

**Senator Wayne A. Harper** proposes the following substitute bill:

**PUBLIC SAFETY AND FIREFIGHTER TIER II**

**RETIREMENT ENHANCEMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: Lee B. Perry

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

▶ creates the New Public Safety and Firefighter Tier II Retirement Benefits Restricted Account;

▶ provides that a portion of the revenues collected from the tax on the admitted insurers shall be deposited in the New Public Safety and Firefighter Tier II Retirement Benefits Restricted Account;

▶ provides that funds in the New Public Safety and Firefighter Tier II Retirement Benefits Restricted Account shall be used to fund state agency costs associated with the employer pick up for employees that are members of the New Public Safety and Firefighter Tier II Retirement System and the Public Safety and Firefighter Tier II Hybrid Retirement System;

▶ requires a participating employer to make an additional nonelective contribution to an employee that is a member of the Public Safety and Firefighter Tier II Defined



26 Contribution Plan, if the participating employer elects to pay the required member contribution  
27 as an employer pick up for employees that are members of the Public Safety and Firefighter  
28 Tier II Hybrid Retirement System;

29 ▶ amends the line-of-duty death benefits payable to the surviving spouse of an active  
30 member of the New Public Safety and Firefighter Tier II Contributory Retirement  
31 System; and

32 ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill provides a special effective date.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **49-23-301 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 484

40 **49-23-401 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 484

41 **49-23-503**, as last amended by Laws of Utah 2016, Chapter 84

42 ENACTS:

43 **49-11-904**, Utah Code Annotated 1953



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

46 Section 1. Section **49-11-904** is enacted to read:

47 **49-11-904. New Public Safety and Firefighter Tier II Retirement Benefits**

48 **Restricted Account -- Insurance premium tax revenues -- Distribution.**

49 (1) As used in this section, "account" means the New Public Safety and Firefighter Tier  
50 II Retirement Benefits Restricted Account created in this section.

51 (2) There is created in the General Fund a restricted account known as the "New Public  
52 Safety and Firefighter Tier II Retirement Benefits Restricted Account."

53 (3) The account shall be funded by:

54 (a) insurance premium tax revenues deposited into the account in accordance with this  
55 section; and

56 (b) interest and earnings on account money.

57 (4) (a) Subject to Subsection (6), and in accordance with this section for a fiscal year  
58 beginning on or after July 1, 2020, an amount equal to the growth in the amount of net revenue  
59 deposited in the General Fund in the current fiscal year from the annual tax levied, assessed,  
60 and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, after all transfers  
61 required by state statute have been made, that exceeds the amount of net revenue deposited in  
62 the General Fund in the 2015-16 fiscal year from the annual tax levied, assessed, and collected  
63 under Title 59, Chapter 9, Taxation of Admitted Insurers, after all transfers required by state  
64 statute have been made, shall be deposited into the account.

65 (b) The amount described in Subsection (4)(a) shall be deposited annually.

66 (5) The Legislature may appropriate money in the account to fund:

67 (a) the contributions that state agencies make on behalf of members as an employer  
68 pick up under Subsection [49-23-301\(2\)\(c\)](#); and

69 (b) nonelective contributions that state agencies make under Subsection  
70 [49-23-401\(1\)\(b\)](#).

71 (6) The amount deposited into the account under Subsection (4) may not exceed the  
72 amount required to cover the contributions described in Subsection (5).

73 Section 2. Section **49-23-301 (Effective 07/01/20)** is amended to read:

74 **49-23-301 (Effective 07/01/20). Contributions.**

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

78 (2) (a) A participating employer shall pay up to 14% of compensation toward the  
79 certified contribution rate to the office for the defined benefit portion of this system.

80 (b) [~~A~~] Except as provided in Subsection (2)(c), a member shall [only] pay to the office  
81 the amount, if any, of the certified contribution rate for the defined benefit portion of this  
82 system that exceeds the percent of compensation paid by the participating employer under  
83 Subsection (2)(a).

84 (c) A participating employer may elect to pay all or part of the required member  
85 contribution under Subsection (2)(b) on behalf of the member as an employer pick up under 26  
86 U.S.C. Sec. 414(h)(2), in addition to the required participating employer contribution under  
87 Subsection (2)(a).

88            ~~[(e)]~~ (d) In addition to the percent specified under Subsection (2)(a), the participating  
89 employer shall pay the corresponding Tier I system amortization rate of the employee's  
90 compensation to the office to be applied to the employer's corresponding Tier I system liability.

91            ~~[(3) A participating employer may elect to pay all or part of the required member  
92 contributions under Subsection (2)(b), in addition to the required participating employer  
93 contributions.]~~

94            ~~[(4)]~~ (3) (a) A member contribution is credited by the office to the account of the  
95 individual member.

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

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

99            ~~[(5)]~~ (4) (a) Each member is considered to consent to payroll deductions of member  
100 contributions.

