safety
571 service employee was absent in the service of the United States government on military duty.

572 Section 6. Section **49-14-201** is amended to read:

573 **49-14-201. System membership -- Eligibility.**

574 (1) Except as provided in Section **49-15-201**, a public safety service employee of a
575 participating employer participating in this system is eligible for service credit in this system at
576 the earliest of:

577 (a) July 1, 1969, if the public safety service employee was employed by the
578 participating employer on July 1, 1969, and the participating employer was participating in this
579 system on that date;

580 (b) the date the participating employer begins participating in this system if the public
581 safety service employee was employed by the participating employer on that date; or

582 (c) the date the public safety service employee is employed by the participating
583 employer and is eligible to perform public safety service, except that a public safety service
584 employee initially entering employment with a participating employer on or after July 1, 2011,
585 who does not have service credit accrued before July 1, 2011, in a Tier I system or plan
586 administered by the board, may not participate in this system.

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

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

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

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

595 (3) The board may combine or segregate the actuarial experience of participating
596 employers in this system for the purpose of setting contribution rates.

597 (4) (a) (i) Each participating employer participating in this system shall annually
598 submit to the office a schedule indicating the positions to be covered under this system in
599 accordance with this chapter.

600 (ii) The office may require documentation to justify the inclusion of any position under
601 this system.

602 (b) If there is a dispute between the office and a participating employer or employee
603 over any position to be covered, the disputed position shall be submitted to the Peace Officer
604 Standards and Training Council established under Section 53-6-106 for determination.

605 (c) (i) The Peace Officer Standards and Training Council's authority to decide
606 eligibility for public safety service credit is limited to claims for coverage under this system for
607 time periods after July 1, 1989.

608 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
609 to service credit earned in another system prior to July 1, 1989.

610 (iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer
611 Standards and Training Council granting a position coverage under this system may only be
612 applied prospectively from the date of that decision.

613 (iv) A decision of the Peace Officer Standards and Training Council granting a position
614 coverage under this system may be applied retroactively only if:

615 (A) the participating employer covered other similarly situated positions under this
616 system during the time period in question; and

617 (B) the position otherwise meets all eligibility requirements for receiving service credit

618 in this system during the period for which service credit is to be granted.

619 (5) The Peace Officer Standards and Training Council may use a subcommittee to
620 provide a recommendation to the council in determining disputes between the office and a
621 participating employer or employee over a position to be covered under this system.

622 (6) The Peace Officer Standards and Training Council shall comply with Title 63G,
623 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

624 (7) A public safety employee who is transferred or promoted to an administration
625 position [~~not covered by this system~~] requiring the performance of duties that consist primarily
626 of management or supervision of public safety service employees shall continue to earn public
627 safety service credit in this system as long as the employee remains employed in the same
628 department.

629 (8) An employee of the Department of Corrections shall continue to earn public safety
630 service credit in this system if:

631 (a) the employee's position is no longer covered under this system for new employees
632 hired on or after July 1, 2015; and

633 (b) the employee:

634 (i) remains employed by the Department of Corrections;

635 (ii) meets the eligibility requirements of this system;

636 (iii) was hired into a position covered by this system prior to July 1, 2015; and

637 (iv) has not had a break in service on or after July 1, 2015.

638 (9) An employee who is reassigned to the Department of Technology Services or to the
639 Department of Human Resource Management, and who was a member of this system, is
640 entitled to remain a member of this system.

641 (10) (a) To determine that a position is covered under this system, the office and, if a
642 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
643 position requires the employee to:

644 (i) except for a dispatcher, place the employee's life or personal safety at risk; and

645 (ii) complete training as provided in Section [53-6-303](#), [53-13-103](#), [53-13-104](#), or

646 53-13-105.

647 (b) If a position satisfies the requirements of Subsection (10)(a), the office and the
648 Peace Officer Standards and Training Council shall consider whether or not the position
649 requires the employee to:

650 (i) perform duties that consist primarily of actively preventing or detecting crime and
651 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

652 (ii) perform duties that consist primarily of providing community protection; and

653 (iii) respond to situations involving threats to public safety and make emergency
654 decisions affecting the lives and health of others.

655 (11) If a subcommittee is used to recommend the determination of disputes to the
656 Peace Officer Standards and Training Council, the subcommittee shall comply with the
657 requirements of Subsection (10) in making its recommendation.

658 (12) A final order of the Peace Officer Standards and Training Council regarding a
659 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative
660 Procedures Act.

661 (13) Except as provided under Subsection (14), if a participating employer's public
662 safety service employees are not covered by this system or under Chapter 15, Public Safety
663 Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees
664 who may otherwise qualify for membership in this system shall, at the discretion of the
665 participating employer, remain in their current retirement system.

666 (14) (a) A public safety service employee employed by an airport police department,
667 which elects to cover its public safety service employees under the Public Safety
668 Noncontributory Retirement System under Subsection (13), may elect to remain in the public
669 safety service employee's current retirement system.

670 (b) The public safety service employee's election to remain in the current retirement
671 system under Subsection (14)(a):

672 (i) shall be made at the time the employer elects to move its public safety service
673 employees to a public safety retirement system;

674 (ii) documented by written notice to the participating employer; and

675 (iii) is irrevocable.

676 (15) (a) Subject to Subsection (16), beginning July 1, 2015, a public safety service
677 employee who is a dispatcher employed by:

678 (i) the state shall be eligible for service credit in this system; and

679 (ii) a participating employer other than the state shall be eligible for service credit in
680 this system if the dispatcher's participating employer elects to cover its dispatchers under this
681 system.

682 (b) A participating employer's election to cover its dispatchers under this system under
683 Subsection (15)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the
684 governing body of the participating employer in accordance with rules made by the office.

685 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
686 of a participating employer under Subsection (15)(b), is not eligible for service credit in this
687 system.

688 (16) Notwithstanding any other provision of this section, a person initially entering
689 employment with a participating employer on or after July 1, 2011, who does not have service
690 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
691 not participate in this system.

692 Section 7. Section **49-15-102** is amended to read:

693 **49-15-102. Definitions.**

694 As used in this chapter:

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

701 (b) "Compensation" includes performance-based bonuses and cost-of-living

702 adjustments.

703 (c) "Compensation" does not include:

704 (i) overtime;

705 (ii) sick pay incentives;

706 (iii) retirement pay incentives;

707 (iv) the monetary value of remuneration paid in kind, as in a residence, use of

708 equipment or uniform, travel, or similar payments;

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

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

713 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
714 under Internal Revenue Code Section 401(a)(17).

715 (2) "Dispatcher" means the same as that term is defined in Section 53-6-102.

716 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
717 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
718 [~~and~~], (b), and (c).

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

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

726 (i) the public safety service employee has transferred from another agency; or

727 (ii) the public safety service employee has been promoted to a new position.

