

**PUBLIC SAFETY AND FIREFIGHTER TIER II
RETIREMENT ENHANCEMENTS**

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Lee B. Perry

LONG TITLE

General Description:

This bill modifies provisions relating to the New Public Safety and Firefighter Tier II Contributory Retirement System by enhancing certain retirement benefits.

Highlighted Provisions:

This bill:

- ▶ increases the percentage of compensation that a participating employer shall pay to the office on behalf of a member for the defined benefit portion of the New Public Safety and Firefighter Tier II Contributory Retirement System;

- ▶ increases the amount of the nonelective contribution made by a participating employer on behalf of each public safety service employee or fighter service employee who is a member of the New Public Safety and Firefighter Tier II Contributory Retirement System;

- ▶ increases the multiplier percentage for the calculation of the retirement allowance of a participant in the New Public Safety and Firefighter Tier II hybrid retirement system for certain years;

- ▶ instructs the Retirement and Independent Entities Interim Committee to carry out an uncodified study; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2020:

- ▶ To Finance-Mandated-State Employee Benefits, as an ongoing appropriation:

- 30 • from the General Fund, \$2,200,000; and
- 31 ▶ To Finance-Mandated-State Employee Benefits, as a one-time appropriation:
- 32 • from the General Fund, One-time (\$2,200,000).

33 **Other Special Clauses:**

34 This bill provides a special effective date.

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **49-22-310**, as enacted by Laws of Utah 2011, Chapter 439
- 38 **49-23-301**, as last amended by Laws of Utah 2016, Chapter 84
- 39 **49-23-302**, as last amended by Laws of Utah 2016, Chapter 227
- 40 **49-23-304**, as last amended by Laws of Utah 2017, Chapter 141
- 41 **49-23-401**, as last amended by Laws of Utah 2016, Chapter 227

42 **Uncodified Material Affected:**

43 ENACTS UNCODIFIED MATERIAL



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

46 Section 1. Section **49-22-310** is amended to read:

47 **49-22-310. Defined benefit adjustments -- Conditions -- Process -- Future years**
48 **accrual.**

49 (1) In accordance with this section and except as provided in Subsection
50 **49-23-301(7)(b)**, the Legislature may make adjustments to the benefits provided for the defined
51 benefit portion of the Tier II Hybrid Retirement System created under this part if the member's
52 contribution required under Subsection **49-22-301(2)(b)** to the certified contribution rate for the
53 defined benefit portion of this system exceeds 2% of the member's salary and:

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

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

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

- 61 (i) there is a significant likelihood that contribution rates will continue to rise; and
- 62 (ii) that participating employers are liable for system costs above the contribution rate
63 established under Subsection 49-22-301(2)(a).

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

- 67 (a) the final average salary calculation provided under Section 49-22-102;
- 68 (b) the years of service required to be eligible to receive a retirement allowance under
69 Section 49-22-304;
- 70 (c) the years of service credit multiplier established under Subsection 49-22-305(2)(a);
- 71 (d) the annual cost-of-living adjustment under Section 49-22-308; or
- 72 (e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement
73 System.

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

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

86 Section 2. Section **49-23-301** is amended to read:

87 **49-23-301. Contributions.**

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

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

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

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

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

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

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

106 (c) A member contribution is vested and nonforfeitable.

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

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

111 (6) Except as provided under Subsection (7), benefits provided under the defined
112 benefit portion of the Tier II hybrid retirement system created under this part:

113 (a) may not be increased unless the actuarial funded ratios of all systems under this title

114 reach 100%; and

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

116 (7) (a) The Legislature authorizes an increase to the death benefit provided to a Tier II
117 public safety service employee or firefighter member's surviving spouse effective on May 12,
118 2015, as provided in Section 49-23-503.

119 (b) (i) The Legislature authorizes an increase to the multiplier for the calculation of the
120 retirement allowance provided to a member of the New Public Safety and Firefighter Tier II
121 hybrid retirement system effective July 1, 2020, as provided in Section 49-23-304.

122 (ii) The requirements of Section 49-22-310 do not apply to the benefit adjustment
123 described in this Subsection (7)(b).

124 Section 3. Section 49-23-302 is amended to read:

125 **49-23-302. Defined contribution benefit established -- Contribution by employer**
126 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
127 **plans.**

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

133 (i) is sponsored by the board; and

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

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

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

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

140 (2) (a) The total amount contributed by the participating employer under Subsection
141 (1)(a), including associated investment gains and losses, vests to the member upon accruing

142 four years of service credit under this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 Section 4. Section **49-23-304** is amended to read:

185 **49-23-304. Defined benefit service retirement plans -- Calculation of retirement**
186 **allowance -- Social security limitations.**

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

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

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

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

194 (i) 1.5% of the retiree's final average salary multiplied by the number of years of
195 service credit accrued on and after July 1, 2011[-], but before July 1, 2020; plus

196 (ii) 2% of the retiree's final average salary multiplied by the number of years of service
197 credit accrued on and after July 1, 2020.

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

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

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

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

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

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

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

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

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

225 (i) spouse died, if notification and supporting documentation for the death are received

226 by the office within 90 days of the spouse's death; or

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

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

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

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

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

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

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

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

250 Section 5. Section **49-23-401** is amended to read:

251 **49-23-401. Contributions -- Rates.**

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

254 contribution plan.

255 (2) (a) The participating employer shall contribute the [~~12%~~] 14% nonelective
256 contribution described in Subsection (1) to a defined contribution plan qualified under Section
257 401(k) of the Internal Revenue Code which:

258 (i) is sponsored by the board; and

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

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

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

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

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

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

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

273 (c) Upon filing a written request for exemption with the office, an eligible employee is
274 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
275 [49-23-203](#).

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

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

281 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be

282 invested in a default option selected by the board until the member is vested in accordance with
283 Subsection (3)(a).

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

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

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

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

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

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

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

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

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

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

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

315 Section 6. **Study.**

316 (1) During the 2019 Legislative interim, the Retirement and Independent Entities
317 Interim Committee shall study:

318 (a) modifications to the New Public Safety and Firefighter Tier II Contributory
319 Retirement System;

320 (b) the appropriate allocation of funding for the 2% multiplier increase;

321 (c) the appropriate proportional share of funding between the state, employers, and
322 members for changes to the New Public Safety and Firefighter Tier II Contributory Retirement
323 System; and

324 (d) other related issues.

325 (2) The Retirement and Independent Entities Interim Committee may make
326 recommendations for the 2020 General Legislative Session based on the study described in
327 Subsection (1).

328 Section 7. **Appropriation.**

329 The following sums of money are appropriated for the fiscal year beginning July 1,
330 2019, and ending June 30, 2020. These are additions to amounts previously appropriated for
331 fiscal year 2020. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
332 Act, the Legislature appropriates the following sums of money from the funds or accounts
333 indicated for the use and support of the government of the state of Utah.

334 ITEM 1

335 To Finance-Mandated-State Employee Benefits

336	<u>From General Fund</u>	<u>\$2,200,000</u>
337	<u>From General Fund, One-time</u>	<u>(\$2,200,000)</u>

338 Section 8. **Effective date.**

339 (1) Except as provided in Subsection (2), this bill takes effect May 14, 2019.

340 (2) The actions affecting the following sections take effect July 1, 2020:

341 (a) Section [49-22-310](#);

342 (b) Section [49-23-301](#);

343 (c) Section [49-23-302](#);

344 (d) Section [49-23-304](#); and

345 (e) Section [49-23-401](#).