

29 ▶ provides that a member who exempts from participation in the Utah Retirement
30 Systems is exempt from earning years of service credit during the period of
31 exemption;

32 ▶ permits a public safety service employee who is promoted to certain administrative
33 positions to continue participation in a public safety retirement system while the
34 employee remains employed with the same department;

35 ▶ permits a fire department chief to exempt from participation in the New Public
36 Safety and Firefighters Tier II Contributory Retirement Act;

37 ▶ repeals the New Public Safety and Firefighter Tier II Retirement Benefits Restricted
38 Account; and

39 ▶ makes technical and conforming changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a special effective date.

44 **Utah Code Sections Affected:**

45 AMENDS:

46 [49-11-603](#), as last amended by Laws of Utah 2017, Chapter 141

47 [49-11-1207](#), as last amended by Laws of Utah 2017, Chapter 141

48 [49-12-102](#), as last amended by Laws of Utah 2018, Chapter 415

49 [49-13-102](#), as last amended by Laws of Utah 2018, Chapter 415

50 [49-14-102](#), as last amended by Laws of Utah 2016, Chapter 227

51 [49-14-201](#), as last amended by Laws of Utah 2021, Chapter 344

52 [49-15-102](#), as last amended by Laws of Utah 2016, Chapter 227

53 [49-15-201](#), as last amended by Laws of Utah 2021, Chapter 344

54 [49-16-102](#), as last amended by Laws of Utah 2019, Chapter 349

55 [49-22-102](#), as last amended by Laws of Utah 2018, Chapter 415

- 56 **49-22-201**, as last amended by Laws of Utah 2020, Chapter 24
- 57 **49-22-204**, as last amended by Laws of Utah 2020, Chapters 24 and 365
- 58 **49-22-205**, as last amended by Laws of Utah 2021, Chapters 64 and 382
- 59 **49-22-401**, as last amended by Laws of Utah 2016, Chapter 227
- 60 **49-23-102**, as last amended by Laws of Utah 2020, Chapter 180
- 61 **49-23-201**, as last amended by Laws of Utah 2015, Chapters 315 and 463
- 62 **49-23-203**, as last amended by Laws of Utah 2020, Chapter 24
- 63 **49-23-401**, as last amended by Laws of Utah 2020, Chapter 437

64 REPEALS:

- 65 **49-11-904**, as enacted by Laws of Utah 2020, Chapter 437



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

68 Section 1. Section **49-11-603** is amended to read:

69 **49-11-603. Participating employer to report and certify -- Time limit -- Penalties**
 70 **for failure to comply.**

71 (1) As soon as administratively possible, but in no event later than 30 days after the
 72 end of each pay period, a participating employer shall report and certify to the office:

73 (a) the eligibility for service credit accrual of:

74 (i) each current employee;

75 (ii) each new employee as the new employee begins employment; and

76 (iii) any changes to eligibility for service credit accrual of each employee;

77 (b) the compensation of each current employee eligible for service credit; and

78 (c) other factors relating to the proper administration of this title as required by the
 79 executive director.

80 (2) (a) Each participating employer shall submit the reports required under Subsection
 81 (1) in a format approved by the office.

82 (b) Each participating employer shall include in the reports a certification, for each

83 employee, whether the employee is:

84 (i) an eligible employee who is accruing service credit;

85 (ii) an ineligible employee who may not accrue service credit;

86 (iii) a reemployed retiree; or

87 (iv) an employee who is eligible for employer contributions to a defined contribution
88 plan administered under this title.

89 (3) A participating employer shall be liable to the office for:

90 (a) any liabilities and expenses, including administrative expenses and the cost of
91 increased benefits to employees, resulting from the participating employer's failure to correctly
92 report and certify records under this section;

93 (b) a penalty equal to the greater of:

94 (i) \$250; or

95 (ii) 50% of the total contributions for the employees for the period of the reporting
96 error; and

97 (c) attorney fees.

98 (4) The executive director may waive all or any part of the interest, penalties, expenses,
99 and fees if the executive director finds there were extenuating circumstances surrounding the
100 participating employer's failure to comply with this section.

101 (5) The office may estimate the length of service, compensation, or age of any
102 employee, if that information is not contained in the records.

103 Section 2. Section **49-11-1207** is amended to read:

104 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

105 (1) (a) If the office receives notice or learns of the reemployment of a retiree in
106 violation of Section [49-11-1204](#) or [49-11-1205](#), the office shall:

107 (i) immediately cancel the retiree's retirement allowance;

108 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar
109 year if the reemployment with a participating employer exceeded the limitation under

110 Subsection 49-11-1205(1)(a)(iii)(A) [~~or~~], (3)(b), or (4)(b); and

111 (iii) recover any overpayment resulting from the violation in accordance with the
112 provisions of Section 49-11-607 before the allowance may be reinstated.

113 (b) Reinstatement of an allowance following cancellation for a violation under this
114 section is subject to the procedures and provisions under Section 49-11-1204.

115 (2) If a retiree or participating employer failed to report reemployment in violation of
116 Section 49-11-1206, the retiree, participating employer, or both, who are found to be
117 responsible for the failure to report, are liable to the office for the amount of any overpayment
118 resulting from the violation.

119 (3) A participating employer is liable to the office for a payment or failure to make a
120 payment in violation of this part.

121 (4) If a participating employer fails to notify the office in accordance with Section
122 49-11-1206, the participating employer is immediately subject to a compliance audit by the
123 office.

124 Section 3. Section 49-12-102 is amended to read:

125 **49-12-102. Definitions.**

126 As used in this chapter:

127 (1) (a) "Benefits normally provided"~~[(a)]~~ means a benefit offered by an employer,
128 including:

129 (i) a leave benefit of any kind;

130 (ii) insurance coverage of any kind if the employer pays some or all of the premium for
131 the coverage;

132 (iii) employer contributions to a health savings account, health reimbursement account,
133 health reimbursement arrangement, or medical expense reimbursement plan; and

134 (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the
135 benefit~~[, and]~~.

136 (b) "Benefits normally provided" does not include:

- 137 (i) a payment for social security;
- 138 (ii) workers' compensation insurance;
- 139 (iii) unemployment insurance;
- 140 (iv) a payment for Medicare;
- 141 (v) a payment or insurance required by federal or state law that is similar to a payment
- 142 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);
- 143 (vi) any other benefit that state or federal law requires an employer to provide an
- 144 employee who would not otherwise be eligible to receive the benefit; or
- 145 (vii) any benefit that an employer provides an employee in order to avoid a penalty or
- 146 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health
- 147 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal
- 148 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.
- 149 (2) (a) "Compensation" means~~[, except as provided in Subsection (2)(c);]~~ the total
- 150 amount of payments made by a participating employer to a member of this system for services
- 151 rendered to the participating employer, including:
 - 152 (i) bonuses;
 - 153 (ii) cost-of-living adjustments;
 - 154 (iii) other payments currently includable in gross income and that are subject to social
 - 155 security deductions, including any payments in excess of the maximum amount subject to
 - 156 deduction under social security law;
 - 157 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
 - 158 or other benefits authorized by federal law; and
 - 159 (v) member contributions.
- 160 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
- 161 under Internal Revenue Code, Section 401(a)(17).
- 162 (c) "Compensation" does not include:
 - 163 (i) the monetary value of remuneration paid in kind, including a residence or use of

164 equipment;

165 (ii) the cost of any employment benefits paid for by the participating employer;

166 (iii) compensation paid to a temporary employee, an exempt employee, or an employee
167 otherwise ineligible for service credit;

168 (iv) any payments upon termination, including accumulated vacation, sick leave
169 payments, severance payments, compensatory time payments, or any other special payments;

170 (v) any allowances or payments to a member for costs or expenses paid by the
171 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
172 housing costs, insurance costs, equipment costs, and dependent care costs; or

173 (vi) a teacher salary bonus described in Section 53F-2-513.

174 (d) The executive director may determine if a payment not listed under this Subsection
175 (2) falls within the definition of compensation.

176 (3) (a) "Final average salary" means the amount calculated by averaging the highest
177 five years of annual compensation preceding retirement subject to Subsections ~~[(3)(a), (b), (c),~~
178 ~~(d), and (e)]~~ (3)(b), (c), (d), (e), and (f).

179 ~~[(a)]~~ (b) Except as provided in Subsection ~~[(3)(b)]~~ (3)(c), the percentage increase in
180 annual compensation in any one of the years used may not exceed the previous year's
181 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the
182 purchasing power of the dollar during the previous year, as measured by a United States Bureau
183 of Labor Statistics Consumer Price Index average as determined by the board.

184 ~~[(b)]~~ (c) In cases where the participating employer provides acceptable documentation
185 to the office, the limitation in Subsection ~~[(3)(a)]~~ (3)(b) may be exceeded if:

186 (i) the member has transferred from another agency; or

187 (ii) the member has been promoted to a new position.

188 ~~[(c)]~~ (d) If the member retires more than six months from the date of termination of
189 employment, the member is considered to have been in service at the member's last rate of pay
190 from the date of the termination of employment to the effective date of retirement for purposes

191 of computing the member's final average salary only.

192 ~~[(d)]~~ (e) If the member has less than five years of service credit in this system, final
193 average salary means the average annual compensation paid to the member during the full
194 period of service credit.

195 ~~[(e)]~~ (f) The annual compensation used to calculate final average salary shall be based
196 on~~[-]~~ a period, as determined by the board, consistent with the period used to determine years
197 of service credit in accordance with Subsection (7).

198 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~
199 ~~educational institution, or]~~

200 ~~[(ii) a contract year for a member employed by an educational institution.]~~

201 (4) "Participating employer" means an employer ~~[which]~~ that meets the participation
202 requirements of Sections 49-12-201 and 49-12-202.

203 (5) (a) "Regular full-time employee" means an employee:

204 (i) whose term of employment for a participating employer contemplates continued
205 employment during a fiscal or calendar year ~~[and]~~;

206 (ii) whose employment normally requires an average of 20 hours or more per week,
207 except as modified by the board~~[-]~~; and

208 (iii) who receives benefits normally provided by the participating employer.