728 (c) The annual compensation used to calculate final average salary shall be based on:

729 (i) a calendar year for a member employed by a participating employer that is not an

730 educational institution; or
731 (ii) a contract year for a member employed by an educational institution.
732 (4) (a) "Line-of-duty death" means a death resulting from:
733 (i) external force, violence, or disease occasioned by an act of duty as a public safety
734 service employee; or
735 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
736 training or another strenuous activity required as an act of duty as a public safety service
737 employee.
738 (b) "Line-of-duty death" does not include a death that:
739 (i) occurs during an activity that is required as an act of duty as a public safety service
740 employee if the activity is not a strenuous activity, including an activity that is clerical,
741 administrative, or of a nonmanual nature;
742 (ii) occurs during the commission of a crime committed by the employee;
743 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
744 nonprescribed, contributes to the employee's death; or
745 (iv) occurs in a manner other than as described in Subsection (4)(a).
746 (5) "Participating employer" means an employer which meets the participation
747 requirements of Section 49-15-201.
748 (6) (a) "Public safety service" means employment normally requiring an average of
749 2,080 hours of regularly scheduled employment per year rendered by a member who is a:
750 (i) law enforcement officer in accordance with Section 53-13-103;
751 (ii) correctional officer in accordance with Section 53-13-104;
752 (iii) special function officer approved in accordance with Sections 49-15-201 and
753 53-13-105;
754 (iv) dispatcher who is certified in accordance with Section 53-6-303; or
755 (v) full-time member of the Board of Pardons and Parole created under Section
756 77-27-2.
757 (b) Except as provided under Subsections (6)(a)(iv) and (v), "public safety service"

758 also requires that in the course of employment the employee's life or personal safety is at risk.

759 (7) "Public safety service employee" means an employee of a participating employer
760 who performs public safety service under this chapter.

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

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

766 (9) "System" means the Public Safety Noncontributory Retirement System created
767 under this chapter.

768 (10) "Years of service credit" means the number of periods, each to consist of 12 full
769 months as determined by the board, whether consecutive or not, during which a public safety
770 service employee was employed by a participating employer, including time the public safety
771 service employee was absent in the service of the United States government on military duty.

772 Section 8. Section **49-15-201** is amended to read:

773 **49-15-201. System membership -- Eligibility.**

774 (1) (a) A public safety service employee employed by the state after July 1, 1989, but
775 before July 1, 2011, is eligible for service credit in this system.

776 (b) A public safety service employee employed by the state prior to July 1, 1989, may
777 either elect to receive service credit in this system or continue to receive service credit under
778 the system established under Chapter 14, Public Safety Contributory Retirement Act, by
779 following the procedures established by the board under this chapter.

780 (2) (a) Public safety service employees of a participating employer other than the state
781 that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement
782 System shall be eligible only for service credit in that system.

783 (b) (i) A participating employer other than the state that elected on or before July 1,
784 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety
785 service employee to elect to participate in either this system or the Public Safety Contributory

786 Retirement System.

787 (ii) Except as expressly allowed by this title, the election of the public safety service
788 employee is final and may not be changed.

789 (c) A public safety service employee hired by a participating employer other than the
790 state after July 1, 1989, but before July 1, 2011, shall become a member in this system.

791 (d) A public safety service employee of a participating employer other than the state
792 who began participation in this system after July 1, 1989, but before July 1, 2011, is only
793 eligible for service credit in this system.

794 (e) A person initially entering employment with a participating employer on or after
795 July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system
796 or plan administered by the board, may not participate in this system.

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

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

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

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

805 (4) The board may combine or segregate the actuarial experience of participating
806 employers in this system for the purpose of setting contribution rates.

807 (5) (a) (i) Each participating employer participating in this system shall annually
808 submit to the office a schedule indicating the positions to be covered under this system in
809 accordance with this chapter.

810 (ii) The office may require documentation to justify the inclusion of any position under
811 this system.

812 (b) If there is a dispute between the office and a participating employer or employee
813 over any position to be covered, the disputed position shall be submitted to the Peace Officer

814 Standards and Training Council established under Section 53-6-106 for determination.

815 (c) (i) The Peace Officer Standards and Training Council's authority to decide
816 eligibility for public safety service credit is limited to claims for coverage under this system for
817 time periods after July 1, 1989.

818 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
819 to service credit earned in another system prior to July 1, 1989.

820 (iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer
821 Standards and Training Council granting a position coverage under this system may only be
822 applied prospectively from the date of that decision.

823 (iv) A decision of the Peace Officer Standards and Training Council granting a position
824 coverage under this system may be applied retroactively only if:

825 (A) the participating employer covered other similarly situated positions under this
826 system during the time period in question; and

827 (B) the position otherwise meets all eligibility requirements for receiving service credit
828 in this system during the period for which service credit is to be granted.

829 (6) The Peace Officer Standards and Training Council may use a subcommittee to
830 provide a recommendation to the council in determining disputes between the office and a
831 participating employer or employee over a position to be covered under this system.

832 (7) The Peace Officer Standards and Training Council shall comply with Title 63G,
833 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

834 (8) A public safety service employee who is transferred or promoted to an
835 administration position [~~not covered by this system~~] requiring the performance of duties that
836 consist primarily of management or supervision of public safety service employees shall
837 continue to earn public safety service credit in this system as long as the employee remains
838 employed in the same department.

839 (9) An employee of the Department of Corrections shall continue to earn public safety
840 service credit in this system if:

841 (a) the employee's position is no longer covered under this system for new employees

842 hired on or after July 1, 2015; and

843 (b) the employee:

844 (i) remains employed by the Department of Corrections;

845 (ii) meets the eligibility requirements of this system;

846 (iii) was hired into a position covered by this system prior to July 1, 2015; and

847 (iv) has not had a break in service on or after July 1, 2015.

848 (10) Any employee who is reassigned to the Department of Technology Services or to
849 the Department of Human Resource Management, and who was a member in this system, shall
850 be entitled to remain a member in this system.

851 (11) (a) To determine that a position is covered under this system, the office and, if a
852 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
853 position requires the employee to:

854 (i) except for a dispatcher, place the employee's life or personal safety at risk; and

855 (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or
856 53-13-105.

857 (b) If a position satisfies the requirements of Subsection (11)(a), the office and Peace
858 Officer Standards and Training Council shall consider whether the position requires the
859 employee to:

860 (i) perform duties that consist primarily of actively preventing or detecting crime and
861 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

862 (ii) perform duties that consist primarily of providing community protection; and

863 (iii) respond to situations involving threats to public safety and make emergency
864 decisions affecting the lives and health of others.

865 (12) If a subcommittee is used to recommend the determination of disputes to the
866 Peace Officer Standards and Training Council, the subcommittee shall comply with the
867 requirements of Subsection (11) in making its recommendation.

868 (13) A final order of the Peace Officer Standards and Training Council regarding a
869 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative

870 Procedures Act.

871 (14) Except as provided under Subsection (15), if a participating employer's public
872 safety service employees are not covered by this system or under Chapter 14, Public Safety
873 Contributory Retirement Act, as of January 1, 1998, those public safety service employees who
874 may otherwise qualify for membership in this system shall, at the discretion of the participating
875 employer, remain in their current retirement system.

876 (15) (a) A public safety service employee employed by an airport police department,
877 which elects to cover its public safety service employees under the Public Safety
878 Noncontributory Retirement System under Subsection (14), may elect to remain in the public
879 safety service employee's current retirement system.

880 (b) The public safety service employee's election to remain in the current retirement
881 system under Subsection (15)(a):

882 (i) shall be made at the time the employer elects to move its public safety service
883 employees to a public safety retirement system;

884 (ii) shall be documented by written notice to the participating employer; and

885 (iii) is irrevocable.

886 (16) (a) Subject to Subsection (17), beginning July 1, 2015, a public safety service
887 employee who is a dispatcher employed by:

888 (i) the state shall be eligible for service credit in this system; and

889 (ii) a participating employer other than the state shall be eligible for service credit in
890 this system if the dispatcher's participating employer elects to cover its dispatchers under this
891 system.

