

1 **UTAH RETIREMENT SYSTEMS AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Adam Robertson**

5 Senate Sponsor: Wayne A. Harper

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7 **LONG TITLE**

8 **Committee Note:**

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

10 **General Description:**

11 This bill modifies the Utah State Retirement and Insurance Benefit Act by amending  
12 retirement and insurance provisions.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ increases the number of members serving on the Membership Council;
- 16 ▶ amends the powers and duties of the Utah Retirement Systems' executive director;
- 17 ▶ modifies provisions allowing the calculation and payment of benefits pending  
18 settlement of a dispute;
- 19 ▶ clarifies the availability of certain retirement allowance payment options;
- 20 ▶ amends how the service status of certain justice court judges is established;
- 21 ▶ specifies additional names for the Tier II retirement systems and plans; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**



28 AMENDS:

29 49-11-102, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315

30 49-11-202, as last amended by Laws of Utah 2010, Chapters 286 and 321

31 49-11-204, as last amended by Laws of Utah 2008, Chapter 252

32 49-11-607, as last amended by Laws of Utah 2013, Chapter 316

33 49-12-406, as last amended by Laws of Utah 2015, Chapter 241

34 49-13-402, as last amended by Laws of Utah 2017, Chapter 141

35 49-13-406, as last amended by Laws of Utah 2015, Chapter 241

36 49-22-103, as enacted by Laws of Utah 2010, Chapter 266

37 49-22-305, as last amended by Laws of Utah 2017, Chapter 141

38 49-22-310, as enacted by Laws of Utah 2011, Chapter 439

39 49-23-103, as enacted by Laws of Utah 2010, Chapter 266

40 49-23-304, as last amended by Laws of Utah 2017, Chapter 141

41 49-23-309, as enacted by Laws of Utah 2011, Chapter 439

42 ENACTS:

43 49-11-205, Utah Code Annotated 1953



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

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

47 **49-11-102. Definitions.**

48 As used in this title:

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

50 (i) is employed by a participating employer and accruing service credit; or

51 (ii) within the previous 120 days:

52 (A) has been employed by a participating employer; and

53 (B) accrued service credit.

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

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

58 (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and

59 adopted by the board upon which the funding of system costs and benefits are computed.

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

61 (i) a department, division, agency, office, authority, commission, board, institution, or  
62 hospital of the state;

63 (ii) a county, municipality, school district, local district, or special service district;

64 (iii) a state college or university; or

65 (iv) any other participating employer.

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

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

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

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

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

76 (9) "Appointive officer" means an employee appointed to a position for a definite and  
77 fixed term of office by official and duly recorded action of a participating employer whose  
78 appointed position is designated in the participating employer's charter, creation document, or  
79 similar document, and:

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

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

84 (10) (a) "At-will employee" means a person who is employed by a participating  
85 employer and:

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

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

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

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

96 (11) "Beneficiary" means any person entitled to receive a payment under this title  
97 through a relationship with or designated by a member, participant, covered individual, or  
98 alternate payee of a defined contribution plan.

99 (12) "Board" means the Utah State Retirement Board established under Section  
100 [49-11-202](#).

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

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

105 (15) "Certified contribution rate" means the board certified percent of salary paid on  
106 behalf of an active member to the office to maintain the system on a financially and actuarially  
107 sound basis.

108 (16) "Contributions" means the total amount paid by the participating employer and the  
109 member into a system or to the Utah Governors' and Legislators' Retirement Plan under  
110 Chapter 19, Utah Governors' and Legislators' Retirement Act.

111 (17) "Council member" means a person serving on the Membership Council  
112 established under Section [~~49-11-202~~] [49-11-205](#).

113 (18) "Covered individual" means any individual covered under Chapter 20, Public  
114 Employees' Benefit and Insurance Program Act.

115 (19) "Current service" means covered service under:

- 116 (a) Chapter 12, Public Employees' Contributory Retirement Act;
- 117 (b) Chapter 13, Public Employees' Noncontributory Retirement Act;
- 118 (c) Chapter 14, Public Safety Contributory Retirement Act;
- 119 (d) Chapter 15, Public Safety Noncontributory Retirement Act;
- 120 (e) Chapter 16, Firefighters' Retirement Act;

- 121 (f) Chapter 17, Judges' Contributory Retirement Act;
- 122 (g) Chapter 18, Judges' Noncontributory Retirement Act;
- 123 (h) Chapter 19, Utah Governors' and Legislators' Retirement Act;
- 124 (i) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
- 125 (j) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.
- 126 (20) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a
- 127 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's
- 128 spouse after retirement that is based on a set formula involving one or more of the following
- 129 factors:
- 130 (a) years of service;
- 131 (b) final average monthly salary; or
- 132 (c) a retirement multiplier.
- 133 (21) "Defined contribution" or "defined contribution plan" means any defined
- 134 contribution plan or deferred compensation plan authorized under the Internal Revenue Code
- 135 and administered by the board.
- 136 (22) "Educational institution" means a political subdivision or instrumentality of the
- 137 state or a combination thereof primarily engaged in educational activities or the administration
- 138 or servicing of educational activities, including:
- 139 (a) the State Board of Education and its instrumentalities;
- 140 (b) any institution of higher education and its branches;
- 141 (c) any school district and its instrumentalities;
- 142 (d) any vocational and technical school; and
- 143 (e) any entity arising out of a consolidation agreement between entities described under
- 144 this Subsection (22).
- 145 (23) "Elected official":
- 146 (a) means a person elected to a state office, county office, municipal office, school
- 147 board or school district office, local district office, or special service district office;
- 148 (b) includes a person who is appointed to serve an unexpired term of office described
- 149 under Subsection (23)(a); and
- 150 (c) does not include a judge or justice who is subject to a retention election under
- 151 Section [20A-12-201](#).