209 (b) "Regular full-time employee" includes:

210 (i) a teacher whose term of employment for a participating employer contemplates
211 continued employment during a school year and who teaches half-time or more;

212 (ii) a classified school employee:

213 (A) who is hired before July 1, 2013; and

214 (B) whose employment normally requires an average of 20 hours per week or more for
215 a participating employer, regardless of benefits provided;

216 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
217 of January 1, 1990, as provided in Section 49-12-407;

- 218 (iv) a faculty member or employee of an institution of higher education who is
- 219 considered full-time by that institution of higher education; and
- 220 (v) an individual who otherwise meets the definition of this Subsection (5) who
- 221 performs services for a participating employer through a professional employer organization or
- 222 similar arrangement.
- 223 (c) "Regular full-time employee" does not include a classified school employee:
- 224 (i) (A) who is hired on or after July 1, 2013; and
- 225 (B) who does not receive benefits normally provided by the participating employer
- 226 even if the employment normally requires an average of 20 hours per week or more for a
- 227 participating employer;
- 228 (ii) (A) who is hired before July 1, 2013;
- 229 (B) who did not qualify as a regular full-time employee before July 1, 2013;
- 230 (C) who does not receive benefits normally provided by the participating employer;
- 231 and
- 232 (D) whose employment hours are increased on or after July 1, 2013, to require an
- 233 average of 20 hours per week or more for a participating employer; or
- 234 (iii) who is a person working on a contract:
- 235 (A) for the purposes of vocational rehabilitation and the employment and training of
- 236 people with significant disabilities; and
- 237 (B) that has been set aside from procurement requirements by the state pursuant to
- 238 Section [63G-6a-805](#) or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- 239 (6) "System" means the Public Employees' Contributory Retirement System created
- 240 under this chapter.
- 241 (7) "Years of service credit" means:
- 242 (a) a period consisting of 12 full months as determined by the board;
- 243 (b) a period determined by the board, whether consecutive or not, during which a
- 244 regular full-time employee performed services for a participating employer, including any time

245 the regular full-time employee was absent on a paid leave of absence granted by a participating
246 employer or was absent in the service of the United States government on military duty as
247 provided by this chapter; or

248 (c) the regular school year consisting of not less than eight months of full-time service
249 for a regular full-time employee of an educational institution.

250 Section 4. Section **49-13-102** is amended to read:

251 **49-13-102. Definitions.**

252 As used in this chapter:

253 (1) "Benefits normally provided" [~~has the same meaning as~~] means the same as that
254 term is defined in Section **49-12-102**.

255 (2) (a) [~~Except as provided in Subsection (2)(c), "compensation"~~] "Compensation"
256 means the total amount of payments made by a participating employer to a member of this
257 system for services rendered to the participating employer, including:

258 (i) bonuses;

259 (ii) cost-of-living adjustments;

260 (iii) other payments currently includable in gross income and that are subject to social
261 security deductions, including any payments in excess of the maximum amount subject to
262 deduction under social security law; and

263 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
264 or other benefits authorized by federal law.

265 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
266 under Internal Revenue Code, Section 401(a)(17).

267 (c) "Compensation" does not include:

268 (i) the monetary value of remuneration paid in kind, including a residence or use of
269 equipment;

270 (ii) the cost of any employment benefits paid for by the participating employer;

271 (iii) compensation paid to a temporary employee, an exempt employee, or an employee

272 otherwise ineligible for service credit;

273 (iv) any payments upon termination, including accumulated vacation, sick leave
274 payments, severance payments, compensatory time payments, or any other special payments;

275 (v) any allowances or payments to a member for costs or expenses paid by the
276 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
277 housing costs, insurance costs, equipment costs, and dependent care costs; or

278 (vi) a teacher salary bonus described in Section 53F-2-513.

279 (d) The executive director may determine if a payment not listed under this Subsection
280 (2) falls within the definition of compensation.

281 (3) (a) "Final average salary" means the amount calculated by averaging the highest
282 three years of annual compensation preceding retirement subject to Subsections [~~(3)(a), (b), (c),~~
283 ~~and (d)~~] (3)(b), (c), (d), and (e).

284 [~~(a)~~] (b) Except as provided in Subsection [~~(3)(b)~~] (3)(c), the percentage increase in
285 annual compensation in any one of the years used may not exceed the previous year's
286 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the
287 purchasing power of the dollar during the previous year, as measured by a United States Bureau
288 of Labor Statistics Consumer Price Index average as determined by the board.

289 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation
290 to the office, the limitation in Subsection [~~(3)(a)~~] (3)(b) may be exceeded if:

- 291 (i) the member has transferred from another agency; or
- 292 (ii) the member has been promoted to a new position.

293 [~~(c)~~] (d) If the member retires more than six months from the date of termination of
294 employment and for purposes of computing the member's final average salary only, the
295 member is considered to have been in service at the member's last rate of pay from the date of
296 the termination of employment to the effective date of retirement.

297 [~~(d)~~] (e) The annual compensation used to calculate final average salary shall be based
298 on[+] a period, as determined by the board, consistent with the period used to determine years

299 of service credit in accordance with Subsection (7).

300 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~
301 ~~educational institution, or]~~

302 ~~[(ii) a contract year for a member employed by an educational institution.]~~

303 (4) "Participating employer" means an employer ~~[which]~~ that meets the participation
304 requirements of Sections 49-13-201 and 49-13-202.

305 (5) (a) "Regular full-time employee" means an employee:

306 (i) whose term of employment for a participating employer contemplates continued
307 employment during a fiscal or calendar year ~~[and]~~;

308 (ii) whose employment normally requires an average of 20 hours or more per week,
309 except as modified by the board~~;~~; and

310 (iii) who receives benefits normally provided by the participating employer.

311 (b) "Regular full-time employee" includes:

312 (i) a teacher whose term of employment for a participating employer contemplates
313 continued employment during a school year and who teaches half time or more;

314 (ii) a classified school employee:

315 (A) who is hired before July 1, 2013; and

316 (B) whose employment normally requires an average of 20 hours per week or more for
317 a participating employer, regardless of benefits provided;

318 (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as
319 of January 1, 1990, as provided in Section 49-13-407;

320 (iv) a faculty member or employee of an institution of higher education who is
321 considered full time by that institution of higher education; and

322 (v) an individual who otherwise meets the definition of this Subsection (5) who
323 performs services for a participating employer through a professional employer organization or
324 similar arrangement.

325 (c) "Regular full-time employee" does not include a classified school employee:

- 326 (i) (A) who is hired on or after July 1, 2013; and
- 327 (B) who does not receive benefits normally provided by the participating employer
- 328 even if the employment normally requires an average of 20 hours per week or more for a
- 329 participating employer;
- 330 (ii) (A) who is hired before July 1, 2013;
- 331 (B) who did not qualify as a regular full-time employee before July 1, 2013;
- 332 (C) who does not receive benefits normally provided by the participating employer;
- 333 and
- 334 (D) whose employment hours are increased on or after July 1, 2013, to require an
- 335 average of 20 hours per week or more for a participating employer; or
- 336 (iii) who is a person working on a contract:
- 337 (A) for the purposes of vocational rehabilitation and the employment and training of
- 338 people with significant disabilities; and
- 339 (B) that has been set aside from procurement requirements by the state pursuant to
- 340 Section [63G-6a-805](#) or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- 341 (6) "System" means the Public Employees' Noncontributory Retirement System.
- 342 (7) "Years of service credit" means:
- 343 (a) a period consisting of 12 full months as determined by the board;
- 344 (b) a period determined by the board, whether consecutive or not, during which a
- 345 regular full-time employee performed services for a participating employer, including any time
- 346 the regular full-time employee was absent on a paid leave of absence granted by a participating
- 347 employer or was absent in the service of the United States government on military duty as
- 348 provided by this chapter; or
- 349 (c) the regular school year consisting of not less than eight months of full-time service
- 350 for a regular full-time employee of an educational institution.

351 Section 5. Section **49-14-102** is amended to read:

352 **49-14-102. Definitions.**

353 As used in this chapter:

354 (1) (a) "Compensation" means the total amount of payments that are includable in
355 gross income [~~which are~~] received by a public safety service employee as base income for the
356 regularly scheduled work period. The participating employer shall establish the regularly
357 scheduled work period. Base income shall be determined prior to the deduction of member
358 contributions or any amounts the public safety service employee authorizes to be deducted for
359 salary deferral or other benefits authorized by federal law.

360 (b) "Compensation" includes performance-based bonuses and cost-of-living
361 adjustments.

362 (c) "Compensation" does not include:

363 (i) overtime;

364 (ii) sick pay incentives;

365 (iii) retirement pay incentives;

366 (iv) the monetary value of remuneration paid in kind, including a residence, use of
367 equipment or uniform, travel, or similar payments;

368 (v) a lump-sum payment or special payments covering accumulated leave; and

369 (vi) all contributions made by a participating employer under this system or under any
370 other employee benefit system or plan maintained by a participating employer for the benefit of
371 a member or participant.

372 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
373 under Internal Revenue Code Section 401(a)(17).

374 (2) "Dispatcher" means the same as that term is defined in Section [53-6-102](#).

375 (3) (a) "Final average salary" means the amount calculated by averaging the highest
376 three years of annual compensation preceding retirement subject to Subsections [~~(3)(a), (b), and~~
377 ~~(c)~~] (3)(b), (c), and (d).

378 [~~(a)~~] (b) Except as provided in Subsection [~~(3)(b)~~] (3)(c), the percentage increase in
379 annual compensation in any one of the years used may not exceed the previous year's

380 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the
381 purchasing power of the dollar during the previous year, as measured by a United States Bureau
382 of Labor Statistics Consumer Price Index average as determined by the board.

383 ~~[(b)]~~ (c) In cases where the participating employer provides acceptable documentation
384 to the office, the limitation in Subsection ~~[(3)(a)]~~ (3)(b) may be exceeded if:

- 385 (i) the public safety service employee has transferred from another agency; or
- 386 (ii) the public safety service employee has been promoted to a new position.

387 ~~[(c)]~~ (d) The annual compensation used to calculate final average salary shall be based
388 on on[+] a period, as determined by the board, consistent with the period used to determine years
389 of service credit in accordance with Subsection (10).

390 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~
391 ~~educational institution; or]~~

392 ~~[(ii) a contract year for a member employed by an educational institution.]~~

393 (4) (a) "Line-of-duty death" means a death resulting from:

- 394 (i) external force, violence, or disease occasioned by an act of duty as a public safety
395 service employee; or
- 396 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
397 training or another strenuous activity required as an act of duty as a public safety service
398 employee.

399 (b) "Line-of-duty death" does not include a death that:

- 400 (i) occurs during an activity that is required as an act of duty as a public safety service
401 employee if the activity is not a strenuous activity, including an activity that is clerical,
402 administrative, or of a nonmanual nature;
- 403 (ii) occurs during the commission of a crime committed by the employee;
- 404 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
405 nonprescribed, contributes to the employee's death; or
- 406 (iv) occurs in a manner other than as described in Subsection (4)(a).