892 (b) A participating employer's election to cover its dispatchers under this system under
893 Subsection (16)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the
894 governing body of the participating employer in accordance with rules made by the office.

895 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
896 of a participating employer under Subsection (16)(b), is not eligible for service credit in this
897 system.

898 (17) Notwithstanding any other provision of this section, a person initially entering
899 employment with a participating employer on or after July 1, 2011, who does not have service
900 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
901 not participate in this system.

902 Section 9. Section **49-16-102** is amended to read:

903 **49-16-102. Definitions.**

904 As used in this chapter:

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

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

913 (c) "Compensation" does not include:

914 (i) overtime;

915 (ii) sick pay incentives;

916 (iii) retirement pay incentives;

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

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

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

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

925 (2) (a) "Disability" means a physical or mental condition that, in the judgment of the

926 office, is total and presumably permanent, and prevents a member from performing firefighter
927 service.

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

930 (3) "Final average salary" means the amount [~~computed~~] calculated by averaging the
931 highest three years of annual compensation preceding retirement subject to Subsections (3)(a)
932 [~~and~~], (b), and (c).

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

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

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

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

942 (c) The annual compensation used to calculate final average salary shall be based on:

943 (i) a calendar year for a member employed by a participating employer that is not an
944 educational institution; or

945 (ii) a contract year for a member employed by an educational institution.

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

948 (i) a firefighter service employee trained in firefighter techniques and assigned to a
949 position of hazardous duty with a regularly constituted fire department; or

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

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

953 (5) "Firefighter service employee" means an employee of a participating employer who

954 provides firefighter service under this chapter. An employee of a regularly constituted fire
955 department who does not perform firefighter service is not a firefighter service employee.

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

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

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

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

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

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

968 (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether
969 prescribed or nonprescribed, contributes to the employee's death or disability; or

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

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

974 (7) "Participating employer" means an employer which meets the participation
975 requirements of Section [49-16-201](#).

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

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

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

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

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

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

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

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

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

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

998 Section 10. Section **49-17-102** is amended to read:

999 **49-17-102. Definitions.**

1000 As used in this chapter:

1001 (1) (a) "Compensation" means the total amount of payments which are currently
1002 includable in gross income made by a participating employer to a member of this system for
1003 services rendered to the participating employer.

1004 (b) "Compensation" includes:

1005 (i) performance-based bonuses;

1006 (ii) cost-of-living adjustments;

1007 (iii) payments subject to Social Security deductions;

1008 (iv) any payments in excess of the maximum amount subject to deduction under Social
1009 Security law;

1010 (v) amounts which the member authorizes to be deducted or reduced for salary deferral
1011 or other benefits authorized by federal law; and

1012 (vi) member contributions.

1013 (c) "Compensation" for purposes of this chapter may not exceed the amount allowed
1014 under Internal Revenue Code Section 401(a)(17).

1015 (d) "Compensation," does not include:

1016 (i) the monetary value of remuneration paid in kind, such as a residence or use of
1017 equipment;

1018 (ii) all contributions made by a participating employer under any system or plan for the
1019 benefit of a member or participant;

1020 (iii) salary paid to a temporary or exempt employee;

1021 (iv) payments upon termination or any other special payments including early
1022 retirement inducements; or

1023 (v) uniform, travel, or similar payments.

1024 (2) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1025 highest two years of annual compensation preceding retirement, subject to Subsections (2)(a)
1026 [~~and~~], (b), and (c).

1027 (a) Except as provided in Subsection (2)(b), the percentage increase in annual
1028 compensation in any one of the years used may not exceed the previous year's compensation by
1029 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1030 of the dollar during the previous year, as measured by a United States Bureau of Labor
1031 Statistics Consumer Price Index average as determined by the board.

1032 (b) In cases where the participating employer provides acceptable documentation to the
1033 board, the limitation in Subsection (2)(a) may be exceeded if:

1034 (i) the member has transferred from another participating employer; or

1035 (ii) the member has been promoted to a new position.

1036 (c) The annual compensation used to calculate final average salary shall be based on
1037 the state's fiscal year.

1038 (3) "Judge" means a judge or justice of the courts of record as enumerated in Section
1039 78A-1-101.

1040 (4) "Participating employer" means the state.

1041 (5) "System" means the Judges' Contributory Retirement System created under this
1042 chapter.

1043 (6) "Years of service credit" means the number of periods, each to consist of 12 full
1044 months as determined by the board, whether consecutive or not, during which a judge was
1045 employed by a participating employer.

1046 Section 11. Section **49-18-102** is amended to read:

1047 **49-18-102. Definitions.**

1048 As used in this chapter:

1049 (1) (a) "Compensation" means the total amount of payments which are currently
1050 includable in gross income made by a participating employer to a member of this system for
1051 services rendered to the participating employer.

1052 (b) "Compensation" includes:

1053 (i) performance-based bonuses;

1054 (ii) cost-of-living adjustments;

1055 (iii) payments subject to Social Security deductions;

1056 (iv) any payments in excess of the maximum amount subject to deduction under Social
1057 Security law; and

1058 (v) amounts which the member authorizes to be deducted or reduced for salary deferral
1059 or other benefits authorized by federal law.

1060 (c) "Compensation" for purposes of this chapter may not exceed the amount allowed
1061 under Internal Revenue Code Section 401(a)(17).

1062 (d) "Compensation" does not include:

1063 (i) the monetary value of remuneration paid in kind, such as a residence or use of
1064 equipment;

1065 (ii) all contributions made by a participating employer under a system or plan for the

1066 benefit of a member or participant;

1067 (iii) salary paid to a temporary or exempt employee;

1068 (iv) payments upon termination or any other special payments including early

1069 retirement inducements; or

1070 (v) uniform, travel, or similar payments.

1071 (2) "Final average salary" means the amount [~~computed~~] calculated by averaging the

1072 highest two years of annual compensation preceding retirement, subject to Subsections (2)(a)

1073 [~~and~~], (b), and (c).

1074 (a) Except as provided in Subsection (2)(b), the percentage increase in annual

1075 compensation in any one of the years used may not exceed the previous year's compensation by

1076 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power

1077 of the dollar during the previous year, as measured by a United States Bureau of Labor

1078 Statistics Consumer Price Index average as determined by the board.

1079 (b) In cases where the participating employer provides acceptable documentation to the
1080 board, the limitation in Subsection (2)(a) may be exceeded if:

1081 (i) the member has transferred from another agency; or

1082 (ii) the member has been promoted to a new position.

1083 (c) The annual compensation used to calculate final average salary shall be based on
1084 the state's fiscal year.

1085 (3) "Judge" means a judge or justice of the courts of record as enumerated in Section
1086 [78A-1-101](#).

1087 (4) "Participating employer" means the state.

1088 (5) "System" means the Judges' Noncontributory Retirement System created under this
1089 chapter.

1090 (6) "Years of service credit" means the number of periods, each to consist of 12 full
1091 months or as determined by the board, whether consecutive or not, during which a judge was
1092 employed by a participating employer.