152 (24) (a) "Employer" means any department, educational institution, or political  
153 subdivision of the state eligible to participate in a government-sponsored retirement system  
154 under federal law.

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

157 (25) "Exempt employee" means an employee working for a participating employer:

158 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,  
159 49-14-203, 49-15-203, or 49-16-203; and

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

162 (26) "Final average monthly salary" means the amount computed by dividing the  
163 compensation received during the final average salary period under each system by the number  
164 of months in the final average salary period.

165 (27) "Fund" means any fund created under this title for the purpose of paying benefits  
166 or costs of administering a system, plan, or program.

167 (28) (a) "Inactive member" means a member who has not been employed by a  
168 participating employer for a period of at least 120 days.

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

170 (29) (a) "Initially entering" means hired, appointed, or elected for the first time, in  
171 current service as a member with any participating employer.

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

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

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

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

178 and

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

180 (30) "Institution of higher education" means an institution described in Section  
181 53B-1-102.

182 (31) (a) "Member" means a person, except a retiree, with contributions on deposit with

183 a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah  
184 Governors' and Legislators' Retirement Act, or with a terminated system.

185 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)  
186 of the Internal Revenue Code, if the employees have contributions on deposit with the office.  
187 If leased employees constitute less than 20% of the participating employer's work force that is  
188 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,  
189 "member" does not include leased employees covered by a plan described in Section 414(n)(5)  
190 of the federal Internal Revenue Code.

191 (32) "Member contributions" means the sum of the contributions paid to a system or  
192 the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a  
193 system, and which are made by:

194 (a) the member; and

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

197 (33) "Nonelective contribution" means an amount contributed by a participating  
198 employer into a participant's defined contribution account.

199 (34) "Normal cost rate":

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

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

204 (35) "Office" means the Utah State Retirement Office.

205 (36) "Participant" means an individual with voluntary deferrals or nonelective  
206 contributions on deposit with the defined contribution plans administered under this title.

207 (37) "Participating employer" means a participating employer, as defined by Chapter  
208 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'  
209 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,  
210 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'  
211 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges'  
212 Noncontributory Retirement Act, or an agency financed in whole or in part by public funds  
213 which is participating in a system or plan as of January 1, 2002.

214 (38) "Part-time appointed board member" means a person:

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

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

219 (39) "Pension" means monthly payments derived from participating employer  
220 contributions.

221 (40) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by  
222 Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees' Tier  
223 II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution Plan,  
224 the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23,  
225 Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under  
226 Section 49-11-801.

227 (41) (a) "Political subdivision" means any local government entity, including cities,  
228 towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally  
229 separate and distinct from the state and only if its employees are not by virtue of their  
230 relationship to the entity employees of the state.

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

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

235 (42) "Program" means the Public Employees' Insurance Program created under Chapter  
236 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
237 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
238 Disability Act.

239 (43) "Public funds" means those funds derived, either directly or indirectly, from public  
240 taxes or public revenue, dues or contributions paid or donated by the membership of the  
241 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,  
242 the governmental, educational, and social programs and systems of the state or its political  
243 subdivisions.

244 (44) "Qualified defined contribution plan" means a defined contribution plan that



245 meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

246 (45) "Refund interest" means the amount accrued on member contributions at a rate  
247 adopted by the board.

248 (46) "Retiree" means an individual who has qualified for an allowance under this title.

249 (47) "Retirement" means the status of an individual who has become eligible, applies  
250 for, and is entitled to receive an allowance under this title.

251 (48) "Retirement date" means the date selected by the member on which the member's  
252 retirement becomes effective with the office.

253 (49) "Retirement related contribution":

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

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

258 (50) "Service credit" means:

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

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

264 (51) "Surviving spouse" means:

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

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

269 (52) "System" means the individual retirement systems created by Chapter 12, Public  
270 Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory  
271 Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public  
272 Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17,  
273 Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and  
274 Chapter 19, Utah Governors' and Legislators' Retirement Act, the defined benefit portion of the  
275 Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System,

276 and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part  
277 3, Tier II Hybrid Retirement System.

278 (53) "Technical college" means the same as that term is defined in Section  
279 53B-1-101.5.

