

HIGHER EDUCATION RETIREMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John R. Westwood

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions relating to higher education retirement participation.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides that the Board of Directors of each applied technology college, rather than the State Board of Regents, shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each applied technology college is eligible to participate in under certain retirement systems or plans; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

49-11-102, as last amended by Laws of Utah 2016, Chapters 84 and 310

49-12-203, as last amended by Laws of Utah 2015, Chapters 315 and 364



- 28 49-12-204, as last amended by Laws of Utah 2014, Chapter 15
- 29 49-13-203, as last amended by Laws of Utah 2015, Chapters 315 and 364
- 30 49-13-204, as last amended by Laws of Utah 2014, Chapter 15
- 31 49-22-203, as last amended by Laws of Utah 2015, Chapters 315 and 364
- 32 49-22-204, as last amended by Laws of Utah 2014, Chapter 15



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

35 Section 1. Section 49-11-102 is amended to read:

36 **49-11-102. Definitions.**

37 As used in this title:

38 (1) (a) "Active member" means a member who:

- 39 (i) is employed by a participating employer and accruing service credit; or
- 40 (ii) within the previous 120 days:
 - 41 (A) has been employed by a participating employer; and
 - 42 (B) accrued service credit.

43 (b) "Active member" does not include a retiree.

44 (2) "Actuarial equivalent" means a benefit of equal value when computed upon the
45 basis of mortality tables as recommended by the actuary and adopted by the executive director,
46 including regular interest.

47 (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and
48 adopted by the board upon which the funding of system costs and benefits are computed.

49 (4) (a) "Agency" means:

- 50 (i) a department, division, agency, office, authority, commission, board, institution, or
51 hospital of the state;
- 52 (ii) a county, municipality, school district, local district, or special service district;
- 53 (iii) a state college or university; or
- 54 (iv) any other participating employer.

55 (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a
56 subdivision of another entity listed under Subsection (4)(a).

57 (5) "Allowance" or "retirement allowance" means the pension plus the annuity,
58 including any cost of living or other authorized adjustments to the pension and annuity.

59 (6) "Alternate payee" means a member's former spouse or family member eligible to
60 receive payments under a Domestic Relations Order in compliance with Section [49-11-612](#).

61 (7) "Amortization rate" means the board certified percent of salary required to amortize
62 the unfunded actuarial accrued liability in accordance with policies established by the board
63 upon the advice of the actuary.

64 (8) "Annuity" means monthly payments derived from member contributions.

65 (9) "Applied technology college" means the same as that term is defined in Section
66 [53B-2a-101](#).

67 [~~9~~] (10) "Appointive officer" means an employee appointed to a position for a
68 definite and fixed term of office by official and duly recorded action of a participating
69 employer whose appointed position is designated in the participating employer's charter,
70 creation document, or similar document, and:

71 (a) who earns \$500 or more per month, indexed as of January 1, 1990, as provided in
72 Section [49-12-407](#) for a Tier I appointive officer; and

73 (b) whose appointive position is full-time as certified by the participating employer for
74 a Tier II appointive officer.

75 [~~10~~] (11) (a) "At-will employee" means a person who is employed by a participating
76 employer and:

77 (i) who is not entitled to merit or civil service protection and is generally considered
78 exempt from a participating employer's merit or career service personnel systems;

79 (ii) whose on-going employment status is entirely at the discretion of the person's
80 employer; or

81 (iii) who may be terminated without cause by a designated supervisor, manager, or
82 director.

83 (b) "At-will employee" does not include a career employee who has obtained a
84 reasonable expectation of continued employment based on inclusion in a participating
85 employer's merit system, civil service protection system, or career service personnel systems,
86 policies, or plans.

87 [~~11~~] (12) "Beneficiary" means any person entitled to receive a payment under this
88 title through a relationship with or designated by a member, participant, covered individual, or
89 alternate payee of a defined contribution plan.

