

1                                   **UTAH RETIREMENT SYSTEMS REVISIONS**

2   2022 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Wayne A. Harper**

5   House Sponsor: Walt Brooks

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7   **LONG TITLE**

8   **Committee Note:**

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

10           Legislative Vote: 11 voting for 0 voting against 4 absent

11   **General Description:**

12           This bill modifies the Utah State Retirement and Insurance Benefit Act.

13   **Highlighted Provisions:**

14           This bill:

- 15           ▶ requires a participating employer to certify each employee's status for retirement
- 16           benefits;
- 17           ▶ provides the time period for which a retiree's retirement allowance is cancelled due
- 18           to a violation of the earnings limitation for a part-time appointed or elected board
- 19           member;
- 20           ▶ aligns the time period for determining final average salary with the time period for
- 21           calculating years of service credit;
- 22           ▶ adds the commissioner of the Department of Public Safety and the executive
- 23           director of the Department of Corrections to the definitions of public safety service
- 24           employee;
- 25           ▶ clarifies when an elected official who is initially elected to office on or after July 1,
- 26           2011, may continue to participate in a retirement plan in which the elected official
- 27           had previously accrued service credit;



- 28           ▶ provides that a full-time Tier II employee who begins employment with an
- 29 institution of higher education and has previously accrued service credit has a
- 30 one-time irrevocable election to continue participation in the Utah Retirement
- 31 Systems;
- 32           ▶ provides that a member who exempts from participation in the Utah Retirement
- 33 Systems is exempt from earning years of service credit during the period of
- 34 exemption;
- 35           ▶ permits a public safety service employee who is promoted to certain administrative
- 36 positions to continue participation in a public safety retirement system while the
- 37 employee remains employed with the same department;
- 38           ▶ permits a fire department chief to exempt from participation in the New Public
- 39 Safety and Firefighters Tier II Contributory Retirement Act; and
- 40           ▶ makes technical and conforming changes.

41 **Money Appropriated in this Bill:**

42           None

43 **Other Special Clauses:**

44           This bill provides a special effective date.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47           [49-11-603](#), as last amended by Laws of Utah 2017, Chapter 141
- 48           [49-11-1207](#), as last amended by Laws of Utah 2017, Chapter 141
- 49           [49-12-102](#), as last amended by Laws of Utah 2018, Chapter 415
- 50           [49-13-102](#), as last amended by Laws of Utah 2018, Chapter 415
- 51           [49-14-102](#), as last amended by Laws of Utah 2016, Chapter 227
- 52           [49-14-201](#), as last amended by Laws of Utah 2021, Chapter 344
- 53           [49-15-102](#), as last amended by Laws of Utah 2016, Chapter 227
- 54           [49-15-201](#), as last amended by Laws of Utah 2021, Chapter 344
- 55           [49-16-102](#), as last amended by Laws of Utah 2019, Chapter 349
- 56           [49-22-102](#), as last amended by Laws of Utah 2018, Chapter 415
- 57           [49-22-201](#), as last amended by Laws of Utah 2020, Chapter 24
- 58           [49-22-204](#), as last amended by Laws of Utah 2020, Chapters 24 and 365

- 59            **49-22-205**, as last amended by Laws of Utah 2021, Chapters 64 and 382
  - 60            **49-22-401**, as last amended by Laws of Utah 2016, Chapter 227
  - 61            **49-23-102**, as last amended by Laws of Utah 2020, Chapter 180
  - 62            **49-23-201**, as last amended by Laws of Utah 2015, Chapters 315 and 463
  - 63            **49-23-203**, as last amended by Laws of Utah 2020, Chapter 24
  - 64            **49-23-401**, as last amended by Laws of Utah 2020, Chapter 437
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66    *Be it enacted by the Legislature of the state of Utah:*

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

68            **49-11-603. Participating employer to report and certify -- Time limit -- Penalties**  
69 **for failure to comply.**

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

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

73            (i) each current employee;

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

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

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

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

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

81            (b) Each participating employer shall include in the reports a certification, for each  
82 employee, whether the employee is:

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

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

85            (iii) a reemployed retiree; or

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

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

89            (a) any liabilities and expenses, including administrative expenses and the cost of

90 increased benefits to employees, resulting from the participating employer's failure to correctly  
91 report and certify records under this section;

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

93 (i) \$250; or

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

96 (c) attorney fees.

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

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

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

103 **49-11-1207. Postretirement reemployment -- Violations -- Penalties.**

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

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

107 (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar  
108 year if the reemployment with a participating employer exceeded the limitation under  
109 Subsection 49-11-1205(1)(a)(iii)(A) [or], (3)(b), or (4)(b); and

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

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

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

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

120 (4) If a participating employer fails to notify the office in accordance with Section

121 49-11-1206, the participating employer is immediately subject to a compliance audit by the  
122 office.

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

124 **49-12-102. Definitions.**

125 As used in this chapter:

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

128 (i) a leave benefit of any kind;

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

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

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

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

136 (i) a payment for social security;

137 (ii) workers' compensation insurance;

138 (iii) unemployment insurance;

139 (iv) a payment for Medicare;

140 (v) a payment or insurance required by federal or state law that is similar to a payment  
141 or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

142 (vi) any other benefit that state or federal law requires an employer to provide an  
143 employee who would not otherwise be eligible to receive the benefit; or

144 (vii) any benefit that an employer provides an employee in order to avoid a penalty or  
145 tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health  
146 Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal  
147 regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

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

151 (i) bonuses;

152 (ii) cost-of-living adjustments;

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

156 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
157 or other benefits authorized by federal law; and

158 (v) member contributions.