1093 Section 12. Section **49-21-403** is amended to read:

1094 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

1095 (1) An eligible employee covered by this chapter and eligible for service credit under a
1096 system or plan, including an eligible employee who relinquishes rights to retirement benefits
1097 under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall
1098 receive a monthly disability benefit until the earlier of:

- 1099 (a) the date of the eligible employee's death;
- 1100 (b) the date the eligible employee no longer has a disability;
- 1101 (c) the date the eligible employee has accumulated or would have accumulated, if the
1102 employee had not chosen the Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan,
1103 Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan, been a volunteer firefighter, or
1104 exempted from a retirement system or plan:

- 1105 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public
1106 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement
1107 Act;

- 1108 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'
1109 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;

- 1110 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public
1111 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory
1112 Retirement Act;

- 1113 (iv) 35 years of service credit if the eligible employee is covered by the defined benefit
1114 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the
1115 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

- 1116 (v) 25 years of service credit if the eligible employee is covered by the defined benefit
1117 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the
1118 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; [or]

- 1119 (d) the date the eligible employee has received a monthly disability benefit for the
1120 following applicable time periods:

- 1121 (i) if the eligible employee is under age 60, the monthly disability benefit is payable

1122 until age 65;

1123 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
1124 monthly disability benefit is payable for five years;

1125 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1126 monthly disability benefit is payable for four years;

1127 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1128 monthly disability benefit is payable for three years;

1129 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1130 monthly disability benefit is payable for two years; and

1131 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
1132 monthly disability benefit is payable for one year[-]; or

1133 (e) the eligible employee's retirement date, set when the eligible employee retires from
1134 a system or from the Utah Governors' and Legislators' Retirement Plan.

1135 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible
1136 for service credit under a system may retire under the requirements of the system which
1137 covered the eligible employee on the date of disability.

1138 (b) The final average salary used in the calculation of the allowance shall be based on
1139 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase
1140 factor applied to retirees of the system which covered the eligible employee on the date of
1141 disability.

1142 (3) An eligible employee who is eligible for service credit in a system, but has
1143 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
1144 eligible employee would have received by being eligible for service credit in the system
1145 covering the eligible employee on the date of disability, except for the accrual of service credit,
1146 in accordance with this title.

1147 (4) An eligible employee receiving a monthly disability benefit who has service credit
1148 from two or more systems may not combine service credits under Section 49-11-405 in
1149 qualifying for retirement, unless the eligible employee would receive a greater allowance by

1150 combining the service credits.

1151 (5) An eligible employee covered by this chapter who is a participant in the Tier II
1152 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or
1153 Chapter 23, Part 4, Tier II Defined Contribution Plan, who applies and is qualified for a
1154 monthly disability benefit, shall receive a monthly disability benefit until the earlier of:

1155 (a) the date of the eligible employee's death;

1156 (b) the date the eligible employee no longer has a disability;

1157 (c) (i) 35 years from the date the eligible employee began participation in the Tier II
1158 Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan; or

1159 (ii) 25 years from the date the eligible employee began participation in the Tier II
1160 Defined Contribution Plan created in Chapter 23, Part 4, Tier II Defined Contribution Plan; or

1161 (d) the date the eligible employee has received a monthly disability benefit for the
1162 following applicable time periods:

1163 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
1164 until age 65;

1165 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
1166 monthly disability benefit is payable for five years;

1167 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
1168 monthly disability benefit is payable for four years;

1169 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
1170 monthly disability benefit is payable for three years;

1171 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
1172 monthly disability benefit is payable for two years; and

1173 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
1174 monthly disability benefit is payable for one year.

1175 Section 13. Section **49-22-102** is amended to read:

1176 **49-22-102. Definitions.**

1177 As used in this chapter:

1178 (1) "Benefits normally provided" has the same meaning as defined in Section
1179 49-12-102.

1180 (2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total
1181 amount of payments made by a participating employer to a member of this system for services
1182 rendered to the participating employer, including:

- 1183 (i) bonuses;
- 1184 (ii) cost-of-living adjustments;
- 1185 (iii) other payments currently includable in gross income and that are subject to Social
1186 Security deductions, including any payments in excess of the maximum amount subject to
1187 deduction under Social Security law;
- 1188 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
1189 or other benefits authorized by federal law; and
- 1190 (v) member contributions.

1191 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
1192 under Internal Revenue Code, Section 401(a)(17).

1193 (c) "Compensation" does not include:

- 1194 (i) the monetary value of remuneration paid in kind, including a residence or use of
1195 equipment;
- 1196 (ii) the cost of any employment benefits paid for by the participating employer;
- 1197 (iii) compensation paid to a temporary employee or an employee otherwise ineligible
1198 for service credit;
- 1199 (iv) any payments upon termination, including accumulated vacation, sick leave
1200 payments, severance payments, compensatory time payments, or any other special payments; or
- 1201 (v) any allowances or payments to a member for costs or expenses paid by the
1202 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
1203 housing costs, insurance costs, equipment costs, and dependent care costs.

1204 (d) The executive director may determine if a payment not listed under this Subsection
1205 (2) falls within the definition of compensation.

1206 (3) "Corresponding Tier I system" means the system or plan that would have covered
1207 the member if the member had initially entered employment before July 1, 2011.

1208 (4) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1209 highest five years of annual compensation preceding retirement subject to Subsections (4)(a),
1210 (b), (c), [~~and~~] (d), and (e).

1211 (a) Except as provided in Subsection (4)(b), the percentage increase in annual
1212 compensation in any one of the years used may not exceed the previous year's compensation by
1213 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1214 of the dollar during the previous year, as measured by a United States Bureau of Labor
1215 Statistics Consumer Price Index average as determined by the board.

1216 (b) In cases where the participating employer provides acceptable documentation to the
1217 office, the limitation in Subsection (4)(a) may be exceeded if:

1218 (i) the member has transferred from another agency; or

1219 (ii) the member has been promoted to a new position.

1220 (c) If the member retires more than six months from the date of termination of
1221 employment, the member is considered to have been in service at the member's last rate of pay
1222 from the date of the termination of employment to the effective date of retirement for purposes
1223 of computing the member's final average salary only.

1224 (d) If the member has less than five years of service credit in this system, final average
1225 salary means the average annual compensation paid to the member during the full period of
1226 service credit.

1227 (e) The annual compensation used to calculate final average salary shall be based on:

1228 (i) a calendar year for a member employed by a participating employer that is not an
1229 educational institution; or

1230 (ii) a contract year for a member employed by an educational institution.

1231 (5) "Participating employer" means an employer which meets the participation
1232 requirements of:

1233 (a) Sections [49-12-201](#) and [49-12-202](#);

1234 (b) Sections 49-13-201 and 49-13-202;

1235 (c) Section 49-19-201; or

1236 (d) Section 49-22-201 or 49-22-202.

1237 (6) (a) "Regular full-time employee" means an employee whose term of employment
1238 for a participating employer contemplates continued employment during a fiscal or calendar
1239 year and whose employment normally requires an average of 20 hours or more per week,
1240 except as modified by the board, and who receives benefits normally provided by the
1241 participating employer.

1242 (b) "Regular full-time employee" includes:

1243 (i) a teacher whose term of employment for a participating employer contemplates
1244 continued employment during a school year and who teaches half time or more;

1245 (ii) a classified school employee:

1246 (A) who is hired before July 1, 2013; and

1247 (B) whose employment normally requires an average of 20 hours per week or more for
1248 a participating employer, regardless of benefits provided;

1249 (iii) an appointive officer whose appointed position is full time as certified by the
1250 participating employer;

1251 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the
1252 attorney general, and a state legislator;

1253 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position
1254 is full time as certified by the participating employer;

1255 (vi) a faculty member or employee of an institution of higher education who is
1256 considered full time by that institution of higher education; and

1257 (vii) an individual who otherwise meets the definition of this Subsection (6) who
1258 performs services for a participating employer through a professional employer organization or
1259 similar arrangement.

