

1 **UTAH RETIREMENT SYSTEMS AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Craig Hall**

5 Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

7 **Committee Note:**

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

9 Legislative Vote: 9 voting for 0 voting against 6 absent

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 ▶ provides that certain employee exclusions, exemptions, participation, or elections  
16 are subject to requirements under federal law and rules made by the Utah State

17 Retirement Board;

18 ▶ amends the type of plans that an employer may contribute to for an employer related  
19 contribution for certain reemployed retirees;

20 ▶ amends the application process for payments to certain survivors based on an  
21 affidavit if there are no designated beneficiaries for the deceased member;

22 ▶ authorizes premium payments for eligible retired firefighters and public safety  
23 officers to be made from a defined contribution plan;

24 ▶ clarifies that a retiree may be eligible to earn additional service credit in a  
25 reemployed position, regardless of whether the retirement allowance was cancelled

26 by the Utah State Retirement Office or at the retiree's election;  
27



- 28           ▶ modifies provisions relating to the forfeiture of retirement benefits to:
- 29           • clarify that reduced charges in accordance with all plea agreements may be
- 30 considered convictions; and
- 31           • establish procedures to be used for an employee appeal of the employer's
- 32 determination if the Administrative Procedures Act is not applicable to that
- 33 employer;
- 34           ▶ authorizes, but does not require, an employer to elect to make all of its exchange
- 35 employees eligible for retirement participation;
- 36           ▶ modifies provisions to provide notice of the available death benefits for public
- 37 safety and firefighter members of the Tier II Defined Contribution Plan; and
- 38           ▶ makes technical changes.

39 **Money Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

42           This bill provides a special effective date.

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45           **49-11-406**, as last amended by Laws of Utah 2013, Chapter 310
- 46           **49-11-504**, as last amended by Laws of Utah 2016, Chapter 310
- 47           **49-11-609**, as last amended by Laws of Utah 2018, Chapter 281
- 48           **49-11-612**, as last amended by Laws of Utah 2018, Chapter 10
- 49           **49-11-1204**, as last amended by Laws of Utah 2018, Chapter 10
- 50           **49-11-1401**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1
- 51           **49-12-203**, as last amended by Laws of Utah 2018, Chapter 10 and last amended by
- 52 Coordination Clause, Laws of Utah 2018, Chapter 315
- 53           **49-12-204**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315
- 54           **49-13-203**, as last amended by Laws of Utah 2018, Chapter 10 and last amended by
- 55 Coordination Clause, Laws of Utah 2018, Chapter 315
- 56           **49-13-204**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315
- 57           **49-14-203**, as last amended by Laws of Utah 2012, Chapter 298
- 58           **49-15-203**, as last amended by Laws of Utah 2012, Chapter 298

59            **49-16-203**, as last amended by Laws of Utah 2016, Chapter 310  
 60            **49-19-403**, as enacted by Laws of Utah 2002, Chapter 250  
 61            **49-22-201**, as last amended by Laws of Utah 2016, Chapter 227  
 62            **49-22-203**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315  
 63            **49-22-204**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 315  
 64            **49-22-205**, as last amended by Laws of Utah 2018, Chapter 10  
 65            **49-23-203**, as enacted by Laws of Utah 2015, Chapter 315  
 66            **49-23-501**, as last amended by Laws of Utah 2013, Chapter 316

67

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

69            Section 1. Section **49-11-406** is amended to read:

70            **49-11-406. Governor's appointed executives and senior staff -- Appointed**  
 71 **legislative employees -- Transfer of value of accrued defined benefit -- Procedures.**

72            (1) As used in this section:

73            (a) "Defined benefit balance" means the total amount of the contributions made on  
 74 behalf of a member to a defined benefit system plus refund interest.

75            (b) "Senior staff" means an at-will employee who reports directly to an elected official,  
 76 executive director, or director and includes a deputy director and other similar, at-will  
 77 employee positions designated by the governor, the speaker of the House, or the president of  
 78 the Senate and filed with the Department of Human Resource Management and the Utah State  
 79 Retirement Office.

80            (2) In accordance with this section and subject to requirements under federal law and  
 81 rules made by the board, a member who has service credit from a system may elect to be  
 82 exempt from coverage under a defined benefit system and to have the member's defined benefit  
 83 balance transferred from the defined benefit system or plan to a defined contribution plan in the  
 84 member's own name if the member is:

85            (a) the state auditor;

86            (b) the state treasurer;

87            (c) an appointed executive under Subsection **67-22-2(1)(a)**;

88            (d) an employee in the Governor's Office;

89            (e) senior staff in the Governor's Office of Management and Budget;

- 90 (f) senior staff in the Governor's Office of Economic Development;
- 91 (g) senior staff in the Commission on Criminal and Juvenile Justice;
- 92 (h) a legislative employee appointed under Subsection 36-12-7(3)(a);
- 93 (i) a legislative employee appointed by the speaker of the House of Representatives, the
- 94 House of Representatives minority leader, the president of the Senate, or the Senate minority
- 95 leader; or

96 (j) senior staff of the Utah Science Technology and Research Initiative created under  
 97 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

98 (3) An election made under Subsection (2):

99 (a) is final, and no right exists to make any further election;

100 (b) is considered a request to be exempt from coverage under a defined benefits  
 101 system; and

102 (c) shall be made on forms provided by the office.

103 (4) The board shall adopt rules to implement and administer this section.

104 Section 2. Section 49-11-504 is amended to read:

105 **49-11-504. Reemployment of a retiree -- Restrictions.**

106 (1) As used in this section:

107 (a) "full-time" means:

108 (i) employment requiring 20 or more hours of work per week; or

109 (ii) at least a half-time teaching contract.

110 (b) "Reemployed," "reemploy," or "reemployment" means the same as those terms are  
 111 defined in Section 49-11-1202.

112 (2) (a) Except for the provisions of Subsection (3), the provisions of this section do not  
 113 apply to a person who is subject to the provisions of Chapter 11, Part 12, Postretirement  
 114 Reemployment Restrictions Act.

115 (b) This section does not apply to employment as an elected official.

116 (3) A person who is not a retiree under this title is not subject to any postretirement  
 117 restrictions under this title.