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

161 (c) "Compensation" does not include:

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

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

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

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

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

172 (vi) a teacher salary bonus described in Section [53F-2-513](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211            (ii) a classified school employee:

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

213            (B) whose employment normally requires an average of 20 hours per week or more for

214 a participating employer, regardless of benefits provided;

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

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

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

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

223 (i) (A) who is hired on or after July 1, 2013; and

224 (B) who does not receive benefits normally provided by the participating employer  
225 even if the employment normally requires an average of 20 hours per week or more for a  
226 participating employer;

227 (ii) (A) who is hired before July 1, 2013;

228 (B) who did not qualify as a regular full-time employee before July 1, 2013;

229 (C) who does not receive benefits normally provided by the participating employer;

230 and

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

233 (iii) who is a person working on a contract:

234 (A) for the purposes of vocational rehabilitation and the employment and training of  
235 people with significant disabilities; and

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

238 (6) "System" means the Public Employees' Contributory Retirement System created  
239 under this chapter.

240 (7) "Years of service credit" means:

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

242 (b) a period determined by the board, whether consecutive or not, during which a  
243 regular full-time employee performed services for a participating employer, including any time  
244 the regular full-time employee was absent on a paid leave of absence granted by a participating



245 employer or was absent in the service of the United States government on military duty as  
246 provided by this chapter; or

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

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

250 **49-13-102. Definitions.**

251 As used in this chapter:

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

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

257 (i) bonuses;

258 (ii) cost-of-living adjustments;

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

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

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

266 (c) "Compensation" does not include:

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

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

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

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

274 (v) any allowances or payments to a member for costs or expenses paid by the  
275 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,

276 housing costs, insurance costs, equipment costs, and dependent care costs; or

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

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

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

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

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

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

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

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

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

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

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

304 (5) (a) "Regular full-time employee" means an employee;

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

307           (ii) whose employment normally requires an average of 20 hours or more per week,  
308 except as modified by the board[;]; and  
309           (iii) who receives benefits normally provided by the participating employer.  
310           (b) "Regular full-time employee" includes:  
311           (i) a teacher whose term of employment for a participating employer contemplates  
312 continued employment during a school year and who teaches half time or more;  
313           (ii) a classified school employee:  
314           (A) who is hired before July 1, 2013; and  
315           (B) whose employment normally requires an average of 20 hours per week or more for  
316 a participating employer, regardless of benefits provided;  
317           (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as  
318 of January 1, 1990, as provided in Section [49-13-407](#);  
319           (iv) a faculty member or employee of an institution of higher education who is  
320 considered full time by that institution of higher education; and  
321           (v) an individual who otherwise meets the definition of this Subsection (5) who  
322 performs services for a participating employer through a professional employer organization or  
323 similar arrangement.  
324           (c) "Regular full-time employee" does not include a classified school employee:  
325           (i) (A) who is hired on or after July 1, 2013; and  
326           (B) who does not receive benefits normally provided by the participating employer  
327 even if the employment normally requires an average of 20 hours per week or more for a  
328 participating employer;  
329           (ii) (A) who is hired before July 1, 2013;  
330           (B) who did not qualify as a regular full-time employee before July 1, 2013;  
331           (C) who does not receive benefits normally provided by the participating employer;  
332 and  
333           (D) whose employment hours are increased on or after July 1, 2013, to require an  
334 average of 20 hours per week or more for a participating employer; or  
335           (iii) who is a person working on a contract:  
336           (A) for the purposes of vocational rehabilitation and the employment and training of  
337 people with significant disabilities; and

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

340 (6) "System" means the Public Employees' Noncontributory Retirement System.

341 (7) "Years of service credit" means:

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

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

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

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

351 **49-14-102. Definitions.**

352 As used in this chapter:

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

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

361 (c) "Compensation" does not include:

362 (i) overtime;

363 (ii) sick pay incentives;

364 (iii) retirement pay incentives;

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

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

368 (vi) all contributions made by a participating employer under this system or under any

369 other employee benefit system or plan maintained by a participating employer for the benefit of  
370 a member or participant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

399 (i) occurs during an activity that is required as an act of duty as a public safety service

400 employee if the activity is not a strenuous activity, including an activity that is clerical,  
401 administrative, or of a nonmanual nature;

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

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

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

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

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

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

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

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

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

415 (v) a full-time member of the Board of Pardons and Parole created under Section  
416 77-27-2[~~7~~];

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

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

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

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

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

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

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

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

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

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

438 **49-14-201. System membership -- Eligibility.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



493 the same department.

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

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

498 (b) the employee:

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

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

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

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

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

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

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

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

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

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

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

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

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

523 (12) A final order of the Peace Officer Standards and Training Council regarding a

524 dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative  
525 Procedures Act.

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

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

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

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

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

540 (iii) is irrevocable.

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

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

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

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

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

554 (16) Notwithstanding any other provision of this section, a person initially entering

555 employment with a participating employer on or after July 1, 2011, who does not have service  
556 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may  
557 not participate in this system.

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

559 **49-15-102. Definitions.**

560 As used in this chapter:

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

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

569 (c) "Compensation" does not include:

570 (i) overtime;

571 (ii) sick pay incentives;

572 (iii) retirement pay incentives;

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

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

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

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

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

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

585 [~~(a)~~] (b) Except as provided in Subsection [~~(3)(b)~~] (3)(c), the percentage increase in

586 annual compensation in any one of the years used may not exceed the previous year's  
587 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the  
588 purchasing power of the dollar during the previous year, as measured by a United States Bureau  
589 of Labor Statistics Consumer Price Index average as determined by the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

616 (6) (a) "Public safety service" means employment normally requiring an average of

617 2,080 hours of regularly scheduled employment per year rendered by a member who is [a]:

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

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

620 (iii) a special function officer approved in accordance with Sections 49-15-201 and

621 53-13-105;

622 (iv) a dispatcher who is certified in accordance with Section 53-6-303; or

623 (v) a full-time member of the Board of Pardons and Parole created under Section

624 77-27-2[-];

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

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

627 (b) Except [~~as provided under Subsections (6)(a)(iv) and (v)] for a position described~~

628 in Subsection (6)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the

629 course of employment, the employee's life or personal safety is at risk.