1260 (c) "Regular full-time employee" does not include:

1261 (i) a firefighter service employee as defined in Section 49-23-102;

- 1262 (ii) a public safety service employee as defined in Section 49-23-102;
- 1263 (iii) a classified school employee:
- 1264 (A) who is hired on or after July 1, 2013; and
- 1265 (B) who does not receive benefits normally provided by the participating employer
- 1266 even if the employment normally requires an average of 20 hours per week or more for a
- 1267 participating employer; or
- 1268 (iv) a classified school employee:
- 1269 (A) who is hired before July 1, 2013;
- 1270 (B) who did not qualify as a regular full-time employee before July 1, 2013;
- 1271 (C) who does not receive benefits normally provided by the participating employer;
- 1272 and
- 1273 (D) whose employment hours are increased on or after July 1, 2013, to require an
- 1274 average of 20 hours per week or more for a participating employer.
- 1275 (7) "System" means the New Public Employees' Tier II Contributory Retirement
- 1276 System created under this chapter.
- 1277 (8) "Years of service credit" means:
- 1278 (a) a period consisting of 12 full months as determined by the board;
- 1279 (b) a period determined by the board, whether consecutive or not, during which a
- 1280 regular full-time employee performed services for a participating employer, including any time
- 1281 the regular full-time employee was absent on a paid leave of absence granted by a participating
- 1282 employer or was absent in the service of the United States government on military duty as
- 1283 provided by this chapter; or
- 1284 (c) the regular school year consisting of not less than eight months of full-time service
- 1285 for a regular full-time employee of an educational institution.
- 1286 Section 14. Section 49-22-201 is amended to read:
- 1287 **49-22-201. System membership -- Eligibility.**
- 1288 (1) Beginning July 1, 2011, a participating employer shall participate in this system.
- 1289 (2) (a) A person initially entering regular full-time employment with a participating

1290 employer on or after July 1, 2011, who does not have service credit accrued before July 1,
1291 2011, in a Tier I system or plan administered by the board, is eligible:

1292 (i) as a member for service credit and defined contributions under the Tier II hybrid
1293 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1294 (ii) as a participant for defined contributions under the Tier II defined contribution plan
1295 established by Part 4, Tier II Defined Contribution Plan.

1296 (b) A person initially entering regular full-time employment with a participating
1297 employer on or after July 1, 2011, shall:

1298 (i) make an election to participate in the system created under this chapter:

1299 (A) as a member for service credit and defined contributions under the Tier II hybrid
1300 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1301 (B) as a participant for defined contributions under the Tier II defined contribution plan
1302 established by Part 4, Tier II Defined Contribution Plan; and

1303 (ii) electronically submit to the office notification of the member's election under
1304 Subsection (2)(b)(i) in a manner approved by the office.

1305 (c) An election made by a person initially entering regular full-time employment with a
1306 participating employer under this Subsection (2) is irrevocable beginning one year from the
1307 date of eligibility for accrual of benefits.

1308 (d) If no election is made under Subsection (2)(b)(i), the person shall become a
1309 member eligible for service credit and defined contributions under the Tier II hybrid retirement
1310 system established by Part 3, Tier II Hybrid Retirement System.

1311 (3) Notwithstanding the provisions of this section and except as provided in Subsection
1312 (4), an elected official initially entering office on or after July 1, 2011:

1313 (a) is only eligible to participate in the Tier II defined contribution plan established
1314 under Part 4, Tier II Defined Contribution Plan; ~~and~~

1315 (b) is not eligible to participate in the Tier II hybrid retirement system established
1316 under Part 3, Tier II Hybrid Retirement System~~[-]; and~~

1317 (c) is vested immediately in the elected official's benefit and the benefit is

1318 nonforfeitable, including the total amount contributed by the participating employer and the
 1319 total amount contributed by the member in the Tier II defined contribution plan.

1320 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected
 1321 official initially entering office on or after July 1, 2011, who has service credit accrued before
 1322 July 1, 2011:

1323 (a) in a Tier I retirement system or plan administered by the board shall continue in the
 1324 Tier I system or plan for which the legislator or full-time elected official is eligible; or

1325 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which
 1326 the legislator or full-time elected official is eligible.

1327 Section 15. Section **49-22-205** is amended to read:

1328 **49-22-205. Exemptions from participation in system.**

1329 (1) Upon filing a written request for exemption with the office, the following
 1330 employees are exempt from participation in the system as provided in this section:

1331 (a) ~~[an elected official; (b)]~~ an executive department head of the state;

1332 ~~[(c)]~~ (b) a member of the State Tax Commission;

1333 ~~[(d)]~~ (c) a member of the Public Service Commission;

1334 ~~[(e)]~~ (d) a member of a full-time or part-time board or commission;

1335 ~~[(f)]~~ (e) an employee of the Governor's Office of Management and Budget;

1336 ~~[(g)]~~ (f) an employee of the Governor's Office of Economic Development;

1337 ~~[(h)]~~ (g) an employee of the Commission on Criminal and Juvenile Justice;

1338 ~~[(i)]~~ (h) an employee of the Governor's Office;

1339 ~~[(j)]~~ (i) an employee of the State Auditor's Office;

1340 ~~[(k)]~~ (j) an employee of the State Treasurer's Office;

1341 ~~[(l)]~~ (k) any other member who is permitted to make an election under Section

1342 [49-11-406](#);

1343 ~~[(m)]~~ (l) a person appointed as a city manager or appointed as a city administrator or
 1344 another at-will employee of a municipality, county, or other political subdivision;

1345 ~~[(n)]~~ (m) an employee of an interlocal cooperative agency created under Title 11,

1346 Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily
1347 provided through membership in a labor organization that provides retirement benefits to its
1348 members; and

1349 ~~(n)~~ (n) an employee of the Utah Science Technology and Research Initiative created
1350 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

1351 (2) (a) A participating employer shall prepare a list designating those positions eligible
1352 for exemption under Subsection (1).

1353 (b) An employee may not be exempted unless the employee is employed in a position
1354 designated by the participating employer under Subsection (1).

1355 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a
1356 municipality, county, or political subdivision may not exempt a total of more than 50 positions
1357 or a number equal to 10% of the employees of the municipality, county, or political
1358 subdivision, whichever is less.

1359 (b) A municipality, county, or political subdivision may exempt at least one regular
1360 full-time employee.

1361 (4) Each participating employer shall:

1362 (a) file each employee exemption annually with the office; and

1363 (b) update an employee exemption in the event of any change.

1364 (5) Beginning on the effective date of the exemption for an employee who elects to be
1365 exempt in accordance with Subsection (1):

1366 (a) for a member of the Tier II defined contribution plan:

1367 (i) the participating employer shall contribute the nonelective contribution and the
1368 amortization rate described in Section 49-22-401, except that the nonelective contribution is
1369 exempt from the vesting requirements of Subsection 49-22-401(3)(a); and

1370 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

1371 (b) for a member of the Tier II hybrid retirement system:

1372 (i) the participating employer shall contribute the nonelective contribution and the
1373 amortization rate described in Section 49-22-401, except that the contribution is exempt from

1374 the vesting requirements of Subsection 49-22-401(3)(a);

1375 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

1376 (iii) the member is not eligible for additional service credit in the system.