118 (4) A retiree of an agency who is reemployed may not earn additional service credit, if  
 119 the retiree is reemployed by:

120 (a) a different agency; or

- 121 (b) the same agency after six months from the retirement date.
- 122 (5) A retiree of an agency who is reemployed on a full-time basis by the same agency
- 123 within six months of the date of retirement is subject to the following:
- 124 (a) the agency shall immediately notify the office;
- 125 (b) the office shall cancel the retiree's allowance and reinstate the retiree to active
- 126 member status;
- 127 (c) the allowance cancellation and reinstatement to active member status is effective on
- 128 the first day of the month following the date of reemployment;
- 129 (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year
- 130 period from the date of cancellation of the original allowance, and if the retiree retires again
- 131 within the two-year period, the original allowance shall be resumed; and
- 132 (e) a reinstated retiree retiring after the two-year period shall be credited with the
- 133 service credit in the retiree's account at the time of the first retirement and from that time shall
- 134 be treated as a member of a system, including the accrual of additional service credit, but
- 135 subject to recalculation of the allowance under Subsection (9).
- 136 (6) A retiree of an agency who is reemployed by the same agency within six months of
- 137 retirement on a less than full-time basis by the same agency is subject to the following:
- 138 (a) the retiree may earn, without penalty, compensation from that position which is not
- 139 in excess of the exempt earnings permitted by Social Security;
- 140 (b) if a retiree receives compensation in a calendar year in excess of the Social Security
- 141 limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;
- 142 (c) the effective date of a suspension and reinstatement of an allowance shall be set by
- 143 the office; and
- 144 (d) any suspension of a retiree's allowance under this Subsection (6) shall be applied on
- 145 a calendar year basis.
- 146 (7) For six months immediately following retirement, the retiree and participating
- 147 employer who are subject to Subsection (6) shall:
- 148 (a) maintain an accurate record of gross earnings in employment;
- 149 (b) report the gross earnings at least monthly to the office;
- 150 (c) immediately notify the office in writing of any postretirement earnings under
- 151 Subsection (6); and

152 (d) immediately notify the office in writing whether postretirement earnings equal or  
153 exceed the exempt earnings under Subsection (6).

154 (8) (a) If a participating employer hires a retiree, the participating employer may not  
155 make a retirement related contribution in an amount that exceeds the normal cost rate as  
156 defined under Section 49-11-102 on behalf of the retiree under ~~[Subsections]~~ Subsection (8)(b)  
157 ~~[and (c)]~~.

158 (b) The contributions under Subsection (8)(a) are not required, but if paid, shall be paid  
159 to a ~~[retiree-designated]~~:

160 (i) ~~[qualified] defined contribution plan administered by the board[, if the participating  
161 employer participates in a qualified defined contribution plan administered by the board]; or~~

162 ~~[(ii) qualified defined contribution plan offered by the participating employer if the  
163 participating employer does not participate in a qualified defined contribution plan  
164 administered by the board.]~~

165 ~~[(c) Notwithstanding the provisions of Subsection (8)(b), if an employer is not  
166 participating in a qualified defined contribution plan administered by the board, the employer  
167 may elect to pay the contributions under Subsection (8)(a) to a deferred compensation plan  
168 administered by the board.]~~

169 (ii) deferred compensation plan administered by the board.

170 (9) A retiree who has returned to work, accrued additional service credit, and again  
171 retires shall have the retiree's allowance recalculated using:

172 (a) the formula in effect at the date of the retiree's original retirement for all service  
173 credit accrued prior to that date; and

174 (b) the formula in effect at the date of the subsequent retirement for all service credit  
175 accrued between the first and subsequent retirement dates.

176 (10) The board may make rules to implement this section.

177 Section 3. Section 49-11-609 is amended to read:

178 **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**  
179 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**  
180 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**  
181 **expenses.**

182 (1) As used in this section, "member" includes a member, retiree, participant, covered

183 individual, a spouse of a retiree participating in the insurance benefits created by Sections  
184 49-12-404, 49-13-404, 49-22-307, and 49-23-306, or an alternate payee under a domestic  
185 relations order dividing a defined contribution account.

186 (2) (a) Except as provided under Subsection (2)(b) or (c), the most recent beneficiary  
187 designations signed by the member and filed with the office, including electronic records, at the  
188 time of the member's death are binding in the payment of any benefits due under this title.

189 (b) (i) The divorce or annulment of a member's marriage shall revoke the member's  
190 former spouse as a beneficiary from any of the member's beneficiary designations.

191 (ii) A revocation of a former spouse as a beneficiary in accordance with Subsection  
192 (2)(b)(i) does not revoke any other beneficiaries named on the member's beneficiary  
193 designations.

194 (c) A former spouse whose beneficiary designation is revoked solely under Subsection  
195 (2)(b) shall be revived on the member's beneficiary designations by:

196 (i) the member's remarriage to the former spouse; or

197 (ii) a nullification of the divorce or annulment.

198 (d) A revocation under Subsection (2)(b) does not apply to a former spouse named as a  
199 beneficiary in a beneficiary designation signed by the member and filed with the office after the  
200 date of the divorce or annulment.

201 (e) The office is not liable for having made a payment of any benefits to a beneficiary  
202 designated in a beneficiary designation affected by a divorce, annulment, or remarriage before  
203 the office received written notice of the divorce, annulment, or remarriage.

204 (3) (a) Except where an optional continuing benefit is chosen, or the law makes a  
205 specific benefit designation to a dependent spouse, a member may revoke a beneficiary  
206 designation at any time and may execute and file a different beneficiary designation with the  
207 office.

208 (b) A beneficiary designation or change of beneficiary designation shall be completed  
209 on forms provided by the office.

210 (4) (a) All benefits payable by the office may be paid or applied to the benefit of the  
211 decedent's heirs in the order of precedence established under Title 75, Chapter 2, Intestate  
212 Succession and Wills, if:

213 (i) no beneficiary is designated or if all designated beneficiaries have predeceased the

214 member;

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

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

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

223 (ii) Payment to a person in any group may be based upon receipt [~~from the person~~] of  
224 an affidavit in a form satisfactory to the office that:

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

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

227 (C) more than 30 days have elapsed since the date of death of the decedent.