630 (7) "Public safety service employee" means an employee of a participating employer

631 who performs public safety service under this chapter.

632 (8) (a) "Strenuous activity" means engagement involving a difficult, stressful, or

633 vigorous fire suppression, rescue, hazardous material response, emergency medical service,

634 physical law enforcement, prison security, disaster relief, or other emergency response activity.

635 (b) "Strenuous activity" includes participating in a participating employer sanctioned

636 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

637 (9) "System" means the Public Safety Noncontributory Retirement System created

638 under this chapter.

639 (10) "Years of service credit" means the number of periods, each to consist of 12 full

640 months as determined by the board, whether consecutive or not, during which a public safety

641 service employee was employed by a participating employer, including time the public safety

642 service employee was absent in the service of the United States government on military duty.

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

644 **49-15-201. System membership -- Eligibility.**

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

647 (b) A public safety service employee employed by the state [~~prior to~~] before July 1,

648 1989, may either elect to receive service credit in this system or continue to receive service  
649 credit under the system established under Chapter 14, Public Safety Contributory Retirement  
650 Act, by following the procedures established by the board under this chapter.

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

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

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

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

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

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

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

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

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

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

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

678 (5) (a) (i) Each participating employer participating in this system shall annually

679 submit to the office a schedule indicating the positions to be covered under this system in  
680 accordance with this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

714 (b) the employee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



741 Procedures Act.

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

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

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

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

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

756 (iii) is irrevocable.

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

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

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

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

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

770 (17) Notwithstanding any other provision of this section, a person initially entering  
771 employment with a participating employer on or after July 1, 2011, who does not have service

772 credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may  
773 not participate in this system.

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

775 **49-16-102. Definitions.**

776 As used in this chapter:

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

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

785 (c) "Compensation" does not include:

786 (i) overtime;

787 (ii) sick pay incentives;

788 (iii) retirement pay incentives;

789 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,  
790 or similar payments;

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

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

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

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

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

802 (3) (a) "Final average salary" means the amount calculated by averaging the highest

803 three years of annual compensation preceding retirement subject to Subsections [~~(3)(a), (b), and~~  
 804 ~~(c)~~] (3)(b), (c), and (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

876 Section 10. Section ~~49-22-102~~ is amended to read:

877 **49-22-102. Definitions.**

878 As used in this chapter:

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

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

884 (i) bonuses;

885 (ii) cost-of-living adjustments;

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

889 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
890 or other benefits authorized by federal law; and

891 (v) member contributions.

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

894 (c) "Compensation" does not include:

895 (i) the monetary value of remuneration paid in kind, including a residence or use of

896 equipment;

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

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

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

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

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

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

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

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

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

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

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

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

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

926 [~~(d)~~] (e) If the member has less than five years of service credit in this system, final

927 average salary means the average annual compensation paid to the member during the full  
928 period of service credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

950 (ii) a classified school employee:

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

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

954 (iii) an appointive officer whose appointed position is full time as certified by the  
955 participating employer;

956 (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the  
957 attorney general, and a state legislator;

958 (v) an elected official not included under Subsection (6)(b)(iv) whose elected position  
959 is full time as certified by the participating employer;

960 (vi) a faculty member or employee of an institution of higher education who is  
961 considered full time by that institution of higher education; and

962 (vii) an individual who otherwise meets the definition of this Subsection (6) who  
963 performs services for a participating employer through a professional employer organization or  
964 similar arrangement.

965 (c) "Regular full-time employee" does not include:

966 (i) a firefighter service employee as defined in Section 49-23-102;

967 (ii) a public safety service employee as defined in Section 49-23-102;

968 (iii) a classified school employee:

969 (A) who is hired on or after July 1, 2013; and

970 (B) who does not receive benefits normally provided by the participating employer  
971 even if the employment normally requires an average of 20 hours per week or more for a  
972 participating employer;

973 (iv) a classified school employee:

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

975 (B) who did not qualify as a regular full-time employee before July 1, 2013;

976 (C) who does not receive benefits normally provided by the participating employer;

977 and

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

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

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

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

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

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

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



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

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

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

997 **49-22-201. System membership -- Eligibility.**

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

999 (2) (a) A person initially entering regular full-time employment with a participating  
1000 employer on or after July 1, 2011, who does not have service credit accrued before July 1,  
1001 2011, in a Tier I system or plan administered by the board, is eligible:

1002 (i) as a member for service credit and defined contributions under the Tier II hybrid  
1003 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1004 (ii) as a participant for defined contributions under the Tier II defined contribution plan  
1005 established by Part 4, Tier II Defined Contribution Plan.

1006 (b) A person initially entering regular full-time employment with a participating  
1007 employer on or after July 1, 2011, shall:

1008 (i) make an election to participate in the system created under this chapter:

1009 (A) as a member for service credit and defined contributions under the Tier II hybrid  
1010 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1011 (B) as a participant for defined contributions under the Tier II defined contribution plan  
1012 established by Part 4, Tier II Defined Contribution Plan; and

1013 (ii) electronically submit to the office notification of the member's election under  
1014 Subsection (2)(b)(i) in a manner approved by the office.

1015 (c) An election made by a person initially entering regular full-time employment with a  
1016 participating employer under this Subsection (2) is irrevocable beginning one year from the  
1017 date of eligibility for accrual of benefits.

1018 (d) If no election is made under Subsection (2)(b)(i), the person shall become a  
1019 member eligible for service credit and defined contributions under the Tier II hybrid retirement

1020 system established by Part 3, Tier II Hybrid Retirement System.

1021 (3) Notwithstanding the provisions of this section and except as provided in Subsection  
1022 (4), an elected official initially entering office on or after July 1, 2011:

1023 (a) is only eligible to participate in the Tier II defined contribution plan established  
1024 under Part 4, Tier II Defined Contribution Plan;

1025 (b) is not eligible to participate in the Tier II hybrid retirement system established  
1026 under Part 3, Tier II Hybrid Retirement System; and

1027 (c) is vested immediately in the elected official's benefit and the benefit is  
1028 nonforfeitable, including the total amount contributed by the participating employer and the  
1029 total amount contributed by the member in the Tier II defined contribution plan.