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

103            ~~[(6)]~~ (5) Except as provided under Subsection ~~[(7)]~~ (6), benefits provided under the  
104 defined benefit portion of the Tier II hybrid retirement system created under this part:

105            (a) may not be increased unless the actuarial funded ratios of all systems under this title  
106 reach 100%; and

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

108            ~~[(7)]~~ (6) (a) The Legislature authorizes ~~[an increase]~~ increases to the death benefit  
109 provided to a Tier II public safety service employee or firefighter member's surviving spouse  
110 effective on May 12, 2015, and July 1, 2020, as provided in Section 49-23-503.

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

114            (ii) The requirements of Section 49-22-310 do not apply to the benefit adjustment  
115 described in this Subsection ~~[(7)]~~ (6)(b).

116            Section 3. Section 49-23-401 (Effective 07/01/20) is amended to read:

117            **49-23-401 (Effective 07/01/20). Contributions -- Rates.**

118            (1) (a) Up to the amount allowed by federal law, the participating employer shall make

119 a nonelective contribution of 14% of the participant's compensation to a defined contribution  
120 plan.

121 (b) In addition to the nonelective contribution described in Subsection (1)(a), if a  
122 participating employer elects under Subsection 49-23-301(2)(c) to pay all or part of the  
123 required member contribution on behalf of the participating employer's employees that are  
124 members covered under Part 3, Tier II Hybrid Retirement System, the participating employer  
125 shall make an additional nonelective contribution to an employee that is a member covered  
126 under this part at the same percentage rate of the participant's compensation as the participating  
127 employer's election to pay required member contributions on behalf of the participating  
128 employer's employees that are members covered under Part 3, Tier II Hybrid Retirement  
129 System.

130 (2) (a) The participating employer shall contribute the [~~14% nonelective contribution~~]  
131 contributions described in Subsection (1) to a defined contribution plan qualified under Section  
132 401(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 (2); or

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

140 (c) In addition to the [~~percent~~] contributions specified under Subsection (2)(a), the  
141 participating employer shall pay the corresponding Tier I system amortization rate of the  
142 employee's compensation to the office to be applied to the employer's corresponding Tier I  
143 system liability.

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

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

149 (c) Upon filing a written request for exemption with the office, an eligible employee is

150 exempt from the vesting requirements of Subsection (3)(a) in accordance with Section  
151 49-23-203.

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

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

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

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

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

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

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

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

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

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

180 (ii) the length of time that the member worked with the previous employer shall be

181 included in determining whether the member has completed the vesting period under  
182 Subsection (3)(a).

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

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

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

191 Section 4. Section **49-23-503** is amended to read:

192 **49-23-503. Death of active member in line of duty -- Payment of benefits.**

193 If an active member of this system dies, benefits are payable as follows:

194 (1) If the death is classified by the office as a line-of-duty death, benefits are payable as  
195 follows:

196 (a) If the member has accrued less than 20 years of public safety service or firefighter  
197 service credit, the surviving spouse shall receive:

198 (i) a lump sum equal to six months of the active member's final average salary; and

199 (ii) the greater of:

200 (A) an allowance equal to 30% of the member's final average monthly salary[-]; or

201 (B) an allowance equal to 2% of the member's final average monthly salary multiplied  
202 by the years of service credit accrued by the member.

203 (b) If the member has accrued 20 or more years of public safety service or firefighter  
204 service credit, the member shall be considered to have retired with an Option One allowance  
205 calculated without an actuarial reduction under Section 49-23-304 and the surviving spouse  
206 shall receive the allowance that would have been payable to the member.

207 (2) (a) A volunteer firefighter is eligible for a line-of-duty death benefit under this  
208 section if the death results from external force, violence, or disease directly resulting from  
209 firefighter service.

210 (b) The lowest monthly compensation of firefighters of a city of the first class in this  
211 state at the time of death shall be considered to be the final average monthly salary of a

212 volunteer firefighter for purposes of computing these benefits.

213 (c) Each volunteer fire department shall maintain a current roll of all volunteer  
214 firefighters which meet the requirements of Subsection 49-23-102(13) to determine the  
215 eligibility for this benefit.

216 (3) (a) If the death is classified as a line-of-duty death by the office, death benefits are  
217 payable under this section and the surviving spouse is not eligible for benefits under Section  
218 49-23-502.

219 (b) If the death is not classified as a line-of-duty death by the office, benefits are  
220 payable in accordance with Section 49-23-502.

221 (4) (a) A surviving spouse who qualifies for a monthly benefit under this section shall  
222 apply in writing to the office.

223 (b) The allowance shall begin on the first day of the month following the month in  
224 which the:

225 (i) member or participant died, if the application is received by the office within 90  
226 days of the date of death of the member or participant; or

227 (ii) application is received by the office, if the application is received by the office  
228 more than 90 days after the date of death of the member or participant.

229 Section 5. **Effective date.**

230 This bill takes effect on July 1, 2020.