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

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

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

231 Section 4. Section **49-11-612** is amended to read:

232 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**  
233 **payments -- Exemption from legal process.**

234 (1) As used in this section, "domestic relations order benefits" means:

235 (a) an allowance;

236 (b) a defined contribution account established under:

237 (i) Part 8, Defined Contribution Plans;

238 (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

239 (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement

240 Act;

241 (c) a continuing monthly death benefit established under:

242 (i) Chapter 14, Part 5, Death Benefit;

243 (ii) Chapter 15, Part 5, Death Benefit;

244 (iii) Chapter 16, Part 5, Death Benefit;

- 245 (iv) Chapter 17, Part 5, Death Benefit;
- 246 (v) Chapter 18, Part 5, Death Benefit; or
- 247 (vi) Chapter 19, Part 5, Death Benefit;
- 248 (d) a lump sum death benefit provided under:
- 249 (i) Chapter 12, Part 5, Death Benefit;
- 250 (ii) Chapter 13, Part 5, Death Benefit;
- 251 (iii) Chapter 22, Part 5, Death Benefit; or
- 252 (iv) Chapter 23, Part 5, Death Benefit; or
- 253 (e) a refund of member contributions upon termination.
- 254 (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree,
- 255 participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or
- 256 any other retirement right accrued or accruing under this title and the assets of the funds created
- 257 by this title are not subject to alienation or assignment by the member, retiree, participant, or
- 258 their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal
- 259 or equitable process.
- 260 (3) (a) The office may, upon the request of the retiree, deduct from the retiree's
- 261 allowance, insurance premiums or other dues payable on behalf of the retiree, but only to those
- 262 entities that have received the deductions prior to February 1, 2002.
- 263 (b) The office may, upon the request of a retiree of a public safety or firefighter system,
- 264 deduct insurance premiums from the retiree's allowance or defined contribution plan
- 265 administered by the board.
- 266 (4) (a) The office shall provide for the division of domestic relations order benefits
- 267 with former spouses and family members under an order of a court of competent jurisdiction
- 268 with respect to domestic relations matters on file with the office.
- 269 (b) The court order shall specify the manner in which the domestic relations order
- 270 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.
- 271 (c) Domestic relations order benefits split under a domestic relations order are subject
- 272 to the following:
- 273 (i) the amount to be paid or the period for which payments shall be made under the
- 274 original domestic relations order may not be altered if the alteration affects the actuarial
- 275 calculation of the allowance;

276 (ii) payments to an alternate payee shall begin at the time the member or beneficiary  
277 begins receiving payments; and

278 (iii) the alternate payee shall receive payments in the same form as allowances received  
279 by the member or beneficiary.

280 (d) (i) Except as provided under Subsection (4)(d)(ii), to be valid, a court order under  
281 this section must be on file with the office before the member's date of death.

282 (ii) A court order under this section received by the office after the member's date of  
283 death shall be considered valid if it is received in good order before benefits relating to the  
284 member's death are paid or settled.

285 (e) A court order under this section may not require and may not be interpreted in any  
286 way to require the office to provide any type of benefit or any option not otherwise provided  
287 under this title.

288 (5) In accordance with federal law, the board may deduct the required amount from any  
289 benefit, payment, or other right accrued or accruing to any member or beneficiary of a system,  
290 plan, or program under this title to offset any amount that member or beneficiary owes to a  
291 system, plan, or program administered by the board.

292 (6) The board shall make rules to implement this section.

293 Section 5. Section **49-11-1204** is amended to read:

294 **49-11-1204. General restrictions -- Election following one-year separation --**  
295 **Amortization rate.**

296 (1) A retiree may not for the same period of reemployment:

297 (a) (i) earn additional service credit; or

298 (ii) receive any retirement related contribution from a participating employer; and

299 (b) receive a retirement allowance.

300 (2) (a) Except as provided under Section [49-11-1205](#), the office shall cancel the  
301 retirement allowance of a retiree if the reemployment with a participating employer begins  
302 within one year of the retiree's retirement date.

303 (b) If the office cancels the retiree's retirement allowance under Subsection (2)(a), the  
304 retiree may be eligible to earn additional service credit in the reemployed position and receive  
305 an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title.

306 (3) If a reemployed retiree [~~has completed~~], in accordance with Subsection (2)(a), is

307 exempt from having the allowance cancelled, including for completing the one-year separation  
308 from employment with a participating employer [~~required under Subsection (2)~~], the retiree  
309 may elect to:

310 (a) cancel the retiree's retirement allowance and instead earn additional service credit in  
311 the reemployed position and receive an allowance in accordance with Subsections (4)(a) and  
312 (5) and other provisions of this title; or

313 (b) continue to receive the retiree's retirement allowance, forfeit earning additional  
314 service credit, and forfeit any retirement-related contribution from the participating employer  
315 that reemployed the retiree.

316 (4) (a) If a retiree's retirement allowance is cancelled and the retiree is eligible for  
317 retirement coverage in a reemployed position, the office shall reinstate the retiree to active  
318 member status on the first day of the month following the date of the employee's eligible  
319 reemployment.

320 (b) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible  
321 for retirement coverage in the reemployed position, the participating employer that reemploys  
322 the retiree shall contribute the amortization rate to the office on behalf of the retiree.

323 (c) A participating employer that reemploys a retiree in accordance with Subsection  
324 [49-11-1205\(1\)](#) is not required to contribute the amortization rate to the office.

325 (5) (a) For a retiree reinstated to active member status under Subsection (4)(a) who  
326 retires within two years from the date of reemployment, the office:

327 (i) may not recalculate a retirement benefit for the retiree; and

328 (ii) shall resume the allowance that was being paid to the retiree at the time of the  
329 cancellation.

330 (b) Subject to Subsection (1), for a retiree who is reinstated to active membership  
331 under Subsection (4)(a) and retires two or more years after the date of reinstatement to active  
332 membership, the office shall:

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

334 (ii) calculate an additional allowance for the retiree based on the formula in effect at  
335 the date of the subsequent retirement for all service credit accrued between the first and  
336 subsequent retirement dates.