1030 (4) ~~[Notwithstanding the provisions of Subsection (3), a]~~ A legislator or full-time  
1031 elected official initially entering office on or after July 1, 2011, who has previously accrued  
1032 service credit:

1033 (a) in a Tier I retirement system or plan administered by the board shall continue in the  
1034 Tier I system or plan for which the legislator or full-time elected official is eligible; or

1035 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which  
1036 the ~~[legislator or]~~ full-time elected official is eligible.

1037 Section 12. Section ~~49-22-204~~ is amended to read:

1038 **49-22-204. Higher education employees' eligibility requirements -- Election**  
1039 **between different retirement plans -- Classification requirements -- Transfer between**  
1040 **systems.**

1041 (1) (a) A regular full-time employee of an institution of higher education who is  
1042 eligible to participate in either this system or in a retirement annuity contract with a public or  
1043 private system, organization, or company, designated as described in Subsection (1)(c) or (d),  
1044 shall, not later than January 1, 1979, elect to participate exclusively in this system or in an  
1045 annuity contract allowed under this Subsection (1).

1046 (b) The election is final, and no right exists to make any further election.

1047 (c) Except as provided in Subsection (1)(d), the Utah Board of Higher Education shall  
1048 designate the public or private retirement systems, organizations, or companies that a regular  
1049 full-time employee of an institution of higher education is eligible to participate in under  
1050 Subsection (1)(a).

1051 (d) The technical college board of trustees of each technical college shall designate the  
1052 public or private retirement systems, organizations, or companies that a regular full-time  
1053 employee of each technical college is eligible to participate in under Subsection (1)(a).

1054 (2) (a) A regular full-time employee hired by an institution of higher education after  
1055 January 1, 1979, may participate only in the retirement plan [~~which attaches to~~] designated for  
1056 the person's employment classification.

1057 (b) Each institution of higher education shall prepare or amend existing employment  
1058 classifications, under the direction of the Utah Board of Higher Education, or the technical  
1059 college board of trustees of each technical college for each technical college, so that each  
1060 classification is assigned with either:

1061 (i) this system; or

1062 (ii) a public or private system, organization, or company designated by:

1063 (A) except as provided under Subsection (2)(b)(ii)(B), the Utah Board of Higher  
1064 Education; or

1065 (B) the technical college board of trustees of each technical college for regular  
1066 full-time employees of each technical college.

1067 (c) Notwithstanding a person's employment classification assignment under Subsection  
1068 (2)(b), a regular full-time employee who begins employment with an institution of higher  
1069 education has a one-time irrevocable election to continue participation in this system if the  
1070 employee:

1071 (i) has service credit in this system before the date of employment with the institution  
1072 of higher education; and

1073 (ii) makes the election before participating in the system described in Subsection  
1074 (2)(b)(ii).

1075 (3) A regular full-time employee hired by an institution of higher education on or after  
1076 July 1, 2011, whose employment classification requires participation in this system may elect  
1077 to continue participation in this system upon change to an employment classification [~~which~~]  
1078 that requires participation in a public or private system, organization, or company designated  
1079 by:

1080 (a) except as provided in Subsection (3)(b), the Utah Board of Higher Education; or

1081 (b) the technical college board of trustees of each technical college for regular full-time

1082 employees of each technical college.

1083 (4) A regular full-time employee hired by an institution of higher education on or after  
1084 July 1, 2011, whose employment classification requires participation in this system shall  
1085 participate in this system.

1086 (5) An employee's participation or election described in this section:

1087 (a) shall be made in accordance with this section; and

1088 (b) is subject to requirements under federal law and rules made by the board.

1089 Section 13. Section **49-22-205** is amended to read:

1090 **49-22-205. Exemptions from participation in system.**

1091 (1) Upon filing a written request for exemption with the office, the following  
1092 employees are exempt from participation in the system as provided in this section:

1093 (a) an executive department head of the state;

1094 (b) a member of the State Tax Commission;

1095 (c) a member of the Public Service Commission;

1096 (d) a member of a full-time or part-time board or commission;

1097 (e) an employee of the Governor's Office of Planning and Budget;

1098 (f) an employee of the Governor's Office of Economic Opportunity;

1099 (g) an employee of the Commission on Criminal and Juvenile Justice;

1100 (h) an employee of the Governor's Office;

1101 (i) an employee of the State Auditor's Office;

1102 (j) an employee of the State Treasurer's Office;

1103 (k) any other member who is permitted to make an election under Section [49-11-406](#);

1104 (l) a person appointed as a city manager or appointed as a city administrator or another  
1105 at-will employee of a municipality, county, or other political subdivision;

1106 (m) an employee of an interlocal cooperative agency created under Title 11, Chapter  
1107 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided  
1108 through membership in a labor organization that provides retirement benefits to its members;  
1109 and

1110 (n) an employee serving as an exchange employee from outside the state for an  
1111 employer who has elected to make all of the employer's exchange employees eligible for  
1112 service credit in this system.

1113 (2) (a) A participating employer shall prepare and maintain a list designating those  
1114 positions eligible for exemption under Subsection (1).

1115 (b) An employee may not be exempted unless the employee is employed in a position  
1116 designated by the participating employer under Subsection (1).

1117 (3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a  
1118 municipality, county, or political subdivision may not exempt a total of more than 50 positions  
1119 or a number equal to 10% of the eligible employees of the municipality, county, or political  
1120 subdivision, whichever is less.

1121 (b) A municipality, county, or political subdivision may exempt at least one regular  
1122 full-time employee.

1123 (4) Each participating employer shall:

1124 (a) maintain a list of employee exemptions; and

1125 (b) update an employee exemption in the event of any change.