280 (54) "Tier I" means a system or plan under this title for which:

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

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

284 (55) (a) "Tier II" means a system or plan under this title provided in lieu of a Tier I  
285 system or plan for an employee, governor, legislator, or full-time elected official who does not  
286 have Tier I service credit in a system or plan under this title:

287 (i) if the employee initially enters regular full-time employment on or after July 1,  
288 2011; or

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

291 (b) "Tier II" includes:

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

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

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

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

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

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

298 (56) "Unfunded actuarial accrued liability" or "UAAL":

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

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

302 (57) "Voluntary deferrals" means an amount contributed by a participant into that  
303 participant's defined contribution account.

304 Section 2. Section 49-11-202 is amended to read:

305 **49-11-202. Establishment of Utah State Retirement Board -- Quorum -- Terms --**  
306 **Officers -- Expenses and per diem.**

307 (1) There is established the Utah State Retirement Board composed of seven board  
308 members determined as follows:

309 (a) Four board members, with experience in investments or banking, shall be appointed  
310 by the governor from the general public.

311 (b) One board member shall be a school employee appointed by the governor from at  
312 least three nominations submitted by the governing board of the school employees' association  
313 that is representative of a majority of the school employees who are members of a system  
314 administered by the board.

315 (c) One board member shall be a public employee appointed by the governor from at  
316 least three nominations submitted by the governing board of the public employee association  
317 that is representative of a majority of the public employees who are members of a system  
318 administered by the board.

319 (d) One board member shall be the state treasurer.

320 (2) Four board members constitute a quorum for the transaction of business.

321 (3) (a) All appointments to the board shall be made on a nonpartisan basis, with the  
322 consent of the Senate.

323 (b) Board members shall serve until their successors are appointed and take the  
324 constitutional oath of office.

325 (c) When a vacancy occurs on the board for any reason, the replacement shall be  
326 appointed for the unexpired term.

327 (4) (a) Except as required by Subsection (4)(b), all appointed board members shall  
328 serve for four-year terms.

329 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the  
330 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
331 board members are staggered so that:

332 (i) approximately half of the board is appointed every two years; and

333 (ii) no more than two of the board members appointed under Subsection (1)(a) are  
334 appointed every two years.

335 (c) A board member who is appointed as a school employee or as a public employee  
336 who retires or who is no longer employed with a participating employer shall immediately  
337 resign from the board.

338 (5) (a) Each year the board shall elect a president and vice president from its  
339 membership.

340 (b) A board member may not receive compensation or benefits for the board member's  
341 service, but may receive per diem and travel expenses in accordance with:

342 (i) Section 63A-3-106;

343 (ii) Section 63A-3-107; and

344 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
345 63A-3-107.

346 ~~[(6) (a) There is established a Membership Council to perform the duties under  
347 Subsection (10).]~~

348 ~~[(b) A member of the council may not receive compensation or benefits for the  
349 member's service, but may receive per diem and travel expenses in accordance with:]~~

350 ~~[(i) Section 63A-3-106;]~~

351 ~~[(ii) Section 63A-3-107; and]~~

352 ~~[(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
353 63A-3-107.]~~

354 ~~[(7) The Membership Council shall be composed of 13 council members selected as  
355 follows:]~~

356 ~~[(a) Three council members shall be school employees selected by the governing board  
357 of an association representative of a majority of school employees who are members of a  
358 system administered by the board.]~~

359 ~~[(b) One council member shall be a classified school employee selected by the  
360 governing board of the association representative of a majority of classified school employees  
361 who are members of a system administered by the board.]~~

362 ~~[(c) Two council members shall be public employees selected by the governing board  
363 of the association representative of a majority of the public employees who are members of a  
364 system administered by the board.]~~

365 ~~[(d) One council member shall be a municipal officer or employee selected by the  
366 governing board of the association representative of a majority of the municipalities who  
367 participate in a system administered by the board.]~~

368 ~~[(e) One council member shall be a county officer or employee selected by the~~

369 governing board of the association representative of a majority of counties who participate in a  
370 system administered by the board.]

371 ~~[(f) One council member shall be a representative of members of the Judges'~~  
372 ~~Noncontributory Retirement System selected by the Judicial Council.]~~

373 ~~[(g) One council member shall be a representative of members of the Public Safety~~  
374 ~~Retirement Systems selected by the governing board of the association representative of the~~  
375 ~~majority of peace officers who are members of the Public Safety Retirement Systems.]~~

376 ~~[(h) One council member shall be a representative of members of the Firefighters'~~  
377 ~~Retirement System selected by the governing board of the association representative of the~~  
378 ~~majority of paid professional firefighters who are members of the Firefighters' Retirement~~  
379 ~~System.]~~

380 ~~[(i) One council member shall be a retiree selected by the governing board of the~~  
381 ~~association representing the largest number of retirees, who are not public education retirees,~~  
382 ~~from the Public Employees' Contributory and Public Employees' Noncontributory Retirement~~  
383 ~~Systems.]~~

384 ~~[(j) One council member shall be a retiree selected by the governing board of the~~  
385 ~~association representing the largest number of public education retirees.]~~