337 Section 6. Section **49-11-1401** is amended to read:

338           **49-11-1401. Forfeiture of retirement benefits for employees for employment**  
339 **related offense convictions -- Notifications -- Investigations -- Appeals.**

340           (1) As used in this section:

341           (a) "Convicted" means a conviction by plea or by verdict, including a plea of guilty or a  
342 plea of no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,  
343 regardless of whether the charge was, or is, subsequently reduced in accordance with the plea  
344 agreement or reduced or dismissed in accordance with the plea in abeyance agreement.

345           (b) "Employee" means a member of a system or plan administered by the board.

346           (c) (i) "Employment related offense" means a felony committed during employment or  
347 the term of an elected or appointed office with a participating employer that is:

348                   (A) during the performance of the employee's duties;

349                   (B) within the scope of the employee's employment; or

350                   (C) under color of the employee's authority.

351           (ii) "Employment related offense" does not include any federal offense for conduct that  
352 is lawful under Title 26, Chapter 61a, Utah Medical Cannabis Act.

353           (2) (a) Notwithstanding any other provision of this title, an employee shall forfeit  
354 accrual of service credit, employer retirement related contributions, including employer  
355 contributions to the employer sponsored defined contribution plans, or other retirement related  
356 benefits from a system or plan under this title in accordance with this section.

357           (b) The forfeiture of retirement related benefits under Subsection (2)(a) does not  
358 include the employee's contribution to a defined contribution plan.

359           (3) An employee shall forfeit the benefits described under Subsection (2)(a):

360                   (a) if the employee is convicted of an employment related offense;

361                   (b) beginning on the day on which the employment related offense occurred; and

362                   (c) until the employee is either:

363                           (i) re-elected or reappointed to office; or

364                           (ii) (A) terminated from the position for which the employee was found to have  
365 committed an employment related offense; and

366                               (B) rehired or hired as an employee who is eligible to be a member of a Utah state  
367 retirement system or plan.

368           (4) The employee's participating employer shall:

- 369 (a) immediately notify the office:
- 370 (i) if an employee is charged with an offense that is or may be an employment related  
371 offense under this section; and
- 372 (ii) if the employee described in Subsection (4)(a)(i) is acquitted of the offense that is  
373 or may be an employment related offense under this section; and
- 374 (b) if the employee is convicted of an offense that may be an employment related  
375 offense:
- 376 (i) conduct an investigation, which may rely on the conviction, to determine:
- 377 (A) whether the conviction is for an employment related offense; and
- 378 (B) the date on which the employment related offense was initially committed; and
- 379 (ii) after the period of time for an appeal by an employee under Subsection (5),  
380 immediately notify the office of the employer's determination under this Subsection (4)(b).
- 381 (5) An employee may appeal the employee's participating employer's determination  
382 under Subsection (4)(b) in accordance with the participating employer's procedures for  
383 appealing agency action, including Title 63G, Chapter 4, Administrative Procedures Act, if  
384 applicable.
- 385 (6) (a) Notwithstanding Subsection (4), a district attorney, a county attorney, the  
386 attorney general's office, or the state auditor may notify the office and the employee's  
387 participating employer if an employee is charged with an offense that is or may be an  
388 employment related offense under this section.
- 389 (b) If the employee's participating employer receives a notification under Subsection  
390 (6)(a), the participating employer shall immediately report to the entity that provided the  
391 notification under Subsection (6)(a):
- 392 (i) if the employee is acquitted of the offense;
- 393 (ii) if the employee is convicted of an offense that may be an employment related  
394 offense; and
- 395 (iii) when the participating employer has concluded its duties under this section if the  
396 employee is convicted, including conducting an investigation, making a determination under  
397 Subsection (4)(b) that the conviction was for an employment related offense, and notifying the  
398 office under Subsection (7).
- 399 (c) The notifying entity under Subsection (6)(a) may assist the employee's participating

400 employer with the investigation and determination described under Subsection (4)(b).

401 (7) Upon receiving a notification from a participating employer that the participating  
402 employer has made a determination under Subsection (4)(b) that the conviction was for an  
403 employment related offense, the office shall immediately forfeit any service credit, employer  
404 retirement related contributions, including employer contributions to the employer sponsored  
405 contribution plans, or other retirement related benefits accrued by or made for the benefit of the  
406 employee, beginning on the date of the initial employment related offense determined under  
407 Subsection (4)(b).

408 (8) This section applies to an employee who is convicted on or after the effective date  
409 of this act for an employment related offense.

410 (9) The board may make rules to implement this section.

411 (10) If any provision of this section, or the application of any provision to any person  
412 or circumstance, is held invalid, the remainder of this section shall be given effect without the  
413 invalid provision or application.

414 Section 7. Section **49-12-203** is amended to read:

415 **49-12-203. Exclusions from membership in system.**

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

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

419 (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
420 education who participates in a retirement system with a public or private retirement system,  
421 organization, or company designated by the State Board of Regents, or the Board of Directors  
422 of each technical college for an employee of each technical college, during any period in which  
423 required contributions based on compensation have been paid on behalf of the employee by the  
424 employer;

425 (c) an employee serving as an exchange employee from outside the state for an  
426 employer who has not elected to make all of the employer's exchange employees eligible for  
427 service credit in this system;

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

- 431 (e) an employee of the Department of Workforce Services who is covered under  
432 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
- 433 (f) an employee who is employed on or after July 1, 2009, with an employer that has  
434 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection  
435 [49-12-202\(2\)\(c\)](#);
- 436 (g) an employee who is employed on or after July 1, 2014, with an employer that has  
437 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection  
438 [49-12-202\(2\)\(d\)](#);
- 439 (h) an employee who is employed with a withdrawing entity that has elected under  
440 Section [49-11-623](#), prior to January 1, 2017, to exclude:
- 441 (i) new employees from participation in this system under Subsection [49-11-623\(3\)\(a\)](#);  
442 or
- 443 (ii) all employees from participation in this system under Subsection [49-11-623\(3\)\(b\)](#);  
444 or
- 445 (i) an employee described in Subsection (1)(i)(i) or (ii) who is employed with a  
446 withdrawing entity that has elected under Section [49-11-624](#), before January 1, 2018, to  
447 exclude:
- 448 (i) new employees from participation in this system under Subsection [49-11-624\(3\)\(a\)](#);  
449 or
- 450 (ii) all employees from participation in this system under Subsection [49-11-624\(3\)\(b\)](#).
- 451 (2) If an employee whose status is temporary in nature due to the nature of type of  
452 work to be performed:
- 453 (a) is employed for a term that exceeds six months and the employee otherwise  
454 qualifies for service credit in this system, the participating employer shall report and certify to  
455 the office that the employee is a regular full-time employee effective the beginning of the  
456 seventh month of employment; or
- 457 (b) was previously terminated prior to being eligible for service credit in this system  
458 and is reemployed within three months of termination by the same participating employer, the  
459 participating employer shall report and certify that the member is a regular full-time employee  
460 when the total of the periods of employment equals six months and the employee otherwise  
461 qualifies for service credits in this system.