1126 (5) Beginning on the effective date of the exemption for an employee who elects to be  
1127 exempt in accordance with Subsection (1):

1128 (a) for a member of the Tier II defined contribution plan:

1129 (i) the participating employer shall contribute the nonelective contribution and the  
1130 amortization rate described in Section 49-22-401, except that the nonelective contribution is  
1131 exempt from the vesting requirements of Subsection 49-22-401(3)(a); ~~and~~

1132 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

1133 (iii) the member is not eligible for additional service credit in the plan for the period of  
1134 exempt employment; and

1135 (b) for a member of the Tier II hybrid retirement system:

1136 (i) the participating employer shall contribute the nonelective contribution and the  
1137 amortization rate described in Section 49-22-401, except that the contribution is exempt from  
1138 the vesting requirements of Subsection 49-22-401(3)(a);

1139 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and

1140 (iii) the member is not eligible for additional service credit in the system for the period  
1141 of exempt employment.

1142 (6) If an employee who is a member of the Tier II hybrid retirement system  
1143 subsequently revokes the election of exemption made under Subsection (1), the provisions

1144 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee  
1145 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1146 (7) (a) All employer contributions made on behalf of an employee shall be invested in  
1147 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election  
1148 period under Subsection 49-22-201(2)(c) is expired if the employee:

1149 (i) elects to be exempt in accordance with Subsection (1); and

1150 (ii) continues employment with the participating employer through the one-year  
1151 election period under Subsection 49-22-201(2)(c).

1152 (b) An employee is entitled to receive a distribution of the employer contributions  
1153 made on behalf of the employee and all associated investment gains and losses if the employee:

1154 (i) elects to be exempt in accordance with Subsection (1); and

1155 (ii) terminates employment prior to the one-year election period under Subsection  
1156 49-22-201(2)(c).

1157 (8) (a) The office shall make rules to implement this section.

1158 (b) The rules made under this Subsection (8) shall include provisions to allow the  
1159 exemption provided under Subsection (1) to apply to all contributions made beginning on or  
1160 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
1161 8, 2012.

1162 (9) An employee's exemption, participation, or election described in this section:

1163 (a) shall be made in accordance with this section; and

1164 (b) is subject to requirements under federal law and rules made by the board.

1165 Section 14. Section 49-22-401 is amended to read:

1166 **49-22-401. Contributions -- Rates.**

1167 (1) Up to the amount allowed by federal law, the participating employer shall make a  
1168 nonelective contribution of 10% of the participant's compensation to a defined contribution  
1169 plan.

1170 (2) (a) The participating employer shall contribute the 10% nonelective contribution  
1171 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
1172 Internal Revenue Code [~~which~~] that:

1173 (i) is sponsored by the board; and

1174 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1175 (b) The member may make voluntary deferrals to:

1176 (i) the qualified 401(k) plan [~~which~~] that receives the employer contribution described  
1177 in this Subsection (2); or

1178 (ii) at the member's option, another defined contribution plan established by the  
1179 participating employer.

1180 (c) In addition to the percent specified under Subsection (2)(a), the participating  
1181 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1182 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1183 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the  
1184 participating employer under Subsection (2)(a) vests to the member upon accruing four years of  
1185 employment as a regular full-time employee under this title.

1186 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
1187 member's benefit immediately and is nonforfeitable.

1188 (c) (i) Upon filing a written request for exemption with the office, an eligible employee  
1189 is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section  
1190 [49-22-205](#).

1191 (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for  
1192 additional service credit in the plan for the period of exempt employment.

1193 (d) (i) Years of employment under Subsection (3)(a) includes any fraction of a year to  
1194 which the member may be entitled.

1195 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of  
1196 one year of the total years required for vesting, the member shall be considered to have the total  
1197 years of employment required for vesting.

1198 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
1199 invested in a default option selected by the board until the member is vested in accordance with  
1200 Subsection (3)(a).

1201 (b) A member may direct the investment of contributions including associated  
1202 investment gains and losses made by a participating employer under Subsection (2)(a) only  
1203 after the contributions have vested in accordance with Subsection (3)(a).

1204 (c) A member may direct the investment of contributions made by the member under  
1205 Subsection (3)(b).

1206 (5) No loans shall be available from contributions made by a participating employer  
1207 under Subsection (2)(a).

1208 (6) No hardship distributions shall be available from contributions made by a  
1209 participating employer under Subsection (2)(a).

1210 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1211 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
1212 contributions made by a participating employer on behalf of the member including associated  
1213 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1214 (b) If a member who terminates employment with a participating employer prior to the  
1215 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
1216 another participating employer within 10 years of the termination date of the previous  
1217 employment:

1218 (i) all contributions made by the previous participating employer on behalf of the  
1219 member including associated investment gains and losses shall be reinstated upon the member's  
1220 employment as a regular full-time employee; and

1221 (ii) the length of time that the member worked with the previous employer shall be  
1222 included in determining whether the member has completed the vesting period under  
1223 Subsection (3)(a).

1224 (c) The office shall establish a forfeiture account and shall specify the uses of the  
1225 forfeiture account, which may include an offset against administrative costs or employer  
1226 contributions made under this section.

1227 (8) The office may request from any other [~~qualified 401(k)~~] plan under Subsection  
1228 (2)(b)(ii) any relevant information pertaining to the maintenance of [~~its~~] the plan's tax  
1229 qualification under the Internal Revenue Code.

1230 (9) The office may take any action [~~which in its~~] that in the office's judgment is  
1231 necessary to maintain the tax-qualified status of [~~its~~] the office's 401(k) defined contribution  
1232 plan under federal law.

1233 Section 15. Section **49-23-102** is amended to read:

1234 **49-23-102. Definitions.**

1235 As used in this chapter:

1236 (1) (a) "Compensation" means the total amount of payments that are includable in



1237 gross income received by a public safety service employee or a firefighter service employee as  
1238 base income for the regularly scheduled work period. The participating employer shall  
1239 establish the regularly scheduled work period. Base income shall be determined prior to the  
1240 deduction of any amounts the public safety service employee or firefighter service employee  
1241 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

1242 (b) "Compensation" includes performance-based bonuses and cost-of-living  
1243 adjustments.