90 ~~[(12)]~~ (13) "Board" means the Utah State Retirement Board established under Section
91 [49-11-202](#).

92 ~~[(13)]~~ (14) "Board member" means a person serving on the Utah State Retirement
93 Board as established under Section [49-11-202](#).

94 (15) "Board of Regents" or "State Board of Regents" means the State Board of Regents
95 established in Section [53B-1-103](#).

96 ~~[(14)]~~ (16) "Certified contribution rate" means the board certified percent of salary paid
97 on behalf of an active member to the office to maintain the system on a financially and
98 actuarially sound basis.

99 ~~[(15)]~~ (17) "Contributions" means the total amount paid by the participating employer
100 and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under
101 Chapter 19, Utah Governors' and Legislators' Retirement Act.

102 ~~[(16)]~~ (18) "Council member" means a person serving on the Membership Council
103 established under Section [49-11-202](#).

104 ~~[(17)]~~ (19) "Covered individual" means any individual covered under Chapter 20,
105 Public Employees' Benefit and Insurance Program Act.

106 ~~[(18)]~~ (20) "Current service" means covered service under:

- 107 (a) Chapter 12, Public Employees' Contributory Retirement Act;
- 108 (b) Chapter 13, Public Employees' Noncontributory Retirement Act;
- 109 (c) Chapter 14, Public Safety Contributory Retirement Act;
- 110 (d) Chapter 15, Public Safety Noncontributory Retirement Act;
- 111 (e) Chapter 16, Firefighters' Retirement Act;
- 112 (f) Chapter 17, Judges' Contributory Retirement Act;
- 113 (g) Chapter 18, Judges' Noncontributory Retirement Act;
- 114 (h) Chapter 19, Utah Governors' and Legislators' Retirement Act;
- 115 (i) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
- 116 (j) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

117 ~~[(19)]~~ (21) "Defined benefit" or "defined benefit plan" or "defined benefit system"
118 means a system or plan offered under this title to provide a specified allowance to a retiree or a
119 retiree's spouse after retirement that is based on a set formula involving one or more of the
120 following factors:

121 (a) years of service;

122 (b) final average monthly salary; or

123 (c) a retirement multiplier.

124 ~~[(20)]~~ (22) "Defined contribution" or "defined contribution plan" means any defined
125 contribution plan or deferred compensation plan authorized under the Internal Revenue Code
126 and administered by the board.

127 ~~[(21)]~~ (23) "Educational institution" means a political subdivision or instrumentality of
128 the state or a combination thereof primarily engaged in educational activities or the
129 administration or servicing of educational activities, including:

130 (a) the State Board of Education and its instrumentalities;

131 (b) any institution of higher education and its branches;

132 (c) any school district and its instrumentalities;

133 (d) any vocational and technical school; and

134 (e) any entity arising out of a consolidation agreement between entities described under
135 this Subsection ~~[(21)]~~ (23).

136 ~~[(22)]~~ (24) "Elected official":

137 (a) means a person elected to a state office, county office, municipal office, school
138 board or school district office, local district office, or special service district office;

139 (b) includes a person who is appointed to serve an unexpired term of office described
140 under Subsection ~~[(22)]~~ (24)(a); and

141 (c) does not include a judge or justice who is subject to a retention election under
142 Section [20A-12-201](#).

143 ~~[(23)]~~ (25) (a) "Employer" means any department, educational institution, or political
144 subdivision of the state eligible to participate in a government-sponsored retirement system
145 under federal law.

146 (b) "Employer" may also include an agency financed in whole or in part by public
147 funds.

148 ~~[(24)]~~ (26) "Exempt employee" means an employee working for a participating
149 employer:

150 (a) who is not eligible for service credit under Section [49-12-203](#), [49-13-203](#),
151 [49-14-203](#), [49-15-203](#), or [49-16-203](#); and

152 (b) for whom a participating employer is not required to pay contributions or
153 nonelective contributions.