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

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

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

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

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

474 (b) an elected official;

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

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

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

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

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

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

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

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

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

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

491 (m) an employee serving as an exchange employee from outside the state for an  
492 employer who has elected to make all of the employer's exchange employees eligible for

493 service credit in this system.

494 (5) (a) Each participating employer shall prepare and maintain a list designating those  
495 positions eligible for exemption under Subsection (4).

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

498 (6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a  
499 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
500 or a number equal to 10% of the eligible employees of the municipality, county, or political  
501 subdivision, whichever is less.

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

504 (7) Each participating employer shall:

505 (a) maintain a list of employee exemptions; and

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

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

508 (9) An employee's exclusion, exemption, participation, or election described in this  
509 section:

510 (a) shall be made in accordance with this section; and

511 (b) is subject to requirements under federal law and rules made by the board.

512 Section 8. Section 49-12-204 is amended to read:

513 **49-12-204. Higher education employees' eligibility requirements -- Election**  
514 **between different retirement plans -- Classification requirements -- Transfer between**  
515 **systems -- One-time election window -- Rulemaking.**

516 (1) (a) A regular full-time employee of an institution of higher education who is  
517 eligible to participate in either this system or a public or private retirement system,  
518 organization, or company, designated as described in Subsection (1)(c) or (d), shall, not later  
519 than January 1, 1979, elect to participate exclusively in this system or in an annuity contract  
520 allowed under this Subsection (1).

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

522 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the  
523 public or private retirement systems, organizations, or companies that a regular full-time

524 employee of an institution of higher education is eligible to participate in under Subsection  
525 (1)(a).

526 (d) The Board of Directors of each technical college shall designate the public or  
527 private retirement systems, organizations, or companies that a regular full-time employee of  
528 each technical college is eligible to participate in under Subsection (1)(a).

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

532 (b) Each institution of higher education shall prepare or amend existing employment  
533 classifications, under the direction of the Board of Regents, or the Board of Directors of each  
534 technical college for each technical college, so that each classification is assigned with either:

535 (i) this system; or

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

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

538 (B) the Board of Directors of each technical college for regular full-time employees of  
539 each technical college.

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

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

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

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

- 555 (i) was hired after January 1, 1979;
- 556 (ii) whose employment classification assignment under Subsection (2)(b) required  
557 participation in a retirement program other than this system; and
- 558 (iii) has service credit in a system under this title.
- 559 (b) The election under Subsection (5)(a) shall be made before June 30, 2010.
- 560 (c) All forms required by the office must be completed and received by the office no  
561 later than June 30, 2010, for the election to participate in this system to be effective.
- 562 (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher  
563 education who elects to be covered by this system under Subsection (5)(a) may begin to accrue  
564 service credit in this system.
- 565 (6) A regular full-time employee of an institution of higher education who elects to be  
566 covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment  
567 while covered under another retirement program sponsored by the institution of higher  
568 education by complying with the requirements of Section [49-11-403](#).
- 569 (7) The board shall make rules to implement this section.
- 570 (8) An employee's participation or election described in this section:
- 571 (a) shall be made in accordance with this section; and
- 572 (b) is subject to requirements under federal law and rules made by the board.
- 573 Section 9. Section **49-13-203** is amended to read:
- 574 **49-13-203. Exclusions from membership in system.**
- 575 (1) The following employees are not eligible for service credit in this system:
- 576 (a) subject to the requirements of Subsection (2), an employee whose employment  
577 status is temporary in nature due to the nature or the type of work to be performed;
- 578 (b) except as provided under Subsection (3)(a), an employee of an institution of higher  
579 education who participates in a retirement system with a public or private retirement system,  
580 organization, or company designated by the State Board of Regents, or the Board of Directors  
581 of each technical college for an employee of each technical college, during any period in which  
582 required contributions based on compensation have been paid on behalf of the employee by the  
583 employer;
- 584 (c) an employee serving as an exchange employee from outside the state for an  
585 employer who has not elected to make all of the employer's exchange employees eligible for

586 service credit in this system;

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

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

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

596 (g) an employee who is employed with a withdrawing entity that has elected under  
597 Section 49-11-623, prior to January 1, 2017, to exclude:

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

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

602 (h) an employee described in Subsection (1)(h)(i) or (ii) who is employed with a  
603 withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to  
604 exclude:

605 (i) new employees from participation in this system under Subsection 49-11-624(3)(a);  
606 or

607 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

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

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

614 (b) was previously terminated prior to being eligible for service credit in this system  
615 and is reemployed within three months of termination by the same participating employer, the  
616 participating employer shall report and certify that the member is a regular full-time employee

617 when the total of the periods of employment equals six months and the employee otherwise  
618 qualifies for service credits in this system.

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

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

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

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

628 (b) an elected official;

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

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

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

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

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

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

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

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

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

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

644 (m) an employee of the Utah Science Technology and Research Initiative created under  
645 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act[-]; and

646 (n) an employee serving as an exchange employee from outside the state for an  
647 employer who has elected to make all of the employer's exchange employees eligible for

648 service credit in this system.

649 (5) (a) Each participating employer shall prepare and maintain a list designating those  
650 positions eligible for exemption under Subsection (4).

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

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

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

659 (7) Each participating employer shall:

660 (a) maintain a list of employee exemptions; and

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

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

663 (9) An employee's exclusion, exemption, participation, or election described in this  
664 section:

665 (a) shall be made in accordance with this section; and

666 (b) is subject to requirements under federal law and rules made by the board.