386 ~~[(8) (a) Each entity granted authority to select council members under Subsection (7)~~  
387 ~~may also revoke the selection at any time.]~~

388 ~~[(b) Each term on the council shall be for a period of four years, subject to Subsection~~  
389 ~~(8)(a).]~~

390 ~~[(c) Each term begins on July 1 and expires on June 30.]~~

391 ~~[(d) When a vacancy occurs on the council for any reason, the replacement shall be~~  
392 ~~selected for the remainder of the unexpired term.]~~

393 ~~[(9) The council shall annually designate one council member as chair.]~~

394 ~~[(10) The council shall:]~~

395 ~~[(a) recommend to the board and to the Legislature benefits and policies for members~~  
396 ~~of any system or plan administered by the board;]~~

397 ~~[(b) recommend procedures and practices to improve the administration of the systems~~  
398 ~~and plans and the public employee relations responsibilities of the board and office;]~~

399 ~~[(c) examine the record of all decisions affecting retirement benefits made by a hearing~~

400 officer under Section ~~49-11-613~~;

401 ~~[(d) submit nominations to the board for the position of executive director if that~~  
402 ~~position is vacant;]~~

403 ~~[(e) advise and counsel with the board and the director on policies affecting members~~  
404 ~~of the various systems administered by the office; and]~~

405 ~~[(f) perform other duties assigned to it by the board.]~~

406 Section 3. Section **49-11-204** is amended to read:

407 **49-11-204. Powers and duties of executive director.**

408 The executive director shall:

409 (1) act as the executive officer of the board and the office;

410 (2) administer the various systems, plans, programs, and functions assigned to the  
411 board or office;

412 (3) subject to board review, develop and implement internal policies and procedures  
413 which administer and govern the day-to-day operations of the systems, plans, and programs;

414 (4) transmit orders of a hearing officer made under Section ~~49-11-613~~ to the board;

415 (5) provide information concerning the operation of the office to the board, the  
416 governor, the Legislature, participating employers, and employer and employee associations,  
417 unless otherwise restricted under Section ~~49-11-618~~;

418 (6) inform the Legislature of any recommendations from the board regarding any  
419 necessary or desirable changes to this title;

420 (7) consult with the Legislature on all legislation under this title;

421 (8) (a) recommend to the board an annual administrative budget covering the  
422 operations of the office and, upon approval, submit the budget along with the actuarial status of  
423 the funds to the governor and the Legislature for review and comment; and

424 (b) direct and control the subsequent expenditures of the budget;

425 (9) employ, within the limitations of the budget, personnel to administer the systems,  
426 plans, programs, and funds assigned to the office, including consultants, actuaries, attorneys,  
427 medical examiners, investment counselors, and accountants to accomplish the purposes of this  
428 title;

429 (10) establish independent financial records for each of the systems, plans, and  
430 programs or combine all financial records using acceptable principles of accounting to identify

431 the assets and vested interests of each system, plan, or program;

432 (11) maintain individual records necessary to provide benefits under this title;

433 (12) keep in convenient form all records, accounts, and data necessary for the

434 administration and actuarial valuation of the systems, plans, and programs;

435 (13) adopt fees, charges, and upon the recommendation of the actuary, interest rates

436 and tables for the administration of the systems, plans, and programs;

437 (14) ~~[consolidate into one]~~ make payment of all monthly allowances and any defined

438 contribution distributions, and may consolidate payments at the sole discretion of the executive

439 director;

440 (15) ensure that [if] the integrity of the various funds is maintained through appropriate

441 accounting records;

442 ~~[(+5)]~~ (16) at least every three years:

443 (a) make an actuarial investigation into the mortality, service, and other experience of

444 the members, participants, beneficiaries, and covered individuals of the systems, plans, and

445 programs;

446 (b) actuarially value the assets and liabilities of the administered funds and accounts;

447 and

448 (c) determine the rate of interest being earned by the funds;

449 ~~[(+6)]~~ (17) report to the board findings under Subsection ~~[(+5)]~~ (16), with

450 recommendations, including proposed changes in the rates of contribution or benefits that are

451 necessary to maintain the actuarial soundness of the systems, plans, or programs;

452 ~~[(+7)]~~ (18) regulate participating employers by:

453 (a) educating them on their duties imposed by this title;

454 (b) specifying the time, place, and manner in which contributions shall be withheld and

455 paid; and

456 (c) requiring any reports necessary for the administration of this title; and

457 ~~[(+8)]~~ (19) otherwise exercise the powers and perform the duties conferred on the

458 executive director by this title.

459 Section 4. Section **49-11-205** is enacted to read:

460 **49-11-205. Membership Council established -- Members -- Chair -- Duties --**

461 **Expenses and per diem.**

462 (1) There is established a Membership Council to perform the duties under Subsection  
463 (5).