407 (5) "Participating employer" means an employer [~~which~~] that meets the participation
408 requirements of Section 49-14-201.

409 (6) (a) "Public safety service" means employment normally requiring an average of
410 2,080 hours of regularly scheduled employment per year rendered by a member who is [a]:

411 (i) a law enforcement officer in accordance with Section 53-13-103;

412 (ii) a correctional officer in accordance with Section 53-13-104;

413 (iii) a special function officer approved in accordance with Sections 49-14-201 and
414 53-13-105;

415 (iv) a dispatcher who is certified in accordance with Section 53-6-303; [~~or~~]

416 (v) a full-time member of the Board of Pardons and Parole created under Section
417 77-27-2[~~;~~];

418 (vi) the commissioner of the Department of Public Safety; or

419 (vii) the executive director of the Department of Corrections.

420 (b) Except [~~as provided under Subsections (6)(a)(iv) and (v)]~~ for a position described
421 in Subsection (6)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the
422 course of employment, the employee's life or personal safety is at risk.

423 (c) Except for the minimum hour requirement, Subsections (6)(a) and (b) do not apply
424 to any person who was eligible for service credit in this system before January 1, 1984.

425 (7) "Public safety service employee" means an employee of a participating employer
426 who performs public safety service under this chapter.

427 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
428 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
429 physical law enforcement, prison security, disaster relief, or other emergency response activity.

430 (b) "Strenuous activity" includes participating in a participating employer sanctioned
431 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

432 (9) "System" means the Public Safety Contributory Retirement System created under
433 this chapter.

434 (10) "Years of service credit" means the number of periods, each to consist of 12 full
435 months as determined by the board, whether consecutive or not, during which a public safety
436 service employee was employed by a participating employer, including time the public safety
437 service employee was absent in the service of the United States government on military duty.

438 Section 6. Section **49-14-201** is amended to read:

439 **49-14-201. System membership -- Eligibility.**

440 (1) Except as provided in Section **49-15-201**, a public safety service employee of a
441 participating employer participating in this system is eligible for service credit in this system at
442 the earliest of:

443 (a) July 1, 1969, if the public safety service employee was employed by the
444 participating employer on July 1, 1969, and the participating employer was participating in this
445 system on that date;

446 (b) the date the participating employer begins participating in this system if the public
447 safety service employee was employed by the participating employer on that date; or

448 (c) the date the public safety service employee is employed by the participating
449 employer and is eligible to perform public safety service, except that a public safety service
450 employee initially entering employment with a participating employer on or after July 1, 2011,
451 who does not have service credit accrued before July 1, 2011, in a Tier I system or plan
452 administered by the board, may not participate in this system.

453 (2) (a) (i) A participating employer that has public safety service and firefighter service
454 employees that require cross-training and duty shall enroll those dual purpose employees in the
455 system in which the greatest amount of time is actually worked.

456 (ii) The employees shall either be full-time public safety service or full-time firefighter
457 service employees of the participating employer.

458 (b) (i) [~~Prior to~~] Before transferring a dual purpose employee from one system to
459 another, the participating employer shall receive written permission from the office.

460 (ii) The office may request documentation to verify the appropriateness of the transfer.

461 (3) The board may combine or segregate the actuarial experience of participating
462 employers in this system for the purpose of setting contribution rates.

463 (4) (a) (i) Each participating employer participating in this system shall annually
464 submit to the office a schedule indicating the positions to be covered under this system in
465 accordance with this chapter.

466 (ii) The office may require documentation to justify the inclusion of any position under
467 this system.

468 (b) If there is a dispute between the office and a participating employer or employee
469 over any position to be covered, the disputed position shall be submitted to the Peace Officer
470 Standards and Training Council established under Section 53-6-106 for determination.

471 (c) (i) The Peace Officer Standards and Training Council's authority to decide
472 eligibility for public safety service credit is limited to claims for coverage under this system for
473 time periods after July 1, 1989.

474 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
475 to service credit earned in another system [~~prior to~~] before July 1, 1989.

476 (iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer
477 Standards and Training Council granting a position coverage under this system may only be
478 applied prospectively from the date of that decision.

479 (iv) A decision of the Peace Officer Standards and Training Council granting a position
480 coverage under this system may be applied retroactively only if:

481 (A) the participating employer covered other similarly situated positions under this
482 system during the time period in question; and

483 (B) the position otherwise meets all eligibility requirements for receiving service credit
484 in this system during the period for which service credit is to be granted.

485 (5) The Peace Officer Standards and Training Council may use a subcommittee to
486 provide a recommendation to the council in determining disputes between the office and a
487 participating employer or employee over a position to be covered under this system.

488 (6) The Peace Officer Standards and Training Council shall comply with Title 63G,
489 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

490 (7) A public safety employee who is transferred or promoted to an administration
491 position requiring the performance of duties that consist primarily of management or
492 supervision of public safety service employees shall continue to earn public safety service
493 credit in this system [~~as long as~~] during the period in which the employee remains employed in
494 the same department.

495 (8) An employee of the Department of Corrections shall continue to earn public safety
496 service credit in this system if:

497 (a) the employee's position is no longer covered under this system for new employees
498 hired on or after July 1, 2015; and

499 (b) the employee:

500 (i) remains employed by the Department of Corrections;

501 (ii) meets the eligibility requirements of this system;

502 (iii) was hired into a position covered by this system [~~prior to~~] before July 1, 2015; and

503 (iv) has not had a break in service on or after July 1, 2015.

504 (9) An employee who is reassigned to the Division of Technology Services or to the
505 Division of Human Resource Management, and who was a member of this system, is entitled
506 to remain a member of this system.

507 (10) (a) To determine that a position is covered under this system, the office and, if a
508 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
509 position requires the employee to:

510 (i) except for a dispatcher, place the employee's life or personal safety at risk; and

511 (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or
512 53-13-105.

513 (b) If a position satisfies the requirements of Subsection (10)(a), the office and the
514 Peace Officer Standards and Training Council shall consider whether or not the position

515 requires the employee to:

516 (i) perform duties that consist primarily of actively preventing or detecting crime and
517 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

518 (ii) perform duties that consist primarily of providing community protection; and

519 (iii) respond to situations involving threats to public safety and make emergency
520 decisions affecting the lives and health of others.

521 (11) If a subcommittee is used to recommend the determination of disputes to the
522 Peace Officer Standards and Training Council, the subcommittee shall comply with the
523 requirements of Subsection (10) in making [its] the subcommittee's recommendation.

524 (12) A final order of the Peace Officer Standards and Training Council regarding a
525 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative
526 Procedures Act.

527 (13) Except as provided under Subsection (14), if a participating employer's public
528 safety service employees are not covered by this system or under Chapter 15, Public Safety
529 Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees
530 who may otherwise qualify for membership in this system shall, at the discretion of the
531 participating employer, remain in their current retirement system.

532 (14) (a) A public safety service employee employed by an airport police department,
533 which elects to cover [its] the airport police department's public safety service employees under
534 the Public Safety Noncontributory Retirement System under Subsection (13), may elect to
535 remain in the public safety service employee's current retirement system.

536 (b) The public safety service employee's election to remain in the current retirement
537 system under Subsection (14)(a):

538 (i) shall be made at the time the employer elects to move [its] the employer's public
539 safety service employees to a public safety retirement system;

540 (ii) documented by written notice to the participating employer; and

541 (iii) is irrevocable.

542 (15) (a) Subject to Subsection (16), beginning July 1, 2015, a public safety service
543 employee who is a dispatcher employed by:

544 (i) the state shall be eligible for service credit in this system; and

545 (ii) a participating employer other than the state shall be eligible for service credit in
546 this system if the dispatcher's participating employer elects to cover [its] the participating
547 employer's dispatchers under this system.

548 (b) A participating employer's election to cover [its] the participating employer's
549 dispatchers under this system under Subsection (15)(a)(ii) is irrevocable and shall be
550 documented by a resolution adopted by the governing body of the participating employer in
551 accordance with rules made by the office.

552 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
553 of a participating employer under Subsection (15)(b), is not eligible for service credit in this
554 system.

555 (16) Notwithstanding any other provision of this section, a person initially entering
556 employment with a participating employer on or after July 1, 2011, who does not have service
557 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
558 not participate in this system.

559 Section 7. Section **49-15-102** is amended to read:

560 **49-15-102. Definitions.**

561 As used in this chapter:

562 (1) (a) "Compensation" means the total amount of payments that are includable in
563 gross income received by a public safety service employee as base income for the regularly
564 scheduled work period. The participating employer shall establish the regularly scheduled
565 work period. Base income shall be determined prior to the deduction of any amounts the
566 public safety service employee authorizes to be deducted for salary deferral or other benefits
567 authorized by federal law.

568 (b) "Compensation" includes performance-based bonuses and cost-of-living

569 adjustments.

570 (c) "Compensation" does not include:

571 (i) overtime;

572 (ii) sick pay incentives;

573 (iii) retirement pay incentives;

574 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
575 equipment or uniform, travel, or similar payments;

576 (v) a lump-sum payment or special payment covering accumulated leave; and

577 (vi) all contributions made by a participating employer under this system or under any
578 other employee benefit system or plan maintained by a participating employer for the benefit of
579 a member or participant.

580 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
581 under Internal Revenue Code Section 401(a)(17).

582 (2) "Dispatcher" means the same as that term is defined in Section 53-6-102.

583 (3) (a) "Final average salary" means the amount calculated by averaging the highest
584 three years of annual compensation preceding retirement subject to Subsections [~~(3)(a)~~, ~~(b)~~, and
585 ~~(c)~~] (3)(b), (c), and (d).

586 [~~(a)~~] (b) Except as provided in Subsection [~~(3)(b)~~] (3)(c), the percentage increase in
587 annual compensation in any one of the years used may not exceed the previous year's
588 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the
589 purchasing power of the dollar during the previous year, as measured by a United States Bureau
590 of Labor Statistics Consumer Price Index average as determined by the board.

591 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation
592 to the office, the limitation in Subsection [~~(3)(a)~~] (3)(b) may be exceeded if:

593 (i) the public safety service employee has transferred from another agency; or

594 (ii) the public safety service employee has been promoted to a new position.

595 [~~(c)~~] (d) The annual compensation used to calculate final average salary shall be based

596 on[+] a period, as determined by the board, consistent with the period used to determine years
597 of service credit in accordance with Subsection (10).