154 ~~[(25)]~~ (27) "Final average monthly salary" means the amount computed by dividing the
155 compensation received during the final average salary period under each system by the number
156 of months in the final average salary period.

157 ~~[(26)]~~ (28) "Fund" means any fund created under this title for the purpose of paying
158 benefits or costs of administering a system, plan, or program.

159 ~~[(27)]~~ (29) (a) "Inactive member" means a member who has not been employed by a
160 participating employer for a period of at least 120 days.

161 (b) "Inactive member" does not include retirees.

162 ~~[(28)]~~ (30) (a) "Initially entering" means hired, appointed, or elected for the first time,
163 in current service as a member with any participating employer.

164 (b) "Initially entering" does not include a person who has any prior service credit on
165 file with the office.

166 (c) "Initially entering" includes an employee of a participating employer, except for an
167 employee that is not eligible under a system or plan under this title, who:

168 (i) does not have any prior service credit on file with the office;

169 (ii) is covered by a retirement plan other than a retirement plan created under this title;

170 and

171 (iii) moves to a position with a participating employer that is covered by this title.

172 ~~[(29)]~~ (31) "Institution of higher education" means an institution described in Section
173 [53B-1-102](#).

174 ~~[(30)]~~ (32) (a) "Member" means a person, except a retiree, with contributions on
175 deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19,
176 Utah Governors' and Legislators' Retirement Act, or with a terminated system.

177 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)
178 of the Internal Revenue Code, if the employees have contributions on deposit with the office.

179 If leased employees constitute less than 20% of the participating employer's work force that is
180 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,
181 "member" does not include leased employees covered by a plan described in Section 414(n)(5)
182 of the federal Internal Revenue Code.

183 ~~[(31)]~~ (33) "Member contributions" means the sum of the contributions paid to a
184 system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if
185 allowed by a system, and which are made by:

186 (a) the member; and

187 (b) the participating employer on the member's behalf under Section 414(h) of the
188 Internal Revenue Code.

189 ~~[(32)]~~ (34) "Nonelective contribution" means an amount contributed by a participating
190 employer into a participant's defined contribution account.

191 ~~[(33)]~~ (35) "Normal cost rate":

192 (a) means the percent of salary that is necessary for a retirement system that is fully
193 funded to maintain its fully funded status; and

194 (b) is determined by the actuary based on the assumed rate of return established by the
195 board.

196 ~~[(34)]~~ (36) "Office" means the Utah State Retirement Office.

197 ~~[(35)]~~ (37) "Participant" means an individual with voluntary deferrals or nonelective
198 contributions on deposit with the defined contribution plans administered under this title.

199 ~~[(36)]~~ (38) "Participating employer" means a participating employer, as defined by
200 Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
201 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,
202 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'
203 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges'
204 Noncontributory Retirement Act, or an agency financed in whole or in part by public funds
205 which is participating in a system or plan as of January 1, 2002.

206 ~~[(37)]~~ (39) "Part-time appointed board member" means a person:

207 (a) who is appointed to serve as a member of a board, commission, council, committee,
208 or panel of a participating employer; and

209 (b) whose service as a part-time appointed board member does not qualify as a regular
210 full-time employee as defined under Section [49-12-102](#), [49-13-102](#), or [49-22-102](#).

211 ~~[(38)]~~ (40) "Pension" means monthly payments derived from participating employer
212 contributions.

213 ~~[(39)]~~ (41) "Plan" means the Utah Governors' and Legislators' Retirement Plan created

214 by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees'
215 Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution
216 Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by
217 Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created
218 under Section [49-11-801](#).

219 ~~[(40)]~~ [\(42\)](#) (a) "Political subdivision" means any local government entity, including
220 cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is
221 legally separate and distinct from the state and only if its employees are not by virtue of their
222 relationship to the entity employees of the state.

223 (b) "Political subdivision" includes local districts, special service districts, or
224 authorities created by the Legislature or by local governments, including the office.