464 (2) The Membership Council shall be composed of 15 council members selected as  
465 follows:

466 (a) three council members shall be school employees selected by the governing board  
467 of an association representative of a majority of school employees who are members of a  
468 system administered by the board;

469 (b) one council member shall be a classified school employee selected by the  
470 governing board of the association representative of a majority of classified school employees  
471 who are members of a system administered by the board;

472 (c) two council members shall be public employees selected by the governing board of  
473 the association representative of a majority of the public employees who are members of a  
474 system administered by the board;

475 (d) one council member shall be a municipal officer or employee selected by the  
476 governing board of the association representative of a majority of the municipalities who  
477 participate in a system administered by the board;

478 (e) one council member shall be a county officer or employee selected by the governing  
479 board of the association representative of a majority of counties who participate in a system  
480 administered by the board;

481 (f) one council member shall be a representative of members of the Judges'  
482 Noncontributory Retirement System selected by the Judicial Council;

483 (g) one council member shall be a representative of members of the Public Safety  
484 Retirement Systems selected by the governing board of the association representative of the  
485 majority of peace officers who are members of the Public Safety Retirement Systems;

486 (h) one council member shall be a representative of members of the Firefighters'  
487 Retirement System selected by the governing board of the association representative of the  
488 majority of paid professional firefighters who are members of the Firefighters' Retirement  
489 System;

490 (i) one council member shall be a retiree selected by the governing board of the  
491 association representing the largest number of retirees, who are not public education retirees,  
492 from the Public Employees' Contributory, Public Employees' Noncontributory, and New Public



493 Employees' Tier II Contributory Retirement Systems;

494 (j) one council member shall be a retiree selected by the governing board of the  
 495 association representing the largest number of public education retirees;

496 (k) one council member shall be a school business official selected by the governing  
 497 board of the association representative of a majority of the school business officials from  
 498 public education employers who participate in a system administered by the board; and

499 (l) one council member shall be a special district officer or employee selected by the  
 500 governing board of the association ~~§~~→ **[representative of a majority]** **representing the largest**  
 500a **number** ←~~§~~ of special service districts and  
 501 local districts who participate in a system administered by the board.

502 (3) (a) Each entity granted authority to select council members under Subsection (2)  
 503 may also revoke the selection at any time.

504 (b) Each term on the council shall be for a period of four years, subject to Subsection  
 505 (3)(a).

506 (c) Each term begins on July 1 and expires on June 30.

507 (d) When a vacancy occurs on the council for any reason, the replacement shall be  
 508 selected for the remainder of the unexpired term.

509 (4) The council shall annually designate one council member as chair.

510 (5) The council shall:

511 (a) recommend to the board and to the Legislature benefits and policies for members of  
 512 any system or plan administered by the board;

513 (b) recommend procedures and practices to improve the administration of the systems  
 514 and plans and the public employee relations responsibilities of the board and office;

515 (c) examine the record of all decisions affecting retirement benefits made by a hearing  
 516 officer under Section [49-11-613](#);

517 (d) submit nominations to the board for the position of executive director if that  
 518 position is vacant;

519 (e) advise and counsel with the board and the director on policies affecting members of  
 520 the various systems administered by the office; and

521 (f) perform other duties assigned to it by the board.

522 (6) A member of the council may not receive compensation or benefits for the  
 523 member's service, but may receive per diem and travel expenses in accordance with:

- 524 (a) Section 63A-3-106;
- 525 (b) Section 63A-3-107; and
- 526 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 527 63A-3-107.

528 Section 5. Section 49-11-607 is amended to read:

529 **49-11-607. Determination of benefits -- Errors in records or calculations --**  
530 **Correction of errors by the office.**

531 (1) After the retirement date, which shall be set by a member in the member's  
532 application for retirement, no alteration, addition, or cancellation of a benefit may be made  
533 except as provided in Subsections (2), (3), and (4) or other law.

534 (2) (a) Errors in the records or in the calculations of the office which result in an  
535 incorrect benefit to any member, retiree, participant, covered individual, alternate payee, or  
536 beneficiary shall be corrected by the office if the correction results in a modification of the  
537 benefit amount of \$5 or more.

538 (b) Future payments shall be made to any member, retiree, participant, covered  
539 individual, alternate payee, or beneficiary to:

- 540 (i) pay the benefit to which the member or beneficiary was entitled; or
- 541 (ii) recover any overpayment.

542 (3) (a) Errors in the records or calculation of a participating employer which result in  
543 an incorrect benefit to a member, retiree, participant, covered individual, alternate payee, or  
544 beneficiary shall be corrected by the participating employer.

545 (b) If insufficient employer contributions have been received by the office, the  
546 participating employer shall pay any delinquent employer contributions, plus interest under  
547 Section 49-11-503, required by the office to maintain the system, plan, or program affected on  
548 an actuarially sound basis.

549 (c) If excess contributions have been received by the office, the contributions shall be  
550 refunded to the participating employer or member which paid the contributions.

551 (4) If a dispute exists between a participating employer and a member or the office and  
552 a member at the time of the member's retirement which will affect the member's benefit  
553 calculation, and notice of the dispute is given to the office prior to the calculation of a  
554 member's benefit, the benefit may be paid based on the member's retirement date and the

555 records available and then recalculated upon settlement of the dispute.