598 ~~[(i) a calendar year for a member employed by a participating employer that is not an
599 educational institution; or]~~

600 ~~[(ii) a contract year for a member employed by an educational institution.]~~

601 (4) (a) "Line-of-duty death" means a death resulting from:

602 (i) external force, violence, or disease occasioned by an act of duty as a public safety
603 service employee; or

604 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
605 training or another strenuous activity required as an act of duty as a public safety service
606 employee.

607 (b) "Line-of-duty death" does not include a death that:

608 (i) occurs during an activity that is required as an act of duty as a public safety service
609 employee if the activity is not a strenuous activity, including an activity that is clerical,
610 administrative, or of a nonmanual nature;

611 (ii) occurs during the commission of a crime committed by the employee;

612 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
613 nonprescribed, contributes to the employee's death; or

614 (iv) occurs in a manner other than as described in Subsection (4)(a).

615 (5) "Participating employer" means an employer ~~[which]~~ that meets the participation
616 requirements of Section 49-15-201.

617 (6) (a) "Public safety service" means employment normally requiring an average of
618 2,080 hours of regularly scheduled employment per year rendered by a member who is [a]:

619 (i) a law enforcement officer in accordance with Section 53-13-103;

620 (ii) a correctional officer in accordance with Section 53-13-104;

621 (iii) a special function officer approved in accordance with Sections 49-15-201 and
622 53-13-105;

- 623 (iv) a dispatcher who is certified in accordance with Section 53-6-303; [or]
- 624 (v) a full-time member of the Board of Pardons and Parole created under Section
- 625 77-27-2[-];
- 626 (vi) the commissioner of the Department of Public Safety; or
- 627 (vii) the executive director of the Department of Corrections.

628 (b) Except [~~as provided under Subsections (6)(a)(iv) and (v)]~~ for a position described
629 in Subsection (6)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the
630 course of employment, the employee's life or personal safety is at risk.

631 (7) "Public safety service employee" means an employee of a participating employer
632 who performs public safety service under this chapter.

633 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
634 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
635 physical law enforcement, prison security, disaster relief, or other emergency response activity.

636 (b) "Strenuous activity" includes participating in a participating employer sanctioned
637 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

638 (9) "System" means the Public Safety Noncontributory Retirement System created
639 under this chapter.

640 (10) "Years of service credit" means the number of periods, each to consist of 12 full
641 months as determined by the board, whether consecutive or not, during which a public safety
642 service employee was employed by a participating employer, including time the public safety
643 service employee was absent in the service of the United States government on military duty.

644 Section 8. Section **49-15-201** is amended to read:

645 **49-15-201. System membership -- Eligibility.**

646 (1) (a) A public safety service employee employed by the state after July 1, 1989, but
647 before July 1, 2011, is eligible for service credit in this system.

648 (b) A public safety service employee employed by the state [~~prior to~~] before July 1,
649 1989, may either elect to receive service credit in this system or continue to receive service

650 credit under the system established under Chapter 14, Public Safety Contributory Retirement
651 Act, by following the procedures established by the board under this chapter.

652 (2) (a) Public safety service employees of a participating employer other than the state
653 that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement
654 System shall be eligible only for service credit in that system.

655 (b) (i) A participating employer other than the state that elected on or before July 1,
656 1989, to participate in this system shall, have allowed, [~~prior to~~] before July 1, 1989, a public
657 safety service employee to elect to participate in either this system or the Public Safety
658 Contributory Retirement System.

659 (ii) Except as expressly allowed by this title, the election of the public safety service
660 employee is final and may not be changed.

661 (c) A public safety service employee hired by a participating employer other than the
662 state after July 1, 1989, but before July 1, 2011, shall become a member in this system.

663 (d) A public safety service employee of a participating employer other than the state
664 who began participation in this system after July 1, 1989, but before July 1, 2011, is only
665 eligible for service credit in this system.

666 (e) A person initially entering employment with a participating employer on or after
667 July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system
668 or plan administered by the board, may not participate in this system.

669 (3) (a) (i) A participating employer that has public safety service and firefighter service
670 employees that require cross-training and duty shall enroll those dual purpose employees in the
671 system in which the greatest amount of time is actually worked.

672 (ii) The employees shall either be full-time public safety service or full-time firefighter
673 service employees of the participating employer.

674 (b) (i) [~~Prior to~~] Before transferring a dual purpose employee from one system to
675 another, the participating employer shall receive written permission from the office.

676 (ii) The office may request documentation to verify the appropriateness of the transfer.

677 (4) The board may combine or segregate the actuarial experience of participating
678 employers in this system for the purpose of setting contribution rates.

679 (5) (a) (i) Each participating employer participating in this system shall annually
680 submit to the office a schedule indicating the positions to be covered under this system in
681 accordance with this chapter.

682 (ii) The office may require documentation to justify the inclusion of any position under
683 this system.

684 (b) If there is a dispute between the office and a participating employer or employee
685 over any position to be covered, the disputed position shall be submitted to the Peace Officer
686 Standards and Training Council established under Section 53-6-106 for determination.

687 (c) (i) The Peace Officer Standards and Training Council's authority to decide
688 eligibility for public safety service credit is limited to claims for coverage under this system for
689 time periods after July 1, 1989.

690 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
691 to service credit earned in another system [~~prior to~~] before July 1, 1989.

692 (iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer
693 Standards and Training Council granting a position coverage under this system may only be
694 applied prospectively from the date of that decision.

695 (iv) A decision of the Peace Officer Standards and Training Council granting a position
696 coverage under this system may be applied retroactively only if:

697 (A) the participating employer covered other similarly situated positions under this
698 system during the time period in question; and

699 (B) the position otherwise meets all eligibility requirements for receiving service credit
700 in this system during the period for which service credit is to be granted.

701 (6) The Peace Officer Standards and Training Council may use a subcommittee to
702 provide a recommendation to the council in determining disputes between the office and a
703 participating employer or employee over a position to be covered under this system.

704 (7) The Peace Officer Standards and Training Council shall comply with Title 63G,
705 Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

706 (8) A public safety service employee who is transferred or promoted to an
707 administration position requiring the performance of duties that consist primarily of
708 management or supervision of public safety service employees shall continue to earn public
709 safety service credit in this system [~~as long as~~] during the period in which the employee
710 remains employed in the same department.

711 (9) An employee of the Department of Corrections shall continue to earn public safety
712 service credit in this system if:

713 (a) the employee's position is no longer covered under this system for new employees
714 hired on or after July 1, 2015; and

715 (b) the employee:

716 (i) remains employed by the Department of Corrections;

717 (ii) meets the eligibility requirements of this system;

718 (iii) was hired into a position covered by this system [~~prior to~~] before July 1, 2015; and

719 (iv) has not had a break in service on or after July 1, 2015.

720 (10) Any employee who is reassigned to the Division of Technology Services or to the
721 Division of Human Resource Management, and who was a member in this system, shall be
722 entitled to remain a member in this system.

723 (11) (a) To determine that a position is covered under this system, the office and, if a
724 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
725 position requires the employee to:

726 (i) except for a dispatcher, place the employee's life or personal safety at risk; and

727 (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or
728 53-13-105.

729 (b) If a position satisfies the requirements of Subsection (11)(a), the office and Peace
730 Officer Standards and Training Council shall consider whether the position requires the

731 employee to:

732 (i) perform duties that consist primarily of actively preventing or detecting crime and
733 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

734 (ii) perform duties that consist primarily of providing community protection; and

735 (iii) respond to situations involving threats to public safety and make emergency
736 decisions affecting the lives and health of others.

737 (12) If a subcommittee is used to recommend the determination of disputes to the
738 Peace Officer Standards and Training Council, the subcommittee shall comply with the
739 requirements of Subsection (11) in making [its] the subcommittee's recommendation.

740 (13) A final order of the Peace Officer Standards and Training Council regarding a
741 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative
742 Procedures Act.

743 (14) Except as provided under Subsection (15), if a participating employer's public
744 safety service employees are not covered by this system or under Chapter 14, Public Safety
745 Contributory Retirement Act, as of January 1, 1998, those public safety service employees who
746 may otherwise qualify for membership in this system shall, at the discretion of the participating
747 employer, remain in their current retirement system.

748 (15) (a) A public safety service employee employed by an airport police department,
749 which elects to cover [its] the airport police department's public safety service employees under
750 the Public Safety Noncontributory Retirement System under Subsection (14), may elect to
751 remain in the public safety service employee's current retirement system.

752 (b) The public safety service employee's election to remain in the current retirement
753 system under Subsection (15)(a):

754 (i) shall be made at the time the employer elects to move [its] the employer's public
755 safety service employees to a public safety retirement system;

756 (ii) shall be documented by written notice to the participating employer; and

757 (iii) is irrevocable.

758 (16) (a) Subject to Subsection (17), beginning July 1, 2015, a public safety service
759 employee who is a dispatcher employed by:

760 (i) the state shall be eligible for service credit in this system; and

761 (ii) a participating employer other than the state shall be eligible for service credit in
762 this system if the dispatcher's participating employer elects to cover [its] the participating
763 employer's dispatchers under this system.

764 (b) A participating employer's election to cover [its] the participating employer's
765 dispatchers under this system under Subsection (16)(a)(ii) is irrevocable and shall be
766 documented by a resolution adopted by the governing body of the participating employer in
767 accordance with rules made by the office.

768 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
769 of a participating employer under Subsection (16)(b), is not eligible for service credit in this
770 system.

771 (17) Notwithstanding any other provision of this section, a person initially entering
772 employment with a participating employer on or after July 1, 2011, who does not have service
773 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may
774 not participate in this system.

775 Section 9. Section **49-16-102** is amended to read:

776 **49-16-102. Definitions.**

777 As used in this chapter:

778 (1) (a) "Compensation" means the total amount of payments that are includable as
779 gross income [~~which are~~] received by a firefighter service employee as base income for the
780 regularly scheduled work period. The participating employer shall establish the regularly
781 scheduled work period. Base income shall be determined prior to the deduction of member
782 contributions or any amounts the firefighter service employee authorizes to be deducted for
783 salary deferral or other benefits authorized by federal law.

784 (b) "Compensation" includes performance-based bonuses and cost-of-living

785 adjustments.

786 (c) "Compensation" does not include:

787 (i) overtime;

788 (ii) sick pay incentives;

789 (iii) retirement pay incentives;

790 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,

791 or similar payments;

792 (v) a lump-sum payment or special payments covering accumulated leave; and

793 (vi) all contributions made by a participating employer under this system or under any
794 other employee benefit system or plan maintained by a participating employer for the benefit of
795 a member or participant.