667 Section 10. Section 49-13-204 is amended to read:

668 **49-13-204. Higher education employees' eligibility requirements -- Election**  
669 **between different retirement plans -- Classification requirements -- Transfer between**  
670 **systems -- One-time election window -- Rulemaking.**

671 (1) (a) A regular full-time employee of an institution of higher education who is  
672 eligible to participate in either this system or in a retirement system with a public or private  
673 retirement system, organization, or company, designated as described in Subsection (1)(c) or  
674 (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an  
675 annuity contract allowed under this Subsection (1)(a).

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

677 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the  
678 public or private retirement systems, organizations, or companies that a regular full-time

679 employee of an institution of higher education is eligible to participate in under Subsection  
680 (1)(a).

681 (d) The Board of Directors of each technical college shall designate the public or  
682 private retirement systems, organizations, or companies that a regular full-time employee of  
683 each technical college is eligible to participate in under Subsection (1)(a).

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

687 (b) Each institution of higher education shall prepare or amend existing employment  
688 classifications, under the direction of the Board of Regents, or the Board of Directors of each  
689 technical college for regular full-time employees of each technical college, so that each  
690 classification is assigned with either:

691 (i) this system; or

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

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

694 (B) the Board of Directors of each technical college for regular full-time employees of  
695 each technical college.

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

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

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

708 (5) (a) Notwithstanding any other provision of this section, a regular full-time  
709 employee of an institution of higher education whose employment classification assignment

710 under Subsection (2)(b) required participation in a retirement program other than this system  
711 shall have a one-time irrevocable election to participate in this system.

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

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

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

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

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

723 (8) An employee's participation or election described in this section:

724 (a) shall be made in accordance with this section; and

725 (b) is subject to requirements under federal law and rules made by the board.

726 Section 11. Section **49-14-203** is amended to read:

727 **49-14-203. Exemption of certain employees from coverage.**

728 (1) A public safety service employee is excluded from coverage under this system if  
729 the employee:

730 (a) is serving:

731 (i) as the Commissioner of Public Safety;

732 (ii) as the executive director of the Department of Corrections; or

733 (iii) as the elected or appointed sheriff or chief of police of a public safety organization;

734 and

735 (b) files a formal written request seeking the exemption.

736 (2) Except as provided in Subsection (3), the public safety service employee may not  
737 continue employment with the same participating employer and receive an allowance from the  
738 office based on public safety service at the same time.

739 (3) (a) The Commissioner of Public Safety or an elected sheriff who is eligible to retire  
740 under Section [49-14-401](#) may until July 1, 2010:

- 741 (i) retire from this system and receive an allowance;
- 742 (ii) continue in the elected or appointed position; and
- 743 (iii) file for the exemption under Subsection (1).

744 (b) A person who makes an election under Subsection (3)(a) may continue under the  
745 terms of the election.

746 (4) An employee's exclusion, exemption, participation, or election described in this  
747 section:

- 748 (a) shall be made in accordance with this section; and
- 749 (b) is subject to requirements under federal law and rules made by the board.

750 Section 12. Section **49-15-203** is amended to read:

751 **49-15-203. Exemption of certain employees from coverage.**

752 (1) A public safety service employee is excluded from coverage under this system if  
753 the employee:

- 754 (a) is serving:
  - 755 (i) as the Commissioner of Public Safety;
  - 756 (ii) as the executive director of the Department of Corrections; or
  - 757 (iii) as the elected or appointed sheriff or chief of police of a public safety organization;

758 and

759 (b) files a formal written request seeking the exemption.

760 (2) Except as provided in Subsection (3), the public safety service employee may not  
761 continue employment with the same participating employer and receive an allowance from the  
762 office based on public safety service at the same time.

763 (3) (a) The Commissioner of Public Safety, an elected sheriff, or an appointed chief of  
764 police who is eligible to retire under Section **49-15-401** may until July 1, 2010:

- 765 (i) retire from this system and receive an allowance;
- 766 (ii) continue in the elected or appointed position; and
- 767 (iii) file for the exemption under Subsection (1).

768 (b) A person who makes an election under Subsection (3)(a) may continue under the  
769 terms of the election.

770 (4) An employee's exclusion, exemption, participation, or election described in this  
771 section:

772 (a) shall be made in accordance with this section; and

773 (b) is subject to requirements under federal law and rules made by the board.

774 Section 13. Section **49-16-203** is amended to read:

775 **49-16-203. Exemption of certain employees from coverage -- Exception.**

776 (1) A firefighter service employee serving as the chief of any fire department or district  
777 is excluded from coverage under this system if that firefighter service employee files a formal  
778 written request seeking exemption.

779 (2) The chief of any fire department or district who retires from that position shall  
780 comply with the provisions of Section **49-11-504** and Chapter 11, Part 12, Postretirement  
781 Reemployment Restrictions Act, upon reemployment by the participating employer.

782 (3) An employee's exclusion, exemption, participation, or election described in this  
783 section:

784 (a) shall be made in accordance with this section; and

785 (b) is subject to requirements under federal law and rules made by the board.

786 Section 14. Section **49-19-403** is amended to read:

787 **49-19-403. Retirement option.**

788 (1) A governor or legislator may elect to forfeit the allowance provided by this chapter  
789 and in lieu thereof participate, on the same basis as other state elected and appointed officers  
790 under Title 67, Chapter 22, State Officer Compensation, in a defined contribution plan  
791 administered by the office, in accordance with Section **49-11-801** and in accordance with  
792 federal law.

793 (2) A governor's or legislator's exclusion, exemption, participation, or election  
794 described in this section:

795 (a) shall be made in accordance with this section; and

796 (b) is subject to requirements under federal law and rules made by the board.

797 Section 15. Section **49-22-201** is amended to read:

798 **49-22-201. System membership -- Eligibility.**

799 (1) Beginning July 1, 2011, a participating employer shall participate in this system.