556 Section 6. Section **49-12-406** is amended to read:

557 **49-12-406. Exceptions for part-time elective or appointive service -- Computation**  
558 **of allowance -- Justice court judges.**

559 (1) Notwithstanding the provisions of Sections **49-11-401** and **49-12-102**, and unless  
560 otherwise provided in this section, a member's elective or appointive service rendered on a  
561 basis not considered full-time by the office shall have a separate allowance computed on the  
562 basis of compensation actually received by the member during the period of elective or  
563 appointive service.

564 (2) (a) ~~§~~ **(i)** ~~§~~ A justice court judge who has service with only one participating  
564a employer shall

565 be ~~§~~ **[H]** ~~§~~ considered ~~§~~ **[~~determined to be~~]** ~~§~~ part-time or full-time by the office ~~§~~ **[H]**  
565a ~~§~~ as ~~§~~ **[~~after a review of the~~**

566 **~~employment facts and circumstances~~]** ~~§~~ certified by the participating employer ~~§~~ **[~~to the office.~~]**

566a **(ii) If there is a dispute between the office and a participating employer or justice court**  
566b **judge over whether service is full-time or part-time for any employment period, the disputed**  
566c **service shall be submitted by the office to the Administrative Office of the Courts for**  
566d **determination.** ~~§~~

567 (b) If a justice court judge has a combination of part-time service and full-time position  
568 service with one participating employer, the office shall compute separate allowances on the  
569 basis of compensation actually received by the judge during the part-time and full-time periods  
570 of service.

571 (3) (a) A justice court judge who has service with more than one participating  
572 employer shall be considered full-time by the office for a period of service in which the judge  
573 is certified as full-time by:

574 (i) a participating employer; or

575 (ii) the Administrative Office of the Courts beginning on or after January 1, 2009,  
576 based on the judge's aggregate caseload of the multiple employers as determined by the judge's  
577 caseloads of the individual courts of each employer in accordance with Subsection  
578 **78A-7-206(1)(b)(ii)**.

579 (b) If a justice court judge has full-time service under Subsection (3)(a), the office shall  
580 compute an allowance on the basis of total compensation actually received from all  
581 participating employers by the judge during the total period of full-time service.

582 (c) If a justice court judge has part-time service performed that is not within a period  
583 considered full-time service under Subsection (3)(a), the office shall compute a separate  
584 allowance on the basis of compensation actually received by the member during the period of  
585 part-time service.

586 (4) All of the service rendered by a justice court judge in any one fiscal or calendar  
587 year may not count for more than one year of service credit.

588 Section 7. Section 49-13-402 is amended to read:

589 **49-13-402. Service retirement plans -- Calculation of retirement allowance.**

590 (1) (a) Except as provided under Subsection (7) or Section 49-13-701, retirees of this  
591 system may choose from the six retirement options described in this section.

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

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

595 (a) If the retiree is at least 65 years of age or has accrued at least 30 years of service  
596 credit, the allowance is an amount equal to 2% of the retiree's final average monthly salary  
597 multiplied by the number of years of service credit accrued.

598 (b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for  
599 each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of  
600 retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which  
601 event no reduction is made to the allowance.

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

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

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

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

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

616 (b) Option Three is a reduced allowance paid to and throughout the lifetime of the

617 retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout  
618 the lifetime of the retiree's lawful spouse at the time of retirement.

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

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

626 (i) spouse died, if notification and supporting documentation for the death are received  
627 by the office within 90 days of the spouse's death; or

628 (ii) notification and supporting documentation for the death are received by the office,  
629 if the notification and supporting documentation are received by the office more than 90 days  
630 after the spouse's death.

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

635 (i) spouse died, if notification and supporting documentation for the death are received  
636 by the office within 90 days of the spouse's death; or

637 (ii) notification and supporting documentation for the death are received by the office,  
638 if the notification and supporting documentation are received by the office more than 90 days  
639 after the spouse's death.

640 (4) (a) (i) The final average salary is limited in the computation of that part of an  
641 allowance based on service rendered prior to July 1, 1967, during a period when the retiree  
642 received employer contributions on a portion of compensation from an educational institution  
643 toward the payment of the premium required on a retirement annuity contract with a public or  
644 private system, organization, or company designated by the State Board of Regents to \$4,800.

645 (ii) This limitation is not applicable to retirees who elected to continue in the Public  
646 Employees' Contributory Retirement System by July 1, 1967.

647 (b) Periods of employment which are exempt from this system as permitted under

648 Subsection 49-13-203(1)(b) may be purchased by the member for the purpose of retirement  
 649 only if all benefits from a public or private system, organization, or company designated by the  
 650 State Board of Regents based on this period of employment are forfeited.

651 (5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement  
 652 date, the retirement is canceled and the death shall be considered as that of a member before  
 653 retirement.

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

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

659 (b) A conversion to an Option One benefit under this Subsection (6) begins on the first  
 660 day of the month following the month in which the notification and supporting documentation  
 661 for the divorce are received by the office.