796 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
797 under Section 401(a)(17), Internal Revenue Code.

798 (2) (a) "Disability" means the complete inability, due to objective medical impairment,
799 whether physical or mental, to perform firefighter service.

800 (b) "Disability" does not include the inability to meet an employer's required standards
801 or tests relating to fitness, physical ability, or agility that is not a result of a disability as defined
802 under Subsection (2)(a).

803 (3) (a) "Final average salary" means the amount calculated by averaging the highest
804 three years of annual compensation preceding retirement subject to Subsections [~~(3)(a), (b), and~~
805 ~~(c)~~] (3)(b), (c), and (d).

806 [~~(a)~~] (b) Except as provided in Subsection [~~(3)(b)~~] (3)(c), the percentage increase in
807 annual compensation in any one of the years used may not exceed the previous year's
808 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the
809 purchasing power of the dollar during the previous year, as measured by a United States Bureau
810 of Labor Statistics Consumer Price Index average as determined by the board.

811 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation

812 to the office the limitation in Subsection (3)(a) may be exceeded if:

813 (i) the member has transferred from another agency; or

814 (ii) the member has been promoted to a new position.

815 ~~[(c)]~~ (d) The annual compensation used to calculate final average salary shall be based
816 on~~[-]~~ a period, as determined by the board, consistent with the period used to determine years
817 of service credit in accordance with Subsection (13).

818 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~
819 ~~educational institution; or]~~

820 ~~[(ii) a contract year for a member employed by an educational institution.]~~

821 (4) (a) "Firefighter service" means employment normally requiring an average of 2,080
822 hours of regularly scheduled employment per year rendered by a member who is:

823 (i) a firefighter service employee trained in firefighter techniques and assigned to a
824 position of hazardous duty with a regularly constituted fire department; or

825 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire
826 marshal.

827 (b) "Firefighter service" does not include secretarial staff or other similar employees.

828 (5) (a) "Firefighter service employee" means an employee of a participating employer
829 who provides firefighter service under this chapter. ~~[An]~~

830 (b) "Firefighter service employee" does not include an employee of a regularly
831 constituted fire department who does not perform firefighter service ~~[is not a firefighter service~~
832 ~~employee].~~

833 (6) (a) "Line-of-duty death or disability" means a death or disability resulting from:

834 (i) external force, violence, or disease directly resulting from firefighter service; or

835 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
836 training or another strenuous activity required as an act of duty as a firefighter service
837 employee.

838 (b) "Line-of-duty death or disability" does not include a death or disability that:

839 (i) occurs during an activity that is required as an act of duty as a firefighter service
840 employee if the activity is not a strenuous activity, including an activity that is clerical,
841 administrative, or of a nonmanual nature;

842 (ii) occurs during the commission of a crime committed by the employee;

843 (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether
844 prescribed or nonprescribed, contributes to the employee's death or disability; or

845 (iv) occurs in a manner other than as described in Subsection (6)(a).

846 (c) "Line-of-duty death or disability" includes the death or disability of a paid
847 firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid
848 firefighter has five years of firefighter service credit.

849 (7) "Objective medical impairment" means an impairment resulting from an injury or
850 illness [~~which~~] that is diagnosed by a physician or physician assistant and [~~which~~] that is based
851 on accepted objective medical tests or findings rather than subjective complaints.

852 (8) "Participating employer" means an employer [~~which~~] that meets the participation
853 requirements of Section [49-16-201](#).

854 (9) "Regularly constituted fire department" means a fire department that employs a fire
855 chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid
856 employment per year.

857 (10) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
858 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
859 physical law enforcement, prison security, disaster relief, or other emergency response activity.

860 (b) "Strenuous activity" includes participating in a participating employer sanctioned
861 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

862 (11) "System" means the Firefighters' Retirement System created under this chapter.

863 (12) (a) "Volunteer firefighter" means any individual [~~that~~] who is not regularly
864 employed as a firefighter service employee, but who:

865 (i) has been trained in firefighter techniques and skills;

866 (ii) continues to receive regular firefighter training; and
867 (iii) is on the rolls of a legally organized volunteer fire department [~~which~~] that
868 provides ongoing training and serves a political subdivision of the state.

869 (b) [~~An individual that~~] "Volunteer firefighter" does not include an individual who
870 volunteers assistance but does not meet the requirements of Subsection (12)(a) [is not a
871 volunteer firefighter for purposes of this chapter].

872 (13) "Years of service credit" means the number of periods, each to consist of 12 full
873 months as determined by the board, whether consecutive or not, during which a firefighter
874 service employee was employed by a participating employer or received full-time pay while on
875 sick leave, including any time the firefighter service employee was absent in the service of the
876 United States on military duty.

877 Section 10. Section **49-22-102** is amended to read:

878 **49-22-102. Definitions.**

879 As used in this chapter:

880 (1) "Benefits normally provided" [~~has the same meaning as~~] means the same as that
881 term is defined in Section 49-12-102.

882 (2) (a) "Compensation" means~~[, except as provided in Subsection (2)(c);]~~ the total
883 amount of payments made by a participating employer to a member of this system for services
884 rendered to the participating employer, including:

- 885 (i) bonuses;
- 886 (ii) cost-of-living adjustments;
- 887 (iii) other payments currently includable in gross income and that are subject to social
888 security deductions, including any payments in excess of the maximum amount subject to
889 deduction under social security law;
- 890 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral
891 or other benefits authorized by federal law; and
- 892 (v) member contributions.

893 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed
894 under Internal Revenue Code, Section 401(a)(17).

895 (c) "Compensation" does not include:

896 (i) the monetary value of remuneration paid in kind, including a residence or use of
897 equipment;

898 (ii) the cost of any employment benefits paid for by the participating employer;

899 (iii) compensation paid to a temporary employee or an employee otherwise ineligible
900 for service credit;

901 (iv) any payments upon termination, including accumulated vacation, sick leave
902 payments, severance payments, compensatory time payments, or any other special payments;

903 (v) any allowances or payments to a member for costs or expenses paid by the
904 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,
905 housing costs, insurance costs, equipment costs, and dependent care costs; or

906 (vi) a teacher salary bonus described in Section 53F-2-513.

907 (d) The executive director may determine if a payment not listed under this Subsection
908 (2) falls within the definition of compensation.

909 (3) "Corresponding Tier I system" means the system or plan that would have covered
910 the member if the member had initially entered employment before July 1, 2011.

911 (4) (a) "Final average salary" means the amount calculated by averaging the highest
912 five years of annual compensation preceding retirement subject to Subsections [~~(4)(a), (b), (c),~~
913 ~~(d), and (e)~~] (4)(b), (c), (d), (e), and (f).

914 [~~(a)~~] (b) Except as provided in Subsection [~~(4)(b)~~] (4)(c), the percentage increase in
915 annual compensation in any one of the years used may not exceed the previous year's
916 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the
917 purchasing power of the dollar during the previous year, as measured by a United States Bureau
918 of Labor Statistics Consumer Price Index average as determined by the board.

919 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation

920 to the office, the limitation in Subsection ~~[(4)(a)]~~ (4)(b) may be exceeded if:

921 ~~[(i)]~~ (i) the member has transferred from another agency; or

922 ~~[(ii)]~~ (ii) the member has been promoted to a new position.

923 ~~[(d)]~~ (d) If the member retires more than six months from the date of termination of
924 employment, the member is considered to have been in service at the member's last rate of pay
925 from the date of the termination of employment to the effective date of retirement for purposes
926 of computing the member's final average salary only.

927 ~~[(e)]~~ (e) If the member has less than five years of service credit in this system, final
928 average salary means the average annual compensation paid to the member during the full
929 period of service credit.

930 ~~[(f)]~~ (f) The annual compensation used to calculate final average salary shall be based
931 on ~~[:]~~ a period, as determined by the board, consistent with the period used to determine years
932 of service credit in accordance with Subsection (8).

933 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~
934 ~~educational institution; or]~~

935 ~~[(ii) a contract year for a member employed by an educational institution.]~~

936 (5) "Participating employer" means an employer ~~[which]~~ that meets the participation
937 requirements of:

938 (a) Sections [49-12-201](#) and [49-12-202](#);

939 (b) Sections [49-13-201](#) and [49-13-202](#);

940 (c) Section [49-19-201](#); or

941 (d) Section [49-22-201](#) or [49-22-202](#).

942 (6) (a) "Regular full-time employee" means an employee;

943 (i) whose term of employment for a participating employer contemplates continued
944 employment during a fiscal or calendar year ~~[and]~~;

945 (ii) whose employment normally requires an average of 20 hours or more per week,
946 except as modified by the board~~[:]~~; and

- 947 (iii) who receives benefits normally provided by the participating employer.
- 948 (b) "Regular full-time employee" includes:
- 949 (i) a teacher whose term of employment for a participating employer contemplates
- 950 continued employment during a school year and who teaches half time or more;
- 951 (ii) a classified school employee:
- 952 (A) who is hired before July 1, 2013; and
- 953 (B) whose employment normally requires an average of 20 hours per week or more for
- 954 a participating employer, regardless of benefits provided;
- 955 (iii) an appointive officer whose appointed position is full time as certified by the
- 956 participating employer;
- 957 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the
- 958 attorney general, and a state legislator;
- 959 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position
- 960 is full time as certified by the participating employer;
- 961 (vi) a faculty member or employee of an institution of higher education who is
- 962 considered full time by that institution of higher education; and
- 963 (vii) an individual who otherwise meets the definition of this Subsection (6) who
- 964 performs services for a participating employer through a professional employer organization or
- 965 similar arrangement.
- 966 (c) "Regular full-time employee" does not include:
- 967 (i) a firefighter service employee as defined in Section [49-23-102](#);
- 968 (ii) a public safety service employee as defined in Section [49-23-102](#);
- 969 (iii) a classified school employee:
- 970 (A) who is hired on or after July 1, 2013; and
- 971 (B) who does not receive benefits normally provided by the participating employer
- 972 even if the employment normally requires an average of 20 hours per week or more for a
- 973 participating employer;

- 974 (iv) a classified school employee:
- 975 (A) who is hired before July 1, 2013;
- 976 (B) who did not qualify as a regular full-time employee before July 1, 2013;
- 977 (C) who does not receive benefits normally provided by the participating employer;

978 and

979 (D) whose employment hours are increased on or after July 1, 2013, to require an
980 average of 20 hours per week or more for a participating employer; or

981 (E) who is a person working on a contract:

982 (I) for the purposes of vocational rehabilitation and the employment and training of
983 people with significant disabilities; and

984 (II) that has been set aside from procurement requirements by the state pursuant to
985 Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

986 (7) "System" means the New Public Employees' Tier II Contributory Retirement
987 System created under this chapter.