1244 (c) "Compensation" does not include:

1245 (i) overtime;

1246 (ii) sick pay incentives;

1247 (iii) retirement pay incentives;

1248 (iv) the monetary value of remuneration paid in kind, as in a residence, use of  
1249 equipment or uniform, travel, or similar payments;

1250 (v) a lump-sum payment or special payment covering accumulated leave; and

1251 (vi) all contributions made by a participating employer under this system or under any  
1252 other employee benefit system or plan maintained by a participating employer for the benefit of  
1253 a member or participant.

1254 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed  
1255 under Section 401(a)(17), Internal Revenue Code.

1256 (2) "Corresponding Tier I system" means the system or plan that would have covered  
1257 the member if the member had initially entered employment before July 1, 2011.

1258 (3) "Dispatcher" means the same as that term is defined in Section [53-6-102](#).

1259 (4) (a) "Final average salary" means the amount calculated by averaging the highest  
1260 five years of annual compensation preceding retirement subject to Subsections [~~(4)(a), (b), (c),~~  
1261 ~~(d), and (e)~~] (4)(b), (c), (d), (e), and (f).

1262 [~~(a)~~] (b) Except as provided in Subsection [~~(4)(b)~~] (4)(c), the percentage increase in  
1263 annual compensation in any one of the years used may not exceed the previous year's  
1264 compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the  
1265 purchasing power of the dollar during the previous year, as measured by a United States Bureau  
1266 of Labor Statistics Consumer Price Index average as determined by the board.

1267 [~~(b)~~] (c) In cases where the participating employer provides acceptable documentation

1268 to the office, the limitation in Subsection ~~[(4)(a)]~~ (4)(b) may be exceeded if:

1269 (i) the member has transferred from another agency; or

1270 (ii) the member has been promoted to a new position.

1271 ~~[(c)]~~ (d) If the member retires more than six months from the date of termination of  
1272 employment, the member is considered to have been in service at the member's last rate of pay  
1273 from the date of the termination of employment to the effective date of retirement for purposes  
1274 of computing the member's final average salary only.

1275 ~~[(d)]~~ (e) If the member has less than five years of service credit in this system, final  
1276 average salary means the average annual compensation paid to the member during the full  
1277 period of service credit.

1278 ~~[(e)]~~ (f) The annual compensation used to calculate final average salary shall be based  
1279 on~~[-]~~ a period, as determined by the board, consistent with the period used to determine years  
1280 of service credit in accordance with Subsection (14).

1281 ~~[(i) a calendar year for a member employed by a participating employer that is not an~~  
1282 ~~educational institution; or]~~

1283 ~~[(ii) a contract year for a member employed by an educational institution.]~~

1284 (5) (a) "Firefighter service" means employment normally requiring an average of 2,080  
1285 hours of regularly scheduled employment per year rendered by a member who is:

1286 (i) a firefighter service employee trained in firefighter techniques and assigned to a  
1287 position of hazardous duty with a regularly constituted fire department;

1288 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire  
1289 marshal; or

1290 (iii) a firefighter service employee who is:

1291 (A) hired on or after July 1, 2021;

1292 (B) trained in firefighter techniques;

1293 (C) assigned to a position of hazardous duty; and

1294 (D) employed by the state as a participating employer.

1295 (b) "Firefighter service" does not include secretarial staff or other similar employees.

1296 (6) (a) "Firefighter service employee" means an employee of a participating employer  
1297 who provides firefighter service under this chapter.

1298 (b) "Firefighter service employee" does not include an employee of a regularly

1299 constituted fire department who does not perform firefighter service.

1300 (7) (a) "Line-of-duty death" means a death resulting from:

1301 (i) external force, violence, or disease occasioned by an act of duty as a public safety  
1302 service or firefighter service employee; or

1303 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous  
1304 training or another strenuous activity required as an act of duty as a public safety service or  
1305 firefighter service employee.

1306 (b) "Line-of-duty death" does not include a death that:

1307 (i) occurs during an activity that is required as an act of duty as a public safety service  
1308 or firefighter service employee if the activity is not a strenuous activity, including an activity  
1309 that is clerical, administrative, or of a nonmanual nature;

1310 (ii) occurs during the commission of a crime committed by the employee;

1311 (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or  
1312 nonprescribed, contributes to the employee's death; or

1313 (iv) occurs in a manner other than as described in Subsection (7)(a).

1314 (8) "Participating employer" means an employer [~~which~~] that meets the participation  
1315 requirements of:

1316 (a) Sections [49-14-201](#) and [49-14-202](#);

1317 (b) Sections [49-15-201](#) and [49-15-202](#);

1318 (c) Sections [49-16-201](#) and [49-16-202](#); or

1319 (d) Sections [49-23-201](#) and [49-23-202](#).

1320 (9) (a) "Public safety service" means employment normally requiring an average of  
1321 2,080 hours of regularly scheduled employment per year rendered by a member who is [~~a~~]:

1322 (i) a law enforcement officer in accordance with Section [53-13-103](#);

1323 (ii) a correctional officer in accordance with Section [53-13-104](#);

1324 (iii) a special function officer approved in accordance with Sections [49-15-201](#) and  
1325 [53-13-105](#);

1326 (iv) a dispatcher who is certified in accordance with Section [53-6-303](#); [~~and~~]

1327 (v) a full-time member of the Board of Pardons and Parole created under Section  
1328 [77-27-2](#)[~~;~~];

1329 (vi) the commissioner of the Department of Public Safety; or

1330 (vii) the executive director of the Department of Corrections.

1331 (b) Except [~~as provided under Subsections (9)(a)(iv) and (v)]~~ for a position described  
1332 in Subsection (9)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the  
1333 course of employment, the employee's life or personal safety is at risk.