662 (7) A retiree may not choose payment of an allowance under a retirement option  
 663 described in this section that is not applicable to that retiree, including because the retiree did  
 664 not make member contributions or does not have a lawful spouse at the time of retirement.

665 Section 8. Section 49-13-406 is amended to read:

666 **49-13-406. Exceptions for part-time elective or appointive service -- Computation**  
 667 **of allowance -- Justice court judges.**

668 (1) Notwithstanding the provisions of Sections 49-11-401 and 49-13-102, and unless  
 669 otherwise provided in this section, a member's elective or appointive service rendered on a  
 670 basis not considered full-time by the office shall have a separate allowance computed on the  
 671 basis of compensation actually received by the member during the period of elective or  
 672 appointive service.

673 (2) (a) ~~§~~ (i) ~~←~~ A justice court judge who has service with only one participating  
 673a employer shall  
 674 be ~~§~~ [H] ~~←~~ considered ~~§~~ [~~determined to be~~] ~~←~~ part-time or full-time by the office ~~§~~ [H]  
 674a ~~←~~ as ~~§~~ [~~after a review of the~~  
 675 ~~employment facts and circumstances~~] ~~←~~ certified by the participating employer ~~§~~ [~~to the office.~~]

675a (ii) If there is a dispute between the office and a participating employer or justice court  
 675b judge over whether service is full-time or part-time for any employment period, the disputed  
 675c service shall be submitted by the office to the Administrative Office of the Courts for  
 675d determination. ~~←~~

676 (b) If a justice court judge has a combination of part-time service and full-time position  
 677 service with one participating employer, the office shall compute separate allowances on the  
 678 basis of compensation actually received by the judge during the part-time and full-time periods

679 of service.

680 (3) (a) A justice court judge who has service with more than one participating  
681 employer shall be considered full-time by the office for a period of service in which the judge  
682 is certified as full-time by:

683 (i) a participating employer; or

684 (ii) the Administrative Office of the Courts beginning on or after January 1, 2009,  
685 based on the judge's aggregate caseload of the multiple employers as determined by the judge's  
686 caseloads of the individual courts of each employer in accordance with Subsection  
687 [78A-7-206\(1\)\(b\)\(ii\)](#).

688 (b) If a justice court judge has full-time service under Subsection (3)(a), the office shall  
689 compute an allowance on the basis of total compensation actually received from all  
690 participating employers by the judge during the total period of full-time service.

691 (c) If a justice court judge has part-time service performed that is not within a period  
692 considered full-time service under Subsection (3)(a), the office shall compute a separate  
693 allowance on the basis of compensation actually received by the member during the period of  
694 part-time service.

695 (4) All of the service rendered by a justice court judge in any one fiscal or calendar  
696 year may not count for more than one year of service credit.

697 Section 9. Section **49-22-103** is amended to read:

698 **49-22-103. Creation of system.**

699 (1) There is created for members employed by a participating employer the "New  
700 Public Employees' Tier II Contributory Retirement System."

701 (2) The New Public Employees' Tier II Contributory Retirement System includes:

702 (a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement  
703 System; and

704 (b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution  
705 Plan.

706 (3) The system may also be known and function as the Public Employees' Tier 2  
707 Contributory Retirement System, the Tier 2 Hybrid Retirement System, and the Tier 2 Defined  
708 Contribution Plan.

709 Section 10. Section **49-22-305** is amended to read:

710           **49-22-305. Defined benefit service retirement plans -- Calculation of retirement**  
711 **allowance -- Social security limitations.**

712           (1) (a) [~~The~~] Except as provided under Subsection (6), the retirees of this system may  
713 choose from the six retirement options described in this section.

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

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

717           (a) If the retiree is at least 65 years of age or has accrued at least 35 years of service  
718 credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied  
719 by the number of years of service credit accrued on and after July 1, 2011.

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

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

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

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

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

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

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

740           (c) Option Four is a reduced allowance paid to and throughout the lifetime of the



741 retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance  
742 is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

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

747 (i) spouse died, if notification and supporting documentation for the death are received  
748 by the office within 90 days of the spouse's death; or

749 (ii) notification and supporting documentation for the death are received by the office,  
750 if the notification and supporting documentation are received by the office more than 90 days  
751 after the spouse's death.

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

756 (i) spouse died, if notification and supporting documentation for the death are received  
757 by the office within 90 days of the spouse's death; or

758 (ii) notification and supporting documentation for the death are received by the office,  
759 if the notification and supporting documentation are received by the office more than 90 days  
760 after the spouse's death.

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

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

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

769 (b) A conversion to an Option One benefit under this Subsection (5) begins on the first  
770 day of the month following the month in which the notification and supporting documentation  
771 for the divorce are received by the office.

772 (6) A retiree may not choose payment of an allowance under a retirement option  
773 described in this section that is not applicable to that retiree, including because the retiree did  
774 not make member contributions or does not have a lawful spouse at the time of retirement.