225 (c) "Political subdivision" does not include a project entity created under Title 11,
226 Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

227 ~~[(41)]~~ [\(43\)](#) "Program" means the Public Employees' Insurance Program created under
228 Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'
229 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term
230 Disability Act.

231 ~~[(42)]~~ [\(44\)](#) "Public funds" means those funds derived, either directly or indirectly, from
232 public taxes or public revenue, dues or contributions paid or donated by the membership of the
233 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,
234 the governmental, educational, and social programs and systems of the state or its political
235 subdivisions.

236 ~~[(43)]~~ [\(45\)](#) "Qualified defined contribution plan" means a defined contribution plan
237 that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

238 ~~[(44)]~~ [\(46\)](#) "Refund interest" means the amount accrued on member contributions at a
239 rate adopted by the board.

240 ~~[(45)]~~ [\(47\)](#) "Retiree" means an individual who has qualified for an allowance under this
241 title.

242 ~~[(46)]~~ [\(48\)](#) "Retirement" means the status of an individual who has become eligible,
243 applies for, and is entitled to receive an allowance under this title.

244 ~~[(47)]~~ [\(49\)](#) "Retirement date" means the date selected by the member on which the

245 member's retirement becomes effective with the office.

246 [~~(48)~~] (50) "Retirement related contribution":

247 (a) means any employer payment to any type of retirement plan or program made on
248 behalf of an employee; and

249 (b) does not include Social Security payments or Social Security substitute payments
250 made on behalf of an employee.

251 [~~(49)~~] (51) "Service credit" means:

252 (a) the period during which an employee is employed and compensated by a
253 participating employer and meets the eligibility requirements for membership in a system or the
254 Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are
255 paid to the office; and

256 (b) periods of time otherwise purchasable under this title.

257 [~~(50)~~] (52) "Surviving spouse" means:

258 (a) the lawful spouse who has been married to a member for at least six months
259 immediately before the death date of the member; or

260 (b) a former lawful spouse of a member with a valid domestic relations order benefits
261 on file with the office before the member's death date in accordance with Section [49-11-612](#).

262 [~~(51)~~] (53) "System" means the individual retirement systems created by Chapter 12,
263 Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'
264 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,
265 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'
266 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges'
267 Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement
268 Act, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part
269 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid
270 Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

271 [~~(52)~~] (54) "Tier I" means a system or plan under this title for which:

272 (a) an employee is eligible to participate if the employee initially enters regular
273 full-time employment before July 1, 2011; or

274 (b) a governor or legislator who initially enters office before July 1, 2011.

275 [~~(53)~~] (55) (a) "Tier II" means a system or plan under this title provided in lieu of a

276 Tier I system or plan for an employee, governor, legislator, or full-time elected official who
277 does not have Tier I service credit in a system or plan under this title:

278 (i) if the employee initially enters regular full-time employment on or after July 1,
279 2011; or

280 (ii) if the governor, legislator, or full-time elected official initially enters office on or
281 after July 1, 2011.

282 (b) "Tier II" includes:

283 (i) the Tier II hybrid system established under:

284 (A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or

285 (B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and

286 (ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:

287 (A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or

288 (B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

289 [~~54~~] (56) "Unfunded actuarial accrued liability" or "UAAL":

290 (a) is determined by the system's actuary; and

291 (b) means the excess, if any, of the accrued liability of a retirement system over the
292 actuarial value of its assets.

293 [~~55~~] (57) "Voluntary deferrals" means an amount contributed by a participant into
294 that participant's defined contribution account.