1334 (10) "Public safety service employee" means an employee of a participating employer  
1335 who performs public safety service under this chapter.

1336 (11) (a) "Strenuous activity" means engagement involving a difficult, stressful, or  
1337 vigorous fire suppression, rescue, hazardous material response, emergency medical service,  
1338 physical law enforcement, prison security, disaster relief, or other emergency response activity.

1339 (b) "Strenuous activity" includes participating in a participating employer sanctioned  
1340 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

1341 (12) "System" means the New Public Safety and Firefighter Tier II Contributory  
1342 Retirement System created under this chapter.

1343 (13) (a) "Volunteer firefighter" means any individual [~~that~~] who is not regularly  
1344 employed as a firefighter service employee, but who:

1345 (i) has been trained in firefighter techniques and skills;

1346 (ii) continues to receive regular firefighter training; and

1347 (iii) is on the rolls of a legally organized volunteer fire department [~~which~~] that  
1348 provides ongoing training and serves a political subdivision of the state.

1349 (b) An individual that volunteers assistance but does not meet the requirements of  
1350 Subsection (13)(a) is not a volunteer firefighter for purposes of this chapter.

1351 (14) "Years of service credit" means:

1352 (a) a period, consisting of 12 full months as determined by the board; or

1353 (b) a period determined by the board, whether consecutive or not, during which a  
1354 regular full-time employee performed services for a participating employer, including any time  
1355 the regular full-time employee was absent on a paid leave of absence granted by a participating  
1356 employer or was absent in the service of the United States government on military duty as  
1357 provided by this chapter.

1358 Section 16. Section **49-23-201** is amended to read:

1359 **49-23-201. System membership -- Eligibility.**

1360 (1) Beginning July 1, 2011, a participating employer that employs public safety service

1361 employees or firefighter service employees shall participate in this system.

1362 (2) (a) A public safety service employee or a firefighter service employee initially  
1363 entering employment with a participating employer on or after July 1, 2011, who does not have  
1364 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,  
1365 is eligible:

1366 (i) as a member for service credit and defined contributions under the Tier II hybrid  
1367 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1368 (ii) as a participant for defined contributions under the Tier II defined contributions  
1369 plan established by Part 4, Tier II Defined Contribution Plan.

1370 (b) A public safety service employee or a firefighter service employee initially entering  
1371 employment with a participating employer on or after July 1, 2011, shall:

1372 (i) make an election to participate in the system created under this chapter:

1373 (A) as a member for service credit and defined contributions under the Tier II hybrid  
1374 retirement system established by Part 3, Tier II Hybrid Retirement System; or

1375 (B) as a participant for defined contributions under the Tier II defined contribution plan  
1376 established by Part 4, Tier II Defined Contribution Plan; and

1377 (ii) electronically submit to the office notification of the member's election under  
1378 Subsection (2)(b)(i) in a manner approved by the office.

1379 (c) An election made by a public safety service employee or firefighter service  
1380 employee initially entering employment with a participating employer under this Subsection (2)  
1381 is irrevocable beginning one year from the date of eligibility for accrual of benefits.

1382 (d) If no election is made under Subsection (2)(b)(i), the public safety service employee  
1383 or firefighter service employee shall become a member eligible for service credit and defined  
1384 contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid  
1385 Retirement System.

1386 (3) (a) Beginning July 1, 2015, a public safety service employee who is a dispatcher  
1387 employed by:

1388 (i) the state shall be eligible for service credit in this system; and

1389 (ii) a participating employer other than the state shall be eligible for service credit in  
1390 this system if the dispatcher's participating employer elects to cover ~~[its]~~ the participating  
1391 employer's dispatchers under this system.

1392 (b) A participating employer's election to cover ~~[its]~~ the participating employer's  
1393 dispatchers under this system under Subsection (3)(a)(ii) is irrevocable and shall be  
1394 documented by a resolution adopted by the governing body of the participating employer in  
1395 accordance with rules made by the office.

1396 (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution  
1397 of a participating employer under Subsection (3)(b), is not eligible for service credit in this  
1398 system.

1399 (4) A public safety service employee who is transferred or promoted to an  
1400 administration position requiring the performance of duties that consist primarily of  
1401 management or supervision of public safety service employees shall continue to earn public  
1402 safety service credit in this system during the period in which the employee remains employed  
1403 in the same department.

1404 Section 17. Section **49-23-203** is amended to read:

1405 **49-23-203. Exemptions from participation in system.**

1406 (1) Upon filing a written request for exemption with the office, the following  
1407 employees are exempt from participation in the system as provided in this section if the  
1408 employee is a public safety service employee or firefighter service employee and is:

1409 (a) an executive department head of the state;

1410 (b) an elected or appointed sheriff of a county; ~~[or]~~

1411 (c) an elected or appointed chief of police of a municipality~~[-];~~ or

1412 (d) the chief of any fire department or district.

1413 (2) (a) A participating employer shall prepare a list designating those positions eligible  
1414 for exemption under Subsection (1).

1415 (b) An employee may not be exempted unless the employee is employed in a position  
1416 designated by the participating employer under Subsection (1).

1417 (3) Each participating employer shall:

1418 (a) file each employee exemption annually with the office; and

1419 (b) update an employee exemption in the event of any change.

1420 (4) Beginning on the effective date of the exemption for an employee who elects to be  
1421 exempt in accordance with Subsection (1):

1422 (a) for a member of the Tier II defined contribution plan:

1423 (i) the participating employer shall contribute the nonelective contribution and the  
1424 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
1425 the vesting requirements of Subsection 49-23-401(3)(a); [~~and~~]

1426 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

1427 (iii) the member is not eligible for additional service credit in the plan for the period of  
1428 exempt employment; and

1429 (b) for a member of the Tier II hybrid retirement system:

1430 (i) the participating employer shall contribute the nonelective contribution and the  
1431 amortization rate described in Section 49-23-401, except that the contribution is exempt from  
1432 the vesting requirements of Subsection 49-23-401(3)(a);

1433 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

1434 (iii) the member is not eligible for additional service credit in the system for the period  
1435 of exempt employment.