988 (8) "Years of service credit" means:

989 (a) a period consisting of 12 full months as determined by the board;

990 (b) a period determined by the board, whether consecutive or not, during which a
991 regular full-time employee performed services for a participating employer, including any time
992 the regular full-time employee was absent on a paid leave of absence granted by a participating
993 employer or was absent in the service of the United States government on military duty as
994 provided by this chapter; or

995 (c) the regular school year consisting of not less than eight months of full-time service
996 for a regular full-time employee of an educational institution.

997 Section 11. Section 49-22-201 is amended to read:

998 **49-22-201. System membership -- Eligibility.**

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

1000 (2) (a) A person initially entering regular full-time employment with a participating

1001 employer on or after July 1, 2011, who does not have service credit accrued before July 1,
1002 2011, in a Tier I system or plan administered by the board, is eligible:

1003 (i) as a member for service credit and defined contributions under the Tier II hybrid
1004 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1005 (ii) as a participant for defined contributions under the Tier II defined contribution plan
1006 established by Part 4, Tier II Defined Contribution Plan.

1007 (b) A person initially entering regular full-time employment with a participating
1008 employer on or after July 1, 2011, shall:

1009 (i) make an election to participate in the system created under this chapter:

1010 (A) as a member for service credit and defined contributions under the Tier II hybrid
1011 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1012 (B) as a participant for defined contributions under the Tier II defined contribution plan
1013 established by Part 4, Tier II Defined Contribution Plan; and

1014 (ii) electronically submit to the office notification of the member's election under
1015 Subsection (2)(b)(i) in a manner approved by the office.

1016 (c) An election made by a person initially entering regular full-time employment with a
1017 participating employer under this Subsection (2) is irrevocable beginning one year from the
1018 date of eligibility for accrual of benefits.

1019 (d) If no election is made under Subsection (2)(b)(i), the person shall become a
1020 member eligible for service credit and defined contributions under the Tier II hybrid retirement
1021 system established by Part 3, Tier II Hybrid Retirement System.

1022 (3) Notwithstanding the provisions of this section and except as provided in Subsection
1023 (4), an elected official initially entering office on or after July 1, 2011:

1024 (a) is only eligible to participate in the Tier II defined contribution plan established
1025 under Part 4, Tier II Defined Contribution Plan;

1026 (b) is not eligible to participate in the Tier II hybrid retirement system established
1027 under Part 3, Tier II Hybrid Retirement System; and

1028 (c) is vested immediately in the elected official's benefit and the benefit is
 1029 nonforfeitable, including the total amount contributed by the participating employer and the
 1030 total amount contributed by the member in the Tier II defined contribution plan.

1031 (4) ~~[Notwithstanding the provisions of Subsection (3), a]~~ A legislator or full-time
 1032 elected official initially entering office on or after July 1, 2011, who has previously accrued
 1033 service credit:

1034 (a) in a Tier I retirement system or plan administered by the board shall continue in the
 1035 Tier I system or plan for which the legislator or full-time elected official is eligible; or

1036 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which
 1037 the ~~[legislator or]~~ full-time elected official is eligible.

1038 Section 12. Section **49-22-204** is amended to read:

1039 **49-22-204. Higher education employees' eligibility requirements -- Election**
 1040 **between different retirement plans -- Classification requirements -- Transfer between**
 1041 **systems.**

1042 (1) (a) A regular full-time employee of an institution of higher education who is
 1043 eligible to participate in either this system or in a retirement annuity contract with a public or
 1044 private system, organization, or company, designated as described in Subsection (1)(c) or (d),
 1045 shall, not later than January 1, 1979, elect to participate exclusively in this system or in an
 1046 annuity contract allowed under this Subsection (1).

1047 (b) The election is final, and no right exists to make any further election.

1048 (c) Except as provided in Subsection (1)(d), the Utah Board of Higher Education shall
 1049 designate the public or private retirement systems, organizations, or companies that a regular
 1050 full-time employee of an institution of higher education is eligible to participate in under
 1051 Subsection (1)(a).

1052 (d) The technical college board of trustees of each technical college shall designate the
 1053 public or private retirement systems, organizations, or companies that a regular full-time
 1054 employee of each technical college is eligible to participate in under Subsection (1)(a).

1055 (2) (a) A regular full-time employee hired by an institution of higher education after
1056 January 1, 1979, may participate only in the retirement plan [~~which attaches to~~] designated for
1057 the person's employment classification.

1058 (b) Each institution of higher education shall prepare or amend existing employment
1059 classifications, under the direction of the Utah Board of Higher Education, or the technical
1060 college board of trustees of each technical college for each technical college, so that each
1061 classification is assigned with either:

1062 (i) this system; or

1063 (ii) a public or private system, organization, or company designated by:

1064 (A) except as provided under Subsection (2)(b)(ii)(B), the Utah Board of Higher
1065 Education; or

1066 (B) the technical college board of trustees of each technical college for regular
1067 full-time employees of each technical college.

1068 (c) Notwithstanding a person's employment classification assignment under Subsection
1069 (2)(b), a regular full-time employee who begins employment with an institution of higher
1070 education has a one-time irrevocable election to continue participation in this system if the
1071 employee:

1072 (i) has service credit in this system before the date of employment with the institution
1073 of higher education; and

1074 (ii) makes the election before participating in the system described in Subsection
1075 (2)(b)(ii).

1076 (3) A regular full-time employee hired by an institution of higher education on or after
1077 July 1, 2011, whose employment classification requires participation in this system may elect
1078 to continue participation in this system upon change to an employment classification [~~which~~]
1079 that requires participation in a public or private system, organization, or company designated
1080 by:

1081 (a) except as provided in Subsection (3)(b), the Utah Board of Higher Education; or

1082 (b) the technical college board of trustees of each technical college for regular full-time
1083 employees of each technical college.

1084 (4) A regular full-time employee hired by an institution of higher education on or after
1085 July 1, 2011, whose employment classification requires participation in this system shall
1086 participate in this system.

1087 (5) An employee's participation or election described in this section:

1088 (a) shall be made in accordance with this section; and

1089 (b) is subject to requirements under federal law and rules made by the board.

1090 Section 13. Section **49-22-205** is amended to read:

1091 **49-22-205. Exemptions from participation in system.**

1092 (1) Upon filing a written request for exemption with the office, the following
1093 employees are exempt from participation in the system as provided in this section:

1094 (a) an executive department head of the state;

1095 (b) a member of the State Tax Commission;

1096 (c) a member of the Public Service Commission;

1097 (d) a member of a full-time or part-time board or commission;

1098 (e) an employee of the Governor's Office of Planning and Budget;

1099 (f) an employee of the Governor's Office of Economic Opportunity;

1100 (g) an employee of the Commission on Criminal and Juvenile Justice;

1101 (h) an employee of the Governor's Office;

1102 (i) an employee of the State Auditor's Office;

1103 (j) an employee of the State Treasurer's Office;

1104 (k) any other member who is permitted to make an election under Section [49-11-406](#);

1105 (l) a person appointed as a city manager or appointed as a city administrator or another
1106 at-will employee of a municipality, county, or other political subdivision;

1107 (m) an employee of an interlocal cooperative agency created under Title 11, Chapter
1108 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided

1109 through membership in a labor organization that provides retirement benefits to its members;
1110 and

1111 (n) an employee serving as an exchange employee from outside the state for an
1112 employer who has elected to make all of the employer's exchange employees eligible for
1113 service credit in this system.

1114 (2) (a) A participating employer shall prepare and maintain a list designating those
1115 positions eligible for exemption under Subsection (1).

1116 (b) An employee may not be exempted unless the employee is employed in a position
1117 designated by the participating employer under Subsection (1).

1118 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a
1119 municipality, county, or political subdivision may not exempt a total of more than 50 positions
1120 or a number equal to 10% of the eligible employees of the municipality, county, or political
1121 subdivision, whichever is less.

1122 (b) A municipality, county, or political subdivision may exempt at least one regular
1123 full-time employee.

1124 (4) Each participating employer shall:

1125 (a) maintain a list of employee exemptions; and

1126 (b) update an employee exemption in the event of any change.

1127 (5) Beginning on the effective date of the exemption for an employee who elects to be
1128 exempt in accordance with Subsection (1):

1129 (a) for a member of the Tier II defined contribution plan:

1130 (i) the participating employer shall contribute the nonelective contribution and the
1131 amortization rate described in Section 49-22-401, except that the nonelective contribution is
1132 exempt from the vesting requirements of Subsection 49-22-401(3)(a); ~~and~~

1133 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

1134 (iii) the member is not eligible for additional service credit in the plan for the period of
1135 exempt employment; and

- 1136 (b) for a member of the Tier II hybrid retirement system:
- 1137 (i) the participating employer shall contribute the nonelective contribution and the
- 1138 amortization rate described in Section 49-22-401, except that the contribution is exempt from
- 1139 the vesting requirements of Subsection 49-22-401(3)(a);
- 1140 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 1141 (iii) the member is not eligible for additional service credit in the system for the period
- 1142 of exempt employment.

1143 (6) If an employee who is a member of the Tier II hybrid retirement system

1144 subsequently revokes the election of exemption made under Subsection (1), the provisions

1145 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee

1146 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1147 (7) (a) All employer contributions made on behalf of an employee shall be invested in

1148 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election

1149 period under Subsection 49-22-201(2)(c) is expired if the employee:

- 1150 (i) elects to be exempt in accordance with Subsection (1); and
- 1151 (ii) continues employment with the participating employer through the one-year
- 1152 election period under Subsection 49-22-201(2)(c).

1153 (b) An employee is entitled to receive a distribution of the employer contributions

1154 made on behalf of the employee and all associated investment gains and losses if the employee:

- 1155 (i) elects to be exempt in accordance with Subsection (1); and
- 1156 (ii) terminates employment prior to the one-year election period under Subsection
- 1157 49-22-201(2)(c).

1158 (8) (a) The office shall make rules to implement this section.

1159 (b) The rules made under this Subsection (8) shall include provisions to allow the

1160 exemption provided under Subsection (1) to apply to all contributions made beginning on or

1161 after July 1, 2011, on behalf of an exempted employee who began the employment before May

1162 8, 2012.