295 Section 2. Section 49-12-203 is amended to read:

296 **49-12-203. Exclusions from membership in system.**

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

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

300 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
301 education who participates in a retirement system with a public or private retirement system,
302 organization, or company designated by the State Board of Regents, or the Board of Directors
303 of each applied technology college for an employee of each applied technology college, during
304 any period in which required contributions based on compensation have been paid on behalf of
305 the employee by the employer;

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

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

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

312 (f) an employee who is employed on or after July 1, 2009, with an employer that has
313 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
314 [49-12-202\(2\)\(c\)](#);

315 (g) an employee who is employed on or after July 1, 2014, with an employer that has
316 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection
317 [49-12-202\(2\)\(d\)](#); or

318 (h) an employee who is employed with a withdrawing entity that has elected, prior to
319 January 1, 2017, to exclude:

320 (i) new employees from participation in this system under Subsection [49-11-623\(3\)\(a\)](#);

321 or

322 (ii) all employees from participation in this system under Subsection [49-11-623\(3\)\(b\)](#).

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

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

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

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

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

338 Subsection (1)(f).

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

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

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

346 (b) an elected official;

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

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

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

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

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

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

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

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

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

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

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

365 (b) An employee may not be exempted unless the employee is employed in an
366 exempted position designated by the participating employer.

367 (6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a
368 municipality, county, or political subdivision may not exempt a total of more than 50 positions

369 or a number equal to 10% of the employees of the municipality, county, or political
370 subdivision, whichever is less.

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

373 (7) Each participating employer shall:

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

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

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

377 Section 3. Section 49-12-204 is amended to read:

378 **49-12-204. Higher education employees' eligibility requirements -- Election**
379 **between different retirement plans -- Classification requirements -- Transfer between**
380 **systems -- One-time election window -- Rulemaking.**

381 (1) (a) A regular full-time employee of an institution of higher education who is
382 eligible to participate in either this system or a public or private retirement system,
383 organization, or company, designated [~~by the Board of Regents~~] as described in Subsection
384 (1)(c) or (d), shall, not later than January 1, 1979, elect to participate exclusively in this system
385 or in an annuity contract allowed under this Subsection (1).

386 (b) The election is final, and no right exists to make any further election.

387 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the
388 public or private retirement systems, organizations, or companies that a regular full-time
389 employee of an institution of higher education is eligible to participate in under Subsection
390 (1)(a).

391 (d) The Board of Directors of each applied technology college shall designate the
392 public or private retirement systems, organizations, or companies that a regular full-time
393 employee of each applied technology college is eligible to participate in under Subsection
394 (1)(a).

395 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired
396 by an institution of higher education after January 1, 1979, may participate only in the
397 retirement plan which attaches to the person's employment classification.

398 (b) Each institution of higher education shall prepare or amend existing employment
399 classifications, under the direction of the Board of Regents, or the Board of Directors of each

400 applied technology college for each applied technology college, so that each classification is
401 assigned with either:

402 (i) this system; or

403 (ii) a public or private system, organization, or company designated by:

404 (A) except as provided in Subsection (2)(b)(ii)(B), the Board of Regents; or

405 (B) the Board of Directors of each applied technology college for regular full-time
406 employees of each applied technology college.

407 (c) Notwithstanding a person's employment classification assignment under Subsection
408 (2)(b), a regular full-time employee who begins employment with an institution of higher
409 education on or after May 11, 2010, has a one-time irrevocable election to continue
410 participation in this system, if the employee has service credit in this system before the date of
411 employment.

412 (3) Notwithstanding an employment classification assignment change made under
413 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after
414 January 1, 1979, whose employment classification requires participation in this system may
415 elect to continue participation in this system.

416 (4) A regular full-time employee hired by an institution of higher education after
417 January 1, 1979, whose employment classification requires participation in this system shall
418 participate in this system.

419 (5) (a) Notwithstanding any other provision of this section, a regular full-time
420 employee of an institution of higher education shall have a one-time irrevocable election to
421 participate in this system if the employee:

422 (i) was hired after January 1, 1979;

423 (ii) whose employment classification assignment under Subsection (2)(b) required
424 participation in a retirement program other than this system; and

425 (iii) has service credit in a system under this title.