775 Section 11. Section **49-22-310** is amended to read:

776 **49-22-310. Defined benefit adjustments -- Conditions -- Process -- Future years**  
777 **accrual.**

778 (1) In accordance with this section, the Legislature may make adjustments to the  
779 benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System  
780 created under this part if the member's contribution required under Subsection [49-22-301\(2\)\(b\)](#)  
781 to the certified contribution rate for the defined benefit portion of this system exceeds 2% of  
782 the member's salary and:

783 (a) (i) the membership council created under Section [~~49-11-202~~] [49-11-205](#)  
784 recommends an adjustment to the board in accordance with Subsection (2); and

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

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

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

791 (ii) that participating employers are liable for system costs above the contribution rate  
792 established under Subsection [49-22-301\(2\)\(a\)](#).

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

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

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

799 (c) the years of service credit multiplier established under Subsection [49-22-305\(2\)\(a\)](#);

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

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

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

808 (i) cannot reasonably be sustained under its current provisions;

809 (ii) is critically underfunded; and

810 (iii) has become unstable and is in risk of collapse.

811 (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:

812 (i) conversion to a different type of retirement plan;

813 (ii) equitable distribution of system assets to retirees and members; and

814 (iii) a closure of the system.

815 Section 12. Section **49-23-103** is amended to read:

816 **49-23-103. Creation of system.**

817 (1) There is created for members employed by a participating employer the "New  
818 Public Safety and Firefighter Tier II Contributory Retirement System."

819 (2) The New Public Safety and Firefighter Tier II Contributory Retirement System  
820 includes:

821 (a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement  
822 System; and

823 (b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution  
824 Plan.

825 (3) The system may also be known and function as the Public Safety and Firefighter  
826 Tier 2 Contributory Retirement System, the Tier 2 Hybrid Retirement System, and the Tier 2  
827 Defined Contribution Plan.

828 Section 13. Section **49-23-304** is amended to read:

829 **49-23-304. Defined benefit service retirement plans -- Calculation of retirement**  
830 **allowance -- Social security limitations.**

831 (1) (a) [The] Except as provided under Subsection (6), the retirees of this system may  
832 choose from the six retirement options described in this section.

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

834 calculation.

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

836 (a) If the retiree is at least 65 years of age or has accrued at least 25 years of service  
837 credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied  
838 by the number of years of service credit accrued on and after July 1, 2011.

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

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

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

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

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

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

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

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

862 (d) Option Five is a modification of Option Three so that if the lawful spouse at the  
863 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the  
864 time of initial retirement under Option One shall be paid to the retiree for the remainder of the

865 retiree's life, beginning on the first day of the month following the month in which the:

866 (i) spouse died, if notification and supporting documentation for the death are received  
867 by the office within 90 days of the spouse's death; or

868 (ii) notification and supporting documentation for the death are received by the office,  
869 if the notification and supporting documentation are received by the office more than 90 days  
870 after the spouse's death.

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

875 (i) spouse died, if notification and supporting documentation for the death are received  
876 by the office within 90 days of the spouse's death; or

877 (ii) notification and supporting documentation for the death are received by the office,  
878 if the notification and supporting documentation are received by the office more than 90 days  
879 after the spouse's death.

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

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

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

888 (b) A conversion to an Option One benefit under this Subsection (5) begins on the first  
889 day of the month following the month in which the notification and supporting documentation  
890 for the divorce are received by the office.

891 (6) A retiree may not choose payment of an allowance under a retirement option  
892 described in this section that is not applicable to that retiree, including because the retiree did  
893 not make member contributions or does not have a lawful spouse at the time of retirement.

894 Section 14. Section **49-23-309** is amended to read:

895 **49-23-309. Defined benefit adjustments -- Conditions -- Process -- Future years**

896 **accrual.**

897 (1) In accordance with this section, the Legislature may make adjustments to the  
898 benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System  
899 created under this part if the member's contribution required under Subsection [49-23-301\(2\)\(b\)](#)  
900 to the certified contribution rate for the defined benefit portion of this system exceeds 2% of  
901 the member's salary and:

902 (a) (i) the membership council created under Section [~~49-11-202~~] [49-11-205](#)  
903 recommends an adjustment to the board in accordance with Subsection (2); and

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

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

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

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

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

915 (a) the final average salary calculation provided under Section [49-23-102](#);

916 (b) the years of service required to be eligible to receive a retirement allowance under  
917 Section [49-23-303](#);

918 (c) the years of service credit multiplier established under Subsection [49-23-304\(2\)\(a\)](#);

919 (d) the annual cost-of-living adjustment under Section [49-23-307](#); or

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

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

- 927 (i) cannot reasonably be sustained under its current provisions;
  - 928 (ii) is critically underfunded; and
  - 929 (iii) has become unstable and is in risk of collapse.
  - 930 (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:
  - 931 (i) conversion to a different type of retirement plan;
  - 932 (ii) equitable distribution of system assets to retirees and members; and
  - 933 (iii) a closure of the system.
- 934 Section 15. **Effective date.**
- 935 This bill takes effect on July 1, 2019.