1163 (9) An employee's exemption, participation, or election described in this section:

1164 (a) shall be made in accordance with this section; and

1165 (b) is subject to requirements under federal law and rules made by the board.

1166 Section 14. Section **49-22-401** is amended to read:

1167 **49-22-401. Contributions -- Rates.**

1168 (1) Up to the amount allowed by federal law, the participating employer shall make a
1169 nonelective contribution of 10% of the participant's compensation to a defined contribution
1170 plan.

1171 (2) (a) The participating employer shall contribute the 10% nonelective contribution
1172 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
1173 Internal Revenue Code [~~which~~] that:

1174 (i) is sponsored by the board; and

1175 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1176 (b) The member may make voluntary deferrals to:

1177 (i) the qualified 401(k) plan [~~which~~] that receives the employer contribution described
1178 in this Subsection (2); or

1179 (ii) at the member's option, another defined contribution plan established by the
1180 participating employer.

1181 (c) In addition to the percent specified under Subsection (2)(a), the participating
1182 employer shall pay the corresponding Tier I system amortization rate of the employee's
1183 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1184 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1185 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1186 employment as a regular full-time employee under this title.

1187 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1188 member's benefit immediately and is nonforfeitable.

1189 (c) (i) Upon filing a written request for exemption with the office, an eligible employee

1190 is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
1191 [49-22-205](#).

1192 (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for
1193 additional service credit in the plan for the period of exempt employment.

1194 (d) (i) Years of employment under Subsection (3)(a) includes any fraction of a year to
1195 which the member may be entitled.

1196 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1197 one year of the total years required for vesting, the member shall be considered to have the total
1198 years of employment required for vesting.

1199 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1200 invested in a default option selected by the board until the member is vested in accordance with
1201 Subsection (3)(a).

1202 (b) A member may direct the investment of contributions including associated
1203 investment gains and losses made by a participating employer under Subsection (2)(a) only
1204 after the contributions have vested in accordance with Subsection (3)(a).

1205 (c) A member may direct the investment of contributions made by the member under
1206 Subsection (3)(b).

1207 (5) No loans shall be available from contributions made by a participating employer
1208 under Subsection (2)(a).

1209 (6) No hardship distributions shall be available from contributions made by a
1210 participating employer under Subsection (2)(a).

1211 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1212 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1213 contributions made by a participating employer on behalf of the member including associated
1214 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1215 (b) If a member who terminates employment with a participating employer prior to the
1216 vesting period described in Subsection (3)(a) subsequently enters employment with the same or

1217 another participating employer within 10 years of the termination date of the previous
1218 employment:

1219 (i) all contributions made by the previous participating employer on behalf of the
1220 member including associated investment gains and losses shall be reinstated upon the member's
1221 employment as a regular full-time employee; and

1222 (ii) the length of time that the member worked with the previous employer shall be
1223 included in determining whether the member has completed the vesting period under
1224 Subsection (3)(a).

1225 (c) The office shall establish a forfeiture account and shall specify the uses of the
1226 forfeiture account, which may include an offset against administrative costs or employer
1227 contributions made under this section.

1228 (8) The office may request from any other [~~qualified 401(k)~~] plan under Subsection
1229 (2)(b)(ii) any relevant information pertaining to the maintenance of [~~its~~] the plan's tax
1230 qualification under the Internal Revenue Code.

1231 (9) The office may take any action [~~which in its~~] that in the office's judgment is
1232 necessary to maintain the tax-qualified status of [~~its~~] the office's 401(k) defined contribution
1233 plan under federal law.

1234 Section 15. Section **49-23-102** is amended to read:

1235 **49-23-102. Definitions.**

1236 As used in this chapter:

1237 (1) (a) "Compensation" means the total amount of payments that are includable in
1238 gross income received by a public safety service employee or a firefighter service employee as
1239 base income for the regularly scheduled work period. The participating employer shall
1240 establish the regularly scheduled work period. Base income shall be determined prior to the
1241 deduction of any amounts the public safety service employee or firefighter service employee
1242 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

1243 (b) "Compensation" includes performance-based bonuses and cost-of-living

1244 adjustments.

1245 (c) "Compensation" does not include:

1246 (i) overtime;

1247 (ii) sick pay incentives;

1248 (iii) retirement pay incentives;

1249 (iv) the monetary value of remuneration paid in kind, as in a residence, use of
1250 equipment or uniform, travel, or similar payments;

1251 (v) a lump-sum payment or special payment covering accumulated leave; and

1252 (vi) all contributions made by a participating employer under this system or under any
1253 other employee benefit system or plan maintained by a participating employer for the benefit of
1254 a member or participant.

1255 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed
1256 under Section 401(a)(17), Internal Revenue Code.

1257 (2) "Corresponding Tier I system" means the system or plan that would have covered
1258 the member if the member had initially entered employment before July 1, 2011.

1259 (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.

1260 (4) (a) "Final average salary" means the amount calculated by averaging the highest
1261 five years of annual compensation preceding retirement subject to Subsections [~~(4)(a), (b), (c),~~
1262 ~~(d), and (e)~~] (4)(b), (c), (d), (e), and (f).

1263 [~~(a)~~] (b) Except as provided in Subsection [~~(4)(b)~~] (4)(c), the percentage increase in
1264 annual compensation in any one of the years used may not exceed the previous year's
1265 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the
1266 purchasing power of the dollar during the previous year, as measured by a United States Bureau
1267 of Labor Statistics Consumer Price Index average as determined by the board.

1268 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation
1269 to the office, the limitation in Subsection [~~(4)(a)~~] (4)(b) may be exceeded if:

1270 (i) the member has transferred from another agency; or

- 1271 (ii) the member has been promoted to a new position.
- 1272 ~~[(e)]~~ (d) If the member retires more than six months from the date of termination of
1273 employment, the member is considered to have been in service at the member's last rate of pay
1274 from the date of the termination of employment to the effective date of retirement for purposes
1275 of computing the member's final average salary only.
- 1276 ~~[(d)]~~ (e) If the member has less than five years of service credit in this system, final
1277 average salary means the average annual compensation paid to the member during the full
1278 period of service credit.
- 1279 ~~[(e)]~~ (f) The annual compensation used to calculate final average salary shall be based
1280 on~~[:]~~ a period, as determined by the board, consistent with the period used to determine years
1281 of service credit in accordance with Subsection (14).
- 1282 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~
1283 ~~educational institution; or]~~
- 1284 ~~[(ii) a contract year for a member employed by an educational institution.]~~
- 1285 (5) (a) "Firefighter service" means employment normally requiring an average of 2,080
1286 hours of regularly scheduled employment per year rendered by a member who is:
- 1287 (i) a firefighter service employee trained in firefighter techniques and assigned to a
1288 position of hazardous duty with a regularly constituted fire department;
- 1289 (ii) the state fire marshal appointed under Section [53-7-103](#) or a deputy state fire
1290 marshal; or
- 1291 (iii) a firefighter service employee who is:
- 1292 (A) hired on or after July 1, 2021;
- 1293 (B) trained in firefighter techniques;
- 1294 (C) assigned to a position of hazardous duty; and
- 1295 (D) employed by the state as a participating employer.
- 1296 (b) "Firefighter service" does not include secretarial staff or other similar employees.
- 1297 (6) (a) "Firefighter service employee" means an employee of a participating employer

1298 who provides firefighter service under this chapter.

1299 (b) "Firefighter service employee" does not include an employee of a regularly
1300 constituted fire department who does not perform firefighter service.

1301 (7) (a) "Line-of-duty death" means a death resulting from:

1302 (i) external force, violence, or disease occasioned by an act of duty as a public safety
1303 service or firefighter service employee; or

1304 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous
1305 training or another strenuous activity required as an act of duty as a public safety service or
1306 firefighter service employee.

1307 (b) "Line-of-duty death" does not include a death that:

1308 (i) occurs during an activity that is required as an act of duty as a public safety service
1309 or firefighter service employee if the activity is not a strenuous activity, including an activity
1310 that is clerical, administrative, or of a nonmanual nature;

1311 (ii) occurs during the commission of a crime committed by the employee;

1312 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or
1313 nonprescribed, contributes to the employee's death; or

1314 (iv) occurs in a manner other than as described in Subsection (7)(a).

1315 (8) "Participating employer" means an employer [~~which~~] that meets the participation
1316 requirements of:

1317 (a) Sections [49-14-201](#) and [49-14-202](#);

1318 (b) Sections [49-15-201](#) and [49-15-202](#);

1319 (c) Sections [49-16-201](#) and [49-16-202](#); or

1320 (d) Sections [49-23-201](#) and [49-23-202](#).

1321 (9) (a) "Public safety service" means employment normally requiring an average of
1322 2,080 hours of regularly scheduled employment per year rendered by a member who is [~~a~~]:

1323 (i) a law enforcement officer in accordance with Section [53-13-103](#);

1324 (ii) a correctional officer in accordance with Section [53-13-104](#);

1325 (iii) a special function officer approved in accordance with Sections 49-15-201 and
1326 53-13-105;

1327 (iv) a dispatcher who is certified in accordance with Section 53-6-303; ~~[and]~~

1328 (v) a full-time member of the Board of Pardons and Parole created under Section
1329 77-27-2[-];

1330 (vi) the commissioner of the Department of Public Safety; or

1331 (vii) the executive director of the Department of Corrections.

1332 (b) Except ~~[as provided under Subsections (9)(a)(iv) and (v)]~~ for a position described
1333 in Subsection (9)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the
1334 course of employment, the employee's life or personal safety is at risk.

1335 (10) "Public safety service employee" means an employee of a participating employer
1336 who performs public safety service under this chapter.

1337 (11) (a) "Strenuous activity" means engagement involving a difficult, stressful, or
1338 vigorous fire suppression, rescue, hazardous material response, emergency medical service,
1339 physical law enforcement, prison security, disaster relief, or other emergency response activity.

1340 (b) "Strenuous activity" includes participating in a participating employer sanctioned
1341 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

1342 (12) "System" means the New Public Safety and Firefighter Tier II Contributory
1343 Retirement System created under this chapter.

1344 (13) (a) "Volunteer firefighter" means any individual ~~[that]~~ who is not regularly
1345 employed as a firefighter service employee, but who:

1346 (i) has been trained in firefighter techniques and skills;

1347 (ii) continues to receive regular firefighter training; and

1348 (iii) is on the rolls of a legally organized volunteer fire department ~~[which]~~ that
1349 provides ongoing training and serves a political subdivision of the state.