426 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

427 (c) All forms required by the office must be completed and received by the office no
428 later than June 30, 2010, for the election to participate in this system to be effective.

429 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher
430 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue

431 service credit in this system.

432 (6) A regular full-time employee of an institution of higher education who elects to be
433 covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment
434 while covered under another retirement program sponsored by the institution of higher
435 education by complying with the requirements of Section 49-11-403.

436 (7) The board shall make rules to implement this section.

437 Section 4. Section 49-13-203 is amended to read:

438 **49-13-203. Exclusions from membership in system.**

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

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

442 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
443 education who participates in a retirement system with a public or private retirement system,
444 organization, or company designated by the State Board of Regents, or the Board of Directors
445 of each applied technology college for an employee of each applied technology college, during
446 any period in which required contributions based on compensation have been paid on behalf of
447 the employee by the employer;

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

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

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

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

458 (g) an employee who is employed with a withdrawing entity that has elected, prior to
459 January 1, 2017, to exclude:

460 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);

461 or

462 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b).

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

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

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

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

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

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

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

483 (b) an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

503 (b) An employee may not be exempted unless the employee is employed in a position
504 designated by the participating employer.

505 (6) (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a
506 municipality, county, or political subdivision may not exempt a total of more than 50 positions
507 or a number equal to 10% of the employees of the municipality, county, or political
508 subdivision, whichever is less.

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

511 (7) Each participating employer shall:

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

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

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

515 Section 5. Section 49-13-204 is amended to read:

516 **49-13-204. Higher education employees' eligibility requirements -- Election**
517 **between different retirement plans -- Classification requirements -- Transfer between**
518 **systems -- One-time election window -- Rulemaking.**

519 (1) (a) A regular full-time employee of an institution of higher education who is
520 eligible to participate in either this system or in a retirement system with a public or private
521 retirement system, organization, or company, designated [~~by the Board of Regents~~] as
522 described in Subsection (1)(c) or (d), shall, not later than January 1, 1979, elect to participate
523 exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).

524 (b) The election is final, and no right exists to make any further election.

525 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the
526 public or private retirement systems, organizations, or companies that a regular full-time
527 employee of an institution of higher education is eligible to participate in under Subsection
528 (1)(a).

529 (d) The Board of Directors of each applied technology college shall designate the
530 public or private retirement systems, organizations, or companies that a regular full-time
531 employee of each applied technology college is eligible to participate in under Subsection
532 (1)(a).

533 (2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired
534 by an institution of higher education after January 1, 1979, may participate only in the
535 retirement plan which attaches to the person's employment classification.

536 (b) Each institution of higher education shall prepare or amend existing employment
537 classifications, under the direction of the Board of Regents, or the Board of Directors of each
538 applied technology college for regular full-time employees of each applied technology college,
539 so that each classification is assigned with either:

540 (i) this system; or

541 (ii) a public or private system, organization, or company designated by:

542 (A) except as provided in Subsection (2)(b)(ii)(B), the Board of Regents[-]; or

543 (B) the Board of Directors of each applied technology college for regular full-time
544 employees of each applied technology college.

545 (c) Notwithstanding a person's employment classification assignment under Subsection
546 (2)(b), a regular full-time employee who begins employment with an institution of higher
547 education on or after May 11, 2010, has a one-time irrevocable election to continue
548 participation in this system, if the employee has service credit in this system before the date of
549 employment.

550 (3) Notwithstanding an employment classification assignment change made under
551 Subsection (2)(b), a regular full-time employee hired by an institution of higher education after
552 January 1, 1979, whose employment classification requires participation in this system may
553 elect to continue participation in this system.

554 (4) A regular full-time employee hired by an institution of higher education after

555 January 1, 1979, whose employment classification requires participation in this system shall
556 participate in this system.

557 (5) (a) Notwithstanding any other provision of this section, a regular full-time
558 employee of an institution of higher education whose employment classification assignment
559 under Subsection (2)(b) required participation in a retirement program other than this system
560 shall have a one-time irrevocable election to participate in this system.