1436 (5) If an employee who is a member of the Tier II hybrid retirement system  
1437 subsequently revokes the election of exemption made under Subsection (1), the provisions  
1438 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee  
1439 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

1440 (6) (a) All employer contributions made on behalf of an employee shall be invested in  
1441 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election  
1442 period under Subsection 49-23-201(2)(c) is expired if the employee:

1443 (i) elects to be exempt in accordance with Subsection (1); and

1444 (ii) continues employment with the participating employer through the one-year  
1445 election period under Subsection 49-23-201(2)(c).

1446 (b) An employee is entitled to receive a distribution of the employer contributions  
1447 made on behalf of the employee and all associated investment gains and losses if the employee:

1448 (i) elects to be exempt in accordance with Subsection (1); and

1449 (ii) terminates employment prior to the one-year election period under Subsection  
1450 49-23-201(2)(c).

1451 (7) (a) The office shall make rules to implement this section.

1452 (b) The rules made under this Subsection (7) shall include provisions to allow the  
1453 exemption provided under Subsection (1) to apply to all contributions made beginning on or

1454 after July 1, 2011, on behalf of an exempted employee who began the employment before May  
1455 8, 2012.

1456 (8) An employee's exemption, participation, or election described in this section:

1457 (a) shall be made in accordance with this section; and

1458 (b) is subject to requirements under federal law and rules made by the board.

1459 Section 18. Section **49-23-401** is amended to read:

1460 **49-23-401. Contributions -- Rates.**

1461 (1) (a) Up to the amount allowed by federal law, the participating employer shall make  
1462 a nonelective contribution of 14% of the participant's compensation to a defined contribution  
1463 plan.

1464 (b) In addition to the nonelective contribution described in Subsection (1)(a), if a  
1465 participating employer elects under Subsection 49-23-301(2)(c) to pay all or part of the  
1466 required member contribution on behalf of the participating employer's employees that are  
1467 members covered under Part 3, Tier II Hybrid Retirement System, the participating employer  
1468 shall make an additional nonelective contribution to an employee that is a member covered  
1469 under this part at the same percentage rate of the participant's compensation as the participating  
1470 employer's election to pay required member contributions on behalf of the participating  
1471 employer's employees that are members covered under Part 3, Tier II Hybrid Retirement  
1472 System.

1473 (2) (a) The participating employer shall contribute the contributions described in  
1474 Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal  
1475 Revenue Code [~~which~~] that:

1476 (i) is sponsored by the board; and

1477 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1478 (b) The member may make voluntary deferrals to:

1479 (i) the qualified 401(k) plan [~~which~~] that receives the employer contribution described  
1480 in this Subsection (2); or

1481 (ii) at the member's option, another defined contribution plan established by the  
1482 participating employer.

1483 (c) In addition to the contributions specified under Subsection (2)(a), the participating  
1484 employer shall pay the corresponding Tier I system amortization rate of the employee's



1485 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1486 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the  
1487 participating employer under Subsection (2)(a) vests to the member upon accruing four years of  
1488 service credit under this title.

1489 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
1490 member's benefit immediately and is nonforfeitable.

1491 (c) (i) Upon filing a written request for exemption with the office, an eligible employee  
1492 is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section  
1493 [49-23-203](#).

1494 (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for  
1495 additional service credit in the plan for the period of exempt employment.

1496 (d) (i) Years of service credit under Subsection (3)(a) includes any fraction of a year to  
1497 which the member may be entitled.

1498 (ii) At the time of vesting, if a member's years of service credit is within one-tenth of  
1499 one year of the total years required for vesting, the member shall be considered to have the total  
1500 years of service credit required for vesting.

1501 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
1502 invested in a default option selected by the board until the member is vested in accordance with  
1503 Subsection (3)(a).

1504 (b) A member may direct the investment of contributions, including associated  
1505 investment gains and losses, made by a participating employer under Subsection (2)(a) only  
1506 after the contributions have vested in accordance with Subsection (3)(a).

1507 (c) A member may direct the investment of contributions made by the member under  
1508 Subsection (3)(b).

1509 (5) No loans shall be available from contributions made by a participating employer  
1510 under Subsection (2)(a).

1511 (6) No hardship distributions shall be available from contributions made by a  
1512 participating employer under Subsection (2)(a).

1513 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1514 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
1515 contributions made by a participating employer on behalf of the member under Subsection

1516 (2)(a), including associated investment gains and losses are subject to forfeiture.

1517 (b) If a member who terminates employment with a participating employer prior to the  
1518 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
1519 another participating employer within 10 years of the termination date of the previous  
1520 employment:

1521 (i) all contributions made by the previous participating employer on behalf of the  
1522 member, including associated investment gains and losses, shall be reinstated upon the  
1523 member's employment as a regular full-time employee; and

1524 (ii) the length of time that the member worked with the previous employer shall be  
1525 included in determining whether the member has completed the vesting period under  
1526 Subsection (3)(a).

1527 (c) The office shall establish a forfeiture account and shall specify the uses of the  
1528 forfeiture account, which may include an offset against administrative costs of employer  
1529 contributions made under this section.

1530 (8) The office may request from any other [~~qualified 401(k)~~] plan under Subsection  
1531 (2)(b)(ii) any relevant information pertaining to the maintenance of [~~its~~] the plan's tax  
1532 qualification under the Internal Revenue Code.

1533 (9) The office may take any action [~~which in its~~] that in the office's judgment is  
1534 necessary to maintain the tax-qualified status of [~~its~~] the office's 401(k) defined contribution  
1535 plan under federal law.

1536 Section 19. **Effective date.**

1537 This bill takes effect on July 1, 2022.