1377 (6) If an employee who is a member of the Tier II hybrid retirement system

1378 subsequently revokes the election of exemption made under Subsection (1), the provisions

1379 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee

1380 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1381 (7) (a) All employer contributions made on behalf of an employee shall be invested in

1382 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election

1383 period under Subsection 49-22-201(2)(c) is expired if the employee:

1384 (i) elects to be exempt in accordance with Subsection (1); and

1385 (ii) continues employment with the participating employer through the one-year

1386 election period under Subsection 49-22-201(2)(c).

1387 (b) An employee is entitled to receive a distribution of the employer contributions

1388 made on behalf of the employee and all associated investment gains and losses if the employee:

1389 (i) elects to be exempt in accordance with Subsection (1); and

1390 (ii) terminates employment prior to the one-year election period under Subsection

1391 49-22-201(2)(c).

1392 (8) (a) The office shall make rules to implement this section.

1393 (b) The rules made under this Subsection (8) shall include provisions to allow the

1394 exemption provided under Subsection (1) to apply to all contributions made beginning on or

1395 after July 1, 2011, on behalf of an exempted employee who began the employment before May

1396 8, 2012.

1397 Section 16. Section 49-22-303 is amended to read:

1398 **49-22-303. Defined contribution benefit established -- Contribution by employer**

1399 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**

1400 **plans.**

1401 (1) (a) A participating employer shall make a nonelective contribution on behalf of

1402 each regular full-time employee who is a member of this system in an amount equal to 10%
1403 minus the contribution rate paid by the employer [~~pursuant to~~] under Subsection
1404 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under
1405 Section 401(k) of the Internal Revenue Code which:

1406 (i) is sponsored by the board; and
1407 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1408 (b) The member may make voluntary deferrals to:

1409 (i) the qualified 401(k) plan which receives the employer contribution described in this
1410 Subsection (1); or

1411 (ii) at the member's option, another defined contribution plan established by the
1412 participating employer.

1413 (2) (a) The total amount contributed by the participating employer under Subsection
1414 (1)(a), including associated investment gains and losses, vests to the member upon accruing
1415 four years of service credit under this title.

1416 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
1417 member's benefit immediately and is nonforfeitable.

1418 (c) (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to
1419 which the member may be entitled.

1420 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1421 one year of the total years required for vesting, the member shall be considered to have the total
1422 years of service credit required for vesting.

1423 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be
1424 invested in a default option selected by the board until the member is vested in accordance with
1425 Subsection (2)(a).

1426 (b) A member may direct the investment of contributions made by a participating
1427 employer under Subsection (1)(a) only after the contributions have vested in accordance with
1428 Subsection (2)(a).

1429 (c) A member may direct the investment of contributions made by the member under

1430 Subsection (1)(b).

1431 (4) No loans shall be available from contributions made by a participating employer
1432 under Subsection (1)(a).

1433 (5) No hardship distributions shall be available from contributions made by a
1434 participating employer under Subsection (1)(a).

1435 (6) (a) Except as provided in Subsection (6)(b) and Section [49-22-205](#), if a member
1436 terminates employment with a participating employer prior to the vesting period described in
1437 Subsection (2)(a), all contributions, including associated investment gains and losses, made by
1438 a participating employer on behalf of the member under Subsection (1)(a) are subject to
1439 forfeiture.

1440 (b) If a member who terminates employment with a participating employer prior to the
1441 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
1442 another participating employer within 10 years of the termination date of the previous
1443 employment:

1444 (i) all contributions made by the previous participating employer on behalf of the
1445 member, including associated investment gains and losses, shall be reinstated upon
1446 employment as a regular full-time employee; and

1447 (ii) the length of time that the member worked with the previous employer shall be
1448 included in determining whether the member has completed the vesting period under
1449 Subsection (2)(a).

1450 (c) The office shall establish a forfeiture account and shall specify the uses of the
1451 forfeiture account, which may include an offset against administrative costs or employer
1452 contributions made under this section.

1453 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
1454 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
1455 Internal Revenue Code.

1456 (8) The office may take any action which in its judgment is necessary to maintain the
1457 tax-qualified status of its 401(k) defined contribution plan under federal law.

1458 Section 17. Section **49-22-401** is amended to read:

1459 **49-22-401. Contributions -- Rates.**

1460 (1) Up to the amount allowed by federal law, the participating employer shall make a
1461 nonelective contribution of 10% of the participant's compensation to a defined contribution
1462 plan.

1463 (2) (a) The participating employer shall contribute the 10% nonelective contribution
1464 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1465 Internal Revenue Code which:

1466 (i) is sponsored by the board; and

1467 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1468 (b) The member may make voluntary deferrals to:

1469 (i) the qualified 401(k) plan which receives the employer contribution described in this
1470 Subsection (2); or

1471 (ii) at the member's option, another defined contribution plan established by the
1472 participating employer.

1473 (c) In addition to the percent specified under Subsection (2)(a), the participating
1474 employer shall pay the corresponding Tier I system amortization rate of the employee's
1475 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1476 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1477 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1478 employment as a regular full-time employee under this title.

1479 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1480 member's benefit immediately and is nonforfeitable.

1481 (c) Upon filing a written request for exemption with the office, an eligible employee is
1482 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
1483 [49-22-205](#).

1484 (d) (i) Years of employment under Subsection (3)(a) includes any fraction of a year to
1485 which the member may be entitled.

1486 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1487 one year of the total years required for vesting, the member shall be considered to have the total
1488 years of employment required for vesting.

1489 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1490 invested in a default option selected by the board until the member is vested in accordance with
1491 Subsection (3)(a).

1492 (b) A member may direct the investment of contributions including associated
1493 investment gains and losses made by a participating employer under Subsection (2)(a) only
1494 after the contributions have vested in accordance with Subsection (3)(a).

1495 (c) A member may direct the investment of contributions made by the member under
1496 Subsection (3)(b).

1497 (5) No loans shall be available from contributions made by a participating employer
1498 under Subsection (2)(a).

1499 (6) No hardship distributions shall be available from contributions made by a
1500 participating employer under Subsection (2)(a).

1501 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1502 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1503 contributions made by a participating employer on behalf of the member including associated
1504 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1505 (b) If a member who terminates employment with a participating employer prior to the
1506 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1507 another participating employer within 10 years of the termination date of the previous
1508 employment:

1509 (i) all contributions made by the previous participating employer on behalf of the
1510 member including associated investment gains and losses shall be reinstated upon the member's
1511 employment as a regular full-time employee; and

1512 (ii) the length of time that the member worked with the previous employer shall be
1513 included in determining whether the member has completed the vesting period under

1514 Subsection (3)(a).

1515 (c) The office shall establish a forfeiture account and shall specify the uses of the
1516 forfeiture account, which may include an offset against administrative costs or employer
1517 contributions made under this section.

1518 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1519 any relevant information pertaining to the maintenance of its tax qualification under the
1520 Internal Revenue Code.

1521 (9) The office may take any action which in its judgment is necessary to maintain the
1522 tax-qualified status of its 401(k) defined contribution plan under federal law.