1350 (b) An individual that volunteers assistance but does not meet the requirements of
1351 Subsection (13)(a) is not a volunteer firefighter for purposes of this chapter.

1352 (14) "Years of service credit" means:

1353 (a) a period, consisting of 12 full months as determined by the board; or

1354 (b) a period determined by the board, whether consecutive or not, during which a
1355 regular full-time employee performed services for a participating employer, including any time
1356 the regular full-time employee was absent on a paid leave of absence granted by a participating
1357 employer or was absent in the service of the United States government on military duty as
1358 provided by this chapter.

1359 Section 16. Section **49-23-201** is amended to read:

1360 **49-23-201. System membership -- Eligibility.**

1361 (1) Beginning July 1, 2011, a participating employer that employs public safety service
1362 employees or firefighter service employees shall participate in this system.

1363 (2) (a) A public safety service employee or a firefighter service employee initially
1364 entering employment with a participating employer on or after July 1, 2011, who does not have
1365 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,
1366 is eligible:

1367 (i) as a member for service credit and defined contributions under the Tier II hybrid
1368 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1369 (ii) as a participant for defined contributions under the Tier II defined contributions
1370 plan established by Part 4, Tier II Defined Contribution Plan.

1371 (b) A public safety service employee or a firefighter service employee initially entering
1372 employment with a participating employer on or after July 1, 2011, shall:

1373 (i) make an election to participate in the system created under this chapter:

1374 (A) as a member for service credit and defined contributions under the Tier II hybrid
1375 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1376 (B) as a participant for defined contributions under the Tier II defined contribution plan
1377 established by Part 4, Tier II Defined Contribution Plan; and

1378 (ii) electronically submit to the office notification of the member's election under

1379 Subsection (2)(b)(i) in a manner approved by the office.

1380 (c) An election made by a public safety service employee or firefighter service
1381 employee initially entering employment with a participating employer under this Subsection (2)
1382 is irrevocable beginning one year from the date of eligibility for accrual of benefits.

1383 (d) If no election is made under Subsection (2)(b)(i), the public safety service employee
1384 or firefighter service employee shall become a member eligible for service credit and defined
1385 contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid
1386 Retirement System.

1387 (3) (a) Beginning July 1, 2015, a public safety service employee who is a dispatcher
1388 employed by:

1389 (i) the state shall be eligible for service credit in this system; and

1390 (ii) a participating employer other than the state shall be eligible for service credit in
1391 this system if the dispatcher's participating employer elects to cover [its] the participating
1392 employer's dispatchers under this system.

1393 (b) A participating employer's election to cover [its] the participating employer's
1394 dispatchers under this system under Subsection (3)(a)(ii) is irrevocable and shall be
1395 documented by a resolution adopted by the governing body of the participating employer in
1396 accordance with rules made by the office.

1397 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution
1398 of a participating employer under Subsection (3)(b), is not eligible for service credit in this
1399 system.

1400 (4) A public safety service employee who is transferred or promoted to an
1401 administration position requiring the performance of duties that consist primarily of
1402 management or supervision of public safety service employees shall continue to earn public
1403 safety service credit in this system during the period in which the employee remains employed
1404 in the same department.

1405 Section 17. Section **49-23-203** is amended to read:

1406 **49-23-203. Exemptions from participation in system.**

1407 (1) Upon filing a written request for exemption with the office, the following
1408 employees are exempt from participation in the system as provided in this section if the
1409 employee is a public safety service employee or firefighter service employee and is:

- 1410 (a) an executive department head of the state;
- 1411 (b) an elected or appointed sheriff of a county; [~~or~~]
- 1412 (c) an elected or appointed chief of police of a municipality[-]; or
- 1413 (d) the chief of any fire department or district.

1414 (2) (a) A participating employer shall prepare a list designating those positions eligible
1415 for exemption under Subsection (1).

1416 (b) An employee may not be exempted unless the employee is employed in a position
1417 designated by the participating employer under Subsection (1).

1418 (3) Each participating employer shall:

- 1419 (a) file each employee exemption annually with the office; and
- 1420 (b) update an employee exemption in the event of any change.

1421 (4) Beginning on the effective date of the exemption for an employee who elects to be
1422 exempt in accordance with Subsection (1):

1423 (a) for a member of the Tier II defined contribution plan:

1424 (i) the participating employer shall contribute the nonelective contribution and the
1425 amortization rate described in Section 49-23-401, except that the contribution is exempt from
1426 the vesting requirements of Subsection 49-23-401(3)(a); [~~and~~]

1427 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

1428 (iii) the member is not eligible for additional service credit in the plan for the period of
1429 exempt employment; and

1430 (b) for a member of the Tier II hybrid retirement system:

1431 (i) the participating employer shall contribute the nonelective contribution and the
1432 amortization rate described in Section 49-23-401, except that the contribution is exempt from

1433 the vesting requirements of Subsection 49-23-401(3)(a);

1434 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

1435 (iii) the member is not eligible for additional service credit in the system for the period
1436 of exempt employment.

1437 (5) If an employee who is a member of the Tier II hybrid retirement system
1438 subsequently revokes the election of exemption made under Subsection (1), the provisions
1439 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee
1440 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1441 (6) (a) All employer contributions made on behalf of an employee shall be invested in
1442 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election
1443 period under Subsection 49-23-201(2)(c) is expired if the employee:

1444 (i) elects to be exempt in accordance with Subsection (1); and

1445 (ii) continues employment with the participating employer through the one-year
1446 election period under Subsection 49-23-201(2)(c).

1447 (b) An employee is entitled to receive a distribution of the employer contributions
1448 made on behalf of the employee and all associated investment gains and losses if the employee:

1449 (i) elects to be exempt in accordance with Subsection (1); and

1450 (ii) terminates employment prior to the one-year election period under Subsection
1451 49-23-201(2)(c).

1452 (7) (a) The office shall make rules to implement this section.

1453 (b) The rules made under this Subsection (7) shall include provisions to allow the
1454 exemption provided under Subsection (1) to apply to all contributions made beginning on or
1455 after July 1, 2011, on behalf of an exempted employee who began the employment before May
1456 8, 2012.

1457 (8) An employee's exemption, participation, or election described in this section:

1458 (a) shall be made in accordance with this section; and

1459 (b) is subject to requirements under federal law and rules made by the board.

1460 Section 18. Section **49-23-401** is amended to read:

1461 **49-23-401. Contributions -- Rates.**

1462 (1) (a) Up to the amount allowed by federal law, the participating employer shall make
1463 a nonelective contribution of 14% of the participant's compensation to a defined contribution
1464 plan.

1465 (b) In addition to the nonelective contribution described in Subsection (1)(a), if a
1466 participating employer elects under Subsection **49-23-301(2)(c)** to pay all or part of the
1467 required member contribution on behalf of the participating employer's employees that are
1468 members covered under Part 3, Tier II Hybrid Retirement System, the participating employer
1469 shall make an additional nonelective contribution to an employee that is a member covered
1470 under this part at the same percentage rate of the participant's compensation as the participating
1471 employer's election to pay required member contributions on behalf of the participating
1472 employer's employees that are members covered under Part 3, Tier II Hybrid Retirement
1473 System.

1474 (2) (a) The participating employer shall contribute the contributions described in
1475 Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal
1476 Revenue Code [~~which~~] that:

- 1477 (i) is sponsored by the board; and
- 1478 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1479 (b) The member may make voluntary deferrals to:

1480 (i) the qualified 401(k) plan [~~which~~] that receives the employer contribution described
1481 in this Subsection (2); or

1482 (ii) at the member's option, another defined contribution plan established by the
1483 participating employer.

1484 (c) In addition to the contributions specified under Subsection (2)(a), the participating
1485 employer shall pay the corresponding Tier I system amortization rate of the employee's
1486 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1487 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
1488 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
1489 service credit under this title.

1490 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
1491 member's benefit immediately and is nonforfeitable.

1492 (c) (i) Upon filing a written request for exemption with the office, an eligible employee
1493 is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section
1494 [49-23-203](#).

1495 (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for
1496 additional service credit in the plan for the period of exempt employment.

1497 (d) (i) Years of service credit under Subsection (3)(a) includes any fraction of a year to
1498 which the member may be entitled.

1499 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of
1500 one year of the total years required for vesting, the member shall be considered to have the total
1501 years of service credit required for vesting.

1502 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
1503 invested in a default option selected by the board until the member is vested in accordance with
1504 Subsection (3)(a).

1505 (b) A member may direct the investment of contributions, including associated
1506 investment gains and losses, made by a participating employer under Subsection (2)(a) only
1507 after the contributions have vested in accordance with Subsection (3)(a).

1508 (c) A member may direct the investment of contributions made by the member under
1509 Subsection (3)(b).

1510 (5) No loans shall be available from contributions made by a participating employer
1511 under Subsection (2)(a).

1512 (6) No hardship distributions shall be available from contributions made by a
1513 participating employer under Subsection (2)(a).

1514 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
1515 with a participating employer prior to the vesting period described in Subsection (3)(a), all
1516 contributions made by a participating employer on behalf of the member under Subsection
1517 (2)(a), including associated investment gains and losses are subject to forfeiture.

1518 (b) If a member who terminates employment with a participating employer prior to the
1519 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
1520 another participating employer within 10 years of the termination date of the previous
1521 employment:

1522 (i) all contributions made by the previous participating employer on behalf of the
1523 member, including associated investment gains and losses, shall be reinstated upon the
1524 member's employment as a regular full-time employee; and

1525 (ii) the length of time that the member worked with the previous employer shall be
1526 included in determining whether the member has completed the vesting period under
1527 Subsection (3)(a).

1528 (c) The office shall establish a forfeiture account and shall specify the uses of the
1529 forfeiture account, which may include an offset against administrative costs of employer
1530 contributions made under this section.

1531 (8) The office may request from any other [~~qualified 401(k)~~] plan under Subsection
1532 (2)(b)(ii) any relevant information pertaining to the maintenance of [its] the plan's tax
1533 qualification under the Internal Revenue Code.

1534 (9) The office may take any action [~~which in its~~] that in the office's judgment is
1535 necessary to maintain the tax-qualified status of [its] the office's 401(k) defined contribution
1536 plan under federal law.

1537 **Section 19. Repealer.**

1538 This bill repeals:

1539 Section **49-11-904, New Public Safety and Firefighter Tier II Retirement Benefits**
1540 **Restricted Account -- Insurance premium tax revenues -- Distribution.**

S.B. 24

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1541 Section 20. **Effective date.**
1542 This bill takes effect on July 1, 2022.