800 (2) (a) A person initially entering regular full-time employment with a participating  
801 employer on or after July 1, 2011, who does not have service credit accrued before July 1,  
802 2011, in a Tier I system or plan administered by the board, is eligible:

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

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

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

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

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

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

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

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

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

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

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

826 (b) is not eligible to participate in the Tier II hybrid retirement system established  
827 under Part 3, Tier II Hybrid Retirement System; and

828 (c) is vested immediately in the elected official's benefit and the benefit is  
829 nonforfeitable, including the total amount contributed by the participating employer and the  
830 total amount contributed by the member in the Tier II defined contribution plan.

831 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected  
832 official initially entering office on or after July 1, 2011, who has previously accrued service  
833 credit [~~accrued before July 1, 2011~~]:

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

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

838 Section 16. Section **49-22-203** is amended to read:

839 **49-22-203. Exclusions from membership in system.**

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

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

843 (b) except as provided under Subsection (3), an employee of an institution of higher  
844 education who participates in a retirement system with a public or private retirement system,  
845 organization, or company designated by the State Board of Regents, or the Board of Directors  
846 of each technical college for an employee of each technical college, during any period in which  
847 required contributions based on compensation have been paid on behalf of the employee by the  
848 employer;

849 (c) an employee serving as an exchange employee from outside the state for an  
850 employer who has not elected to make all of the employer's exchange employees eligible for  
851 service credit in this system;

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

854 (e) an employee who is employed with a withdrawing entity that has elected under  
855 Section **49-11-623**, prior to January 1, 2017, to exclude:

856 (i) new employees from participation in this system under Subsection **49-11-623(3)(a)**;  
857 or

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

859 (f) a person who files a written request for exemption with the office under Section  
860 **49-22-205**; or

861 (g) an employee described in Subsection (1)(g)(i) or (ii) who is employed with a  
862 withdrawing entity that has elected under Section **49-11-624**, before January 1, 2018, to  
863 exclude:

864 (i) new employees from participation in this system under Subsection **49-11-624(3)(a)**;

865 or

866 (ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

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

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

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

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

880 (4) An employee's exclusion, exemption, participation, or election described in this  
881 section:

882 (a) shall be made in accordance with this section; and

883 (b) is subject to requirements under federal law and rules made by the board.

884 Section 17. Section 49-22-204 is amended to read:

885 **49-22-204. Higher education employees' eligibility requirements -- Election**  
886 **between different retirement plans -- Classification requirements -- Transfer between**  
887 **systems.**

888 (1) (a) A regular full-time employee of an institution of higher education who is  
889 eligible to participate in either this system or in a retirement annuity contract with a public or  
890 private system, organization, or company, designated as described in Subsection (1)(c) or (d),  
891 shall, not later than January 1, 1979, elect to participate exclusively in this system or in an  
892 annuity contract allowed under this Subsection (1).

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

894 (c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the  
895 public or private retirement systems, organizations, or companies that a regular full-time

896 employee of an institution of higher education is eligible to participate in under Subsection  
897 (1)(a).

898 (d) The Board of Directors of each technical college shall designate the public or  
899 private retirement systems, organizations, or companies that a regular full-time employee of  
900 each technical college is eligible to participate in under Subsection (1)(a).

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

904 (b) Each institution of higher education shall prepare or amend existing employment  
905 classifications, under the direction of the Board of Regents, or the Board of Directors of each  
906 technical college for each technical college, so that each classification is assigned with either:

907 (i) this system; or

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

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

910 (B) the Board of Directors of each technical college for regular full-time employees of  
911 each technical college.

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

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

917 (b) the Board of Directors of each technical college for regular full-time employees of  
918 each technical college.

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

922 (5) An employee's participation or election described in this section:

923 (a) shall be made in accordance with this section; and

924 (b) is subject to requirements under federal law and rules made by the board.

925 Section 18. Section **49-22-205** is amended to read:

926 **49-22-205. Exemptions from participation in system.**

- 927 (1) Upon filing a written request for exemption with the office, the following  
928 employees are exempt from participation in the system as provided in this section:
- 929 (a) an executive department head of the state;
  - 930 (b) a member of the State Tax Commission;
  - 931 (c) a member of the Public Service Commission;
  - 932 (d) a member of a full-time or part-time board or commission;
  - 933 (e) an employee of the Governor's Office of Management and Budget;
  - 934 (f) an employee of the Governor's Office of Economic Development;
  - 935 (g) an employee of the Commission on Criminal and Juvenile Justice;
  - 936 (h) an employee of the Governor's Office;
  - 937 (i) an employee of the State Auditor's Office;
  - 938 (j) an employee of the State Treasurer's Office;
  - 939 (k) any other member who is permitted to make an election under Section 49-11-406;
  - 940 (l) a person appointed as a city manager or appointed as a city administrator or another  
941 at-will employee of a municipality, county, or other political subdivision;
  - 942 (m) an employee of an interlocal cooperative agency created under Title 11, Chapter  
943 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided  
944 through membership in a labor organization that provides retirement benefits to its members;  
945 [~~and~~]
  - 946 (n) an employee of the Utah Science Technology and Research Initiative created under  
947 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act[-]; and  
948 (o) an employee serving as an exchange employee from outside the state for an  
949 employer who has elected to make all of the employer's exchange employees eligible for  
950 service credit in this system.
- 951 (2) (a) A participating employer shall prepare and maintain a list designating those  
952 positions eligible for exemption under Subsection (1).
- 953 (b) An employee may not be exempted unless the employee is employed in a position  
954 designated by the participating employer under Subsection (1).
- 955 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a  
956 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
957 or a number equal to 10% of the eligible employees of the municipality, county, or political

958 subdivision, whichever is less.

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

961 (4) Each participating employer shall:

962 (a) maintain a list of employee exemptions; and

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

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

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

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

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

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

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

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

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

977 (6) If an employee who is a member of the Tier II hybrid retirement system  
978 subsequently revokes the election of exemption made under Subsection (1), the provisions  
979 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee  
980 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

981 (7) (a) All employer contributions made on behalf of an employee shall be invested in  
982 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election  
983 period under Subsection 49-22-201(2)(c) is expired if the employee:

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

985 (ii) continues employment with the participating employer through the one-year  
986 election period under Subsection 49-22-201(2)(c).