1523 Section 18. Section **49-23-102** is amended to read:

1524 **49-23-102. Definitions.**

1525 As used in this chapter:

1526 (1) (a) "Compensation" means the total amount of payments that are includable in
1527 gross income received by a public safety service employee or a firefighter service employee as
1528 base income for the regularly scheduled work period. The participating employer shall
1529 establish the regularly scheduled work period. Base income shall be determined prior to the
1530 deduction of any amounts the public safety service employee or firefighter service employee
1531 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

1532 (b) "Compensation" includes performance-based bonuses and cost-of-living
1533 adjustments.

1534 (c) "Compensation" does not include:

1535 (i) overtime;

1536 (ii) sick pay incentives;

1537 (iii) retirement pay incentives;

1538 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
1539 equipment or uniform, travel, or similar payments;

1540 (v) a lump-sum payment or special payment covering accumulated leave; and

1541 (vi) all contributions made by a participating employer under this system or under any

1542 other employee benefit system or plan maintained by a participating employer for the benefit of
1543 a member or participant.

1544 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
1545 under Section 401(a)(17), Internal Revenue Code.

1546 (2) "Corresponding Tier I system" means the system or plan that would have covered
1547 the member if the member had initially entered employment before July 1, 2011.

1548 (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.

1549 (4) "Final average salary" means the amount [~~computed~~] calculated by averaging the
1550 highest five years of annual compensation preceding retirement subject to Subsections (4)(a),
1551 (b), (c), [~~and~~] (d), and (e).

1552 (a) Except as provided in Subsection (4)(b), the percentage increase in annual
1553 compensation in any one of the years used may not exceed the previous year's compensation by
1554 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power
1555 of the dollar during the previous year, as measured by a United States Bureau of Labor
1556 Statistics Consumer Price Index average as determined by the board.

1557 (b) In cases where the participating employer provides acceptable documentation to the
1558 office, the limitation in Subsection (4)(a) may be exceeded if:

1559 (i) the member has transferred from another agency; or

1560 (ii) the member has been promoted to a new position.

1561 (c) If the member retires more than six months from the date of termination of
1562 employment, the member is considered to have been in service at the member's last rate of pay
1563 from the date of the termination of employment to the effective date of retirement for purposes
1564 of computing the member's final average salary only.

1565 (d) If the member has less than five years of service credit in this system, final average
1566 salary means the average annual compensation paid to the member during the full period of
1567 service credit.

1568 (e) The annual compensation used to calculate final average salary shall be based on:

1569 (i) a calendar year for a member employed by a participating employer that is not an

1570 educational institution; or

1571 (ii) a contract year for a member employed by an educational institution.

1572 (5) (a) "Firefighter service" means employment normally requiring an average of 2,080
1573 hours of regularly scheduled employment per year rendered by a member who is:

1574 (i) a firefighter service employee trained in firefighter techniques and assigned to a
1575 position of hazardous duty with a regularly constituted fire department; or

1576 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire
1577 marshal.

1578 (b) "Firefighter service" does not include secretarial staff or other similar employees.

1579 (6) "Firefighter service employee" means an employee of a participating employer who
1580 provides firefighter service under this chapter. An employee of a regularly constituted fire
1581 department who does not perform firefighter service is not a firefighter service employee.

1582 (7) (a) "Line-of-duty death" means a death resulting from:

1583 (i) external force, violence, or disease occasioned by an act of duty as a public safety
1584 service or firefighter service employee; or

1585 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
1586 training or another strenuous activity required as an act of duty as a public safety service or
1587 firefighter service employee.

1588 (b) "Line-of-duty death" does not include a death that:

1589 (i) occurs during an activity that is required as an act of duty as a public safety service
1590 or firefighter service employee if the activity is not a strenuous activity, including an activity
1591 that is clerical, administrative, or of a nonmanual nature;

1592 (ii) occurs during the commission of a crime committed by the employee;

1593 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
1594 nonprescribed, contributes to the employee's death; or

1595 (iv) occurs in a manner other than as described in Subsection (7)(a).

1596 (8) "Participating employer" means an employer which meets the participation
1597 requirements of:

- 1598 (a) Sections 49-14-201 and 49-14-202;
- 1599 (b) Sections 49-15-201 and 49-15-202;
- 1600 (c) Sections 49-16-201 and 49-16-202; or
- 1601 (d) Sections 49-23-201 and 49-23-202.
- 1602 (9) (a) "Public safety service" means employment normally requiring an average of
- 1603 2,080 hours of regularly scheduled employment per year rendered by a member who is a:
- 1604 (i) law enforcement officer in accordance with Section 53-13-103;
- 1605 (ii) correctional officer in accordance with Section 53-13-104;
- 1606 (iii) special function officer approved in accordance with Sections 49-15-201 and
- 1607 53-13-105;
- 1608 (iv) dispatcher who is certified in accordance with Section 53-6-303; and
- 1609 (v) full-time member of the Board of Pardons and Parole created under Section
- 1610 77-27-2.
- 1611 (b) Except as provided under Subsections (9)(a)(iv) and (v), "public safety service"
- 1612 also requires that in the course of employment the employee's life or personal safety is at risk.
- 1613 (10) "Public safety service employee" means an employee of a participating employer
- 1614 who performs public safety service under this chapter.
- 1615 (11) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
- 1616 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
- 1617 physical law enforcement, prison security, disaster relief, or other emergency response activity.
- 1618 (b) "Strenuous activity" includes participating in a participating employer sanctioned
- 1619 and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- 1620 (12) "System" means the New Public Safety and Firefighter Tier II Contributory
- 1621 Retirement System created under this chapter.
- 1622 (13) (a) "Volunteer firefighter" means any individual that is not regularly employed as
- 1623 a firefighter service employee, but who:
- 1624 (i) has been trained in firefighter techniques and skills;
- 1625 (ii) continues to receive regular firefighter training; and

1626 (iii) is on the rolls of a legally organized volunteer fire department which provides
1627 ongoing training and serves a political subdivision of the state.

1628 (b) An individual that volunteers assistance but does not meet the requirements of
1629 Subsection (13)(a) is not a volunteer firefighter for purposes of this chapter.

1630 (14) "Years of service credit" means:

1631 (a) a period, consisting of 12 full months as determined by the board; or

1632 (b) a period determined by the board, whether consecutive or not, during which a
1633 regular full-time employee performed services for a participating employer, including any time
1634 the regular full-time employee was absent on a paid leave of absence granted by a participating
1635 employer or was absent in the service of the United States government on military duty as
1636 provided by this chapter.

1637 Section 19. Section **49-23-302** is amended to read:

1638 **49-23-302. Defined contribution benefit established -- Contribution by employer**
1639 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
1640 **plans.**

1641 (1) (a) A participating employer shall make a nonelective contribution on behalf of
1642 each public safety service employee or firefighter service employee who is a member of this
1643 system in an amount equal to 12% minus the contribution rate paid by the employer [~~pursuant~~
1644 ~~to~~] under Subsection **49-23-301(2)(a)** of the member's compensation to a defined contribution
1645 plan qualified under Section 401(k) of the Internal Revenue Code which:

1646 (i) is sponsored by the board; and

1647 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1648 (b) The member may make voluntary deferrals to:

1649 (i) the qualified 401(k) plan which receives the employer contribution described in this
1650 Subsection (1); or

1651 (ii) at the member's option, another defined contribution plan established by the
1652 participating employer.

1653 (2) (a) The total amount contributed by the participating employer under Subsection

1654 (1)(a), including associated investment gains and losses, vests to the member upon accruing
1655 four years of service credit under this title.

1656 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
1657 member's benefit immediately and is nonforfeitable.