561 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.

562 (c) All forms required by the office must be completed and received by the office no
563 later than June 30, 2010, for the election to participate in this system to be effective.

564 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher
565 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue
566 service credit in this system.

567 (6) A regular full-time employee of an institution of higher education who elects to be
568 covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment
569 while covered under another retirement program by complying with the requirements of
570 Section 49-11-403.

571 (7) The board shall make rules to implement this section.

572 Section 6. Section 49-22-203 is amended to read:

573 **49-22-203. Exclusions from membership in system.**

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

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

577 (b) except as provided under Subsection (3), an employee of an institution of higher
578 education who participates in a retirement system with a public or private retirement system,
579 organization, or company designated by the State Board of Regents, or the Board of Directors
580 of each applied technology college for an employee of each applied technology college, during
581 any period in which required contributions based on compensation have been paid on behalf of
582 the employee by the employer;

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

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

586 (e) an employee who is employed with a withdrawing entity that has elected, prior to
587 January 1, 2017, to exclude:

588 (i) new employees from participation in this system under Subsection 49-11-623(3)(a);

589 or

590 (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

591 or

592 (f) a person who files a written request for exemption with the office under Section
593 49-22-205.

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

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

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

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

607 Section 7. Section 49-22-204 is amended to read:

608 **49-22-204. Higher education employees' eligibility requirements -- Election**
609 **between different retirement plans -- Classification requirements -- Transfer between**
610 **systems.**

611 (1) (a) A regular full-time [employees of institutions] employee of an institution of
612 higher education who [are] is eligible to participate in either this system or in a retirement
613 annuity contract with a public or private system, organization, or company, designated [by the
614 Board of Regents] as described in Subsection (1)(c) or (d), shall, not later than January 1, 1979,
615 elect to participate exclusively in this system or in an annuity contract allowed under this
616 Subsection (1)[(a)].

617 (b) The election is final, and no right exists to make any further election.

618 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the
619 public or private retirement systems, organizations, or companies that a regular full-time
620 employee of an institution of higher education is eligible to participate in under Subsection
621 (1)(a).

622 (d) The Board of Directors of each applied technology college shall designate the
623 public or private retirement systems, organizations, or companies that a regular full-time
624 employee of each applied technology college is eligible to participate in under Subsection
625 (1)(a).

626 (2) (a) A regular full-time employee hired by an institution of higher education after
627 January 1, 1979, may participate only in the retirement plan which attaches to the person's
628 employment classification.

629 (b) Each institution of higher education shall prepare or amend existing employment
630 classifications, under the direction of the Board of Regents, or the Board of Directors of each
631 applied technology college for each applied technology college, so that each classification is
632 assigned with either:

633 (i) this system; or

634 (ii) a public or private system, organization, or company designated by:

635 (A) except as provided under Subsection (2)(b)(ii)(B), the Board of Regents; or

636 (B) the Board of Directors of each applied technology college for regular full-time
637 employees of each applied technology college.

638 (3) A regular full-time employee hired by an institution of higher education on or after
639 July 1, 2011, whose employment classification requires participation in this system may elect
640 to continue participation in this system upon change to an employment classification which
641 requires participation in a public or private system, organization, or company designated by:

642 (a) except as provided in Subsection (3)(b), the Board of Regents; or

643 (b) the Board of Directors of each applied technology college for regular full-time
644 employees of each applied technology college.

645 (4) A regular full-time employee hired by an institution of higher education on or after
646 July 1, 2011, whose employment classification requires participation in this system shall
647 participate in this system.

648 Section 8. **Effective date.**

649 If approved by two-thirds of all the members elected to each house, this bill takes effect

650 upon approval by the governor, or the day following the constitutional time limit of Utah

651 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

652 the date of veto override.

Legislative Review Note
Office of Legislative Research and General Counsel