987 (b) An employee is entitled to receive a distribution of the employer contributions  
988 made on behalf of the employee and all associated investment gains and losses if the employee:

- 989 (i) elects to be exempt in accordance with Subsection (1); and  
990 (ii) terminates employment prior to the one-year election period under Subsection  
991 49-22-201(2)(c).
- 992 (8) (a) The office shall make rules to implement this section.  
993 (b) The rules made under this Subsection (8) shall include provisions to allow the  
994 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
995 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
996 8, 2012.
- 997 (9) An employee's exemption, participation, or election described in this section:  
998 (a) shall be made in accordance with this section; and  
999 (b) is subject to requirements under federal law and rules made by the board.
- 1000 Section 19. Section 49-23-203 is amended to read:  
1001 **49-23-203. Exemptions from participation in system.**
- 1002 (1) Upon filing a written request for exemption with the office, the following  
1003 employees are exempt from participation in the system as provided in this section if the  
1004 employee is a public safety service employee and is:
- 1005 (a) an executive department head of the state;  
1006 (b) an elected or appointed sheriff of a county; or  
1007 (c) an elected or appointed chief of police of a municipality.
- 1008 (2) (a) A participating employer shall prepare a list designating those positions eligible  
1009 for exemption under Subsection (1).
- 1010 (b) An employee may not be exempted unless the employee is employed in a position  
1011 designated by the participating employer under Subsection (1).
- 1012 (3) Each participating employer shall:
- 1013 (a) file each employee exemption annually with the office; and  
1014 (b) update an employee exemption in the event of any change.
- 1015 (4) Beginning on the effective date of the exemption for an employee who elects to be  
1016 exempt in accordance with Subsection (1):
- 1017 (a) for a member of the Tier II defined contribution plan:  
1018 (i) the participating employer shall contribute the nonelective contribution and the  
1019 amortization rate described in Section 49-23-401, except that the contribution is exempt from

1020 the vesting requirements of Subsection 49-23-401(3)(a); and  
1021 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and  
1022 (b) for a member of the Tier II hybrid retirement system:  
1023 (i) the participating employer shall contribute the nonelective contribution and the  
1024 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
1025 the vesting requirements of Subsection 49-23-401(3)(a);  
1026 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and  
1027 (iii) the member is not eligible for additional service credit in the system.  
1028 (5) If an employee who is a member of the Tier II hybrid retirement system  
1029 subsequently revokes the election of exemption made under Subsection (1), the provisions  
1030 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee  
1031 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.  
1032 (6) (a) All employer contributions made on behalf of an employee shall be invested in  
1033 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election  
1034 period under Subsection 49-23-201(2)(c) is expired if the employee:  
1035 (i) elects to be exempt in accordance with Subsection (1); and  
1036 (ii) continues employment with the participating employer through the one-year  
1037 election period under Subsection 49-23-201(2)(c).  
1038 (b) An employee is entitled to receive a distribution of the employer contributions  
1039 made on behalf of the employee and all associated investment gains and losses if the employee:  
1040 (i) elects to be exempt in accordance with Subsection (1); and  
1041 (ii) terminates employment prior to the one-year election period under Subsection  
1042 49-23-201(2)(c).  
1043 (7) (a) The office shall make rules to implement this section.  
1044 (b) The rules made under this Subsection (7) shall include provisions to allow the  
1045 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
1046 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
1047 8, 2012.  
1048 (8) An employee's exemption, participation, or election described in this section:  
1049 (a) shall be made in accordance with this section; and  
1050 (b) is subject to requirements under federal law and rules made by the board.

1051 Section 20. Section **49-23-501** is amended to read:

1052 **49-23-501. Death benefit -- Eligibility for death benefit -- Benefit calculation --**

1053 **Payment of claim.**

1054 (1) The office shall provide a death benefit for members of this system.

1055 (2) The board shall make rules to administer the death benefit provided by this section  
1056 and may, in accordance with federal law, establish:

1057 (a) benefit levels;

1058 (b) classes of members; and

1059 (c) a living benefit option.

1060 (3) This death benefit is payable when:

1061 (a) the member dies prior to the member's retirement date or dies under circumstances  
1062 which Subsection [49-23-304\(4\)](#) requires to be treated as the death of a member before  
1063 retirement;

1064 (b) the office receives acceptable proof of death; and

1065 (c) benefits are not payable under Section [49-23-306](#).

1066 (4) The death benefit payable to the beneficiary under this section is a lump-sum  
1067 payment consisting of:

1068 (a) the return of any member contributions under this chapter; plus

1069 (b) a percentage of the final average salary of the member to be determined by the  
1070 board.

1071 (5) Any amount of a living benefit option paid to the member prior to death shall be  
1072 deducted from the benefit payable to the beneficiary.

1073 (6) The cost of the death benefit shall be paid by the participating employer in addition  
1074 to the contribution rate established under Section [49-23-301](#) or [49-23-401](#).

1075 (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid  
1076 to the beneficiary of an inactive member unless the death of the member occurs either:

1077 (a) within a period of 120 days after the last day of work for which the person received  
1078 compensation; or

1079 (b) while the member is still physically or mentally incapacitated from performance of  
1080 duties, if the incapacity has been continuous since the last day of work for which compensation  
1081 was received.

1082           (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance  
1083 with Sections [49-11-609](#) and [49-11-610](#).

1084           (9) The death benefit paid to the beneficiary of an inactive member, except as  
1085 otherwise provided under Subsection (7), is a lump-sum return of the member's member  
1086 contributions.

1087           (10) Payment of the death benefit by the office constitutes a full settlement of any  
1088 beneficiary's claim against the office and the office is not liable for any further or additional  
1089 claims or assessments on behalf of the member.

1090           (11) Unless otherwise specified in a written document filed with the office, death  
1091 benefits payable to beneficiaries shall be in accordance with the order of precedence  
1092 established under Title 75, Chapter 2, Intestate Succession and Wills.

1093           (12) A death benefit under this section may not be paid on behalf of a retiree under this  
1094 system.

1095           (13) Except for the death benefit described in Subsection (4), a member of the Tier II  
1096 defined contribution plan is not eligible for death benefits under this section or Section  
1097 [49-23-502](#) or [49-23-503](#).

1098           Section 21. **Effective date.**

1099           This bill takes effect on July 1, 2020.