1658 (c) (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to
1659 which the member may be entitled.

1660 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1661 one year of the total years required for vesting, the member shall be considered to have the total
1662 years of service credit required for vesting.

1663 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be
1664 invested in a default option selected by the board until the member is vested in accordance with
1665 Subsection (2)(a).

1666 (b) A member may direct the investment of contributions made by a participating
1667 employer under Subsection (1)(a) only after the contributions have vested in accordance with
1668 Subsection (2)(a).

1669 (c) A member may direct the investment of contributions made by the member under
1670 Subsection (1)(b).

1671 (4) No loans shall be available from contributions made by a participating employer
1672 under Subsection (1)(a).

1673 (5) No hardship distributions shall be available from contributions made by a
1674 participating employer under Subsection (1)(a).

1675 (6) (a) Except as provided in Subsection (6)(b), if a member terminates employment
1676 with a participating employer prior to the vesting period described in Subsection (2)(a), all
1677 contributions, including associated investment gains and losses, made by a participating
1678 employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

1679 (b) If a member who terminates employment with a participating employer prior to the
1680 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
1681 another participating employer within 10 years of the termination date of the previous

1682 employment:

1683 (i) all contributions made by the previous participating employer on behalf of the
1684 member, including associated investment gains and losses, shall be reinstated upon the
1685 member's employment as a regular full-time employee; and

1686 (ii) the length of time that the member worked with the previous employer shall be
1687 included in determining whether the member has completed the vesting period under
1688 Subsection (2)(a).

1689 (c) The office shall establish a forfeiture account and shall specify the uses of the
1690 forfeiture account, which may include an offset against administrative costs or employer
1691 contributions made under this section.

1692 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
1693 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
1694 Internal Revenue Code.

1695 (8) The office may take any action which in its judgment is necessary to maintain the
1696 tax-qualified status of its 401(k) defined contribution plan under federal law.

1697 Section 20. Section **49-23-401** is amended to read:

1698 **49-23-401. Contributions -- Rates.**

1699 (1) Up to the amount allowed by federal law, the participating employer shall make a
1700 nonelective contribution of 12% of the participant's compensation to a defined contribution
1701 plan.

1702 (2) (a) The participating employer shall contribute the 12% nonelective contribution
1703 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1704 Internal Revenue Code which:

1705 (i) is sponsored by the board; and

1706 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1707 (b) The member may make voluntary deferrals to:

1708 (i) the qualified 401(k) plan which receives the employer contribution described in this
1709 Subsection (2); or

1710 (ii) at the member's option, another defined contribution plan established by the
1711 participating employer.

1712 (c) In addition to the percent specified under Subsection (2)(a), the participating
1713 employer shall pay the corresponding Tier I system amortization rate of the employee's
1714 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1715 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1716 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1717 service credit under this title.

1718 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1719 member's benefit immediately and is nonforfeitable.

1720 (c) Upon filing a written request for exemption with the office, an eligible employee is
1721 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
1722 [49-23-203](#).

1723 (d) (i) Years of service credit under Subsection (3)(a) includes any fraction of a year to
1724 which the member may be entitled.

1725 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1726 one year of the total years required for vesting, the member shall be considered to have the total
1727 years of service credit required for vesting.

1728 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1729 invested in a default option selected by the board until the member is vested in accordance with
1730 Subsection (3)(a).

1731 (b) A member may direct the investment of contributions, including associated
1732 investment gains and losses, made by a participating employer under Subsection (2)(a) only
1733 after the contributions have vested in accordance with Subsection (3)(a).

1734 (c) A member may direct the investment of contributions made by the member under
1735 Subsection (3)(b).

1736 (5) No loans shall be available from contributions made by a participating employer
1737 under Subsection (2)(a).

1738 (6) No hardship distributions shall be available from contributions made by a
1739 participating employer under Subsection (2)(a).

1740 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1741 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1742 contributions made by a participating employer on behalf of the member under Subsection
1743 (2)(a), including associated investment gains and losses are subject to forfeiture.

1744 (b) If a member who terminates employment with a participating employer prior to the
1745 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1746 another participating employer within 10 years of the termination date of the previous
1747 employment:

1748 (i) all contributions made by the previous participating employer on behalf of the
1749 member, including associated investment gains and losses, shall be reinstated upon the
1750 member's employment as a regular full-time employee; and

1751 (ii) the length of time that the member worked with the previous employer shall be
1752 included in determining whether the member has completed the vesting period under
1753 Subsection (3)(a).

1754 (c) The office shall establish a forfeiture account and shall specify the uses of the
1755 forfeiture account, which may include an offset against administrative costs of employer
1756 contributions made under this section.

1757 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
1758 any relevant information pertaining to the maintenance of its tax qualification under the
1759 Internal Revenue Code.

1760 (9) The office may take any action which in its judgment is necessary to maintain the
1761 tax-qualified status of its 401(k) defined contribution plan under federal law.

1762 Section 21. Section **67-19-14.4** is amended to read:

1763 **67-19-14.4. Unused Sick Leave Retirement Program II -- Creation --**
1764 **Remuneration upon eligibility for allowance -- Medical expense account after retirement.**

1765 (1) (a) There is created the "Unused Sick Leave Retirement Program II."

1766 (b) An agency shall offer the Unused Sick Leave Retirement Option Program II to an
1767 employee who is eligible to receive a retirement allowance in accordance with Title 49, Utah
1768 State Retirement and Insurance Benefit Act.

1769 (c) An employee who is participating in the Unused Sick Leave Retirement Program I
1770 under Section 67-19-14.2 may make a one-time and irrevocable election to transfer all unused
1771 sick leave hours which shall include all converted sick leave hours under Section 67-19-14.1
1772 for use under the Unused Sick Leave Retirement Program II under this section.

1773 (2) (a) The Unused Sick Leave Retirement Program II provides that upon becoming
1774 eligible to receive a retirement allowance an employee employed by the state between January
1775 1, 2006, and January 3, 2014, shall receive remuneration for the employee's unused
1776 accumulated sick leave and converted sick leave accrued between January 1, 2006, and January
1777 3, 2014, in accordance with this section as follows:

1778 (i) subject to federal requirements and limitations, a contribution at the employee's rate
1779 of pay at the time of retirement for 25% of the employee's unused accumulated sick leave and
1780 converted sick leave shall be transferred directly to the employee's defined contribution plan
1781 qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the Utah
1782 State Retirement Board; and

1783 (ii) participation in a benefit plan that provides for reimbursement for medical
1784 expenses using money deposited at the employee's rate of pay at the time of retirement from
1785 remaining unused accumulated sick leave and converted sick leave balances.

1786 (b) If the amount calculated under Subsection (2)(a)(i) exceeds the federal contribution
1787 limitations, the amount representing the excess shall be deposited under Subsection (2)(a)(ii).

1788 (c) An employee's rate of pay at the time of retirement for purposes of Subsection
1789 (2)(a)(ii) may not be less than the average rate of pay of state employees who retired in the
1790 same retirement system under Title 49, Utah State Retirement and Insurance Benefit Act,
1791 during the previous calendar year.

1792 (3) The Utah State Retirement Office shall develop and maintain a program to provide
1793 a benefit plan that provides for reimbursement for medical expenses under Subsection (2)(a)(ii)

1794 with~~[(a)]~~ money deposited under Subsection (2)(a)(ii)~~]; and (b) accrued earnings].~~