

Senator Wayne A. Harper proposes the following substitute bill:

UTAH RETIREMENT SYSTEMS REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Walt Brooks

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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



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

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill provides a special effective date.

43 **Utah Code Sections Affected:**

44 AMENDS:

45 [49-11-603](#), as last amended by Laws of Utah 2017, Chapter 141
46 [49-11-1207](#), as last amended by Laws of Utah 2017, Chapter 141
47 [49-12-102](#), as last amended by Laws of Utah 2018, Chapter 415
48 [49-13-102](#), as last amended by Laws of Utah 2018, Chapter 415
49 [49-14-102](#), as last amended by Laws of Utah 2016, Chapter 227
50 [49-14-201](#), as last amended by Laws of Utah 2021, Chapter 344
51 [49-15-102](#), as last amended by Laws of Utah 2016, Chapter 227
52 [49-15-201](#), as last amended by Laws of Utah 2021, Chapter 344
53 [49-16-102](#), as last amended by Laws of Utah 2019, Chapter 349
54 [49-22-102](#), as last amended by Laws of Utah 2018, Chapter 415
55 [49-22-201](#), as last amended by Laws of Utah 2020, Chapter 24
56 [49-22-204](#), as last amended by Laws of Utah 2020, Chapters 24 and 365

- 57 [49-22-205](#), as last amended by Laws of Utah 2021, Chapters 64 and 382
- 58 [49-22-401](#), as last amended by Laws of Utah 2016, Chapter 227
- 59 [49-23-102](#), as last amended by Laws of Utah 2020, Chapter 180
- 60 [49-23-201](#), as last amended by Laws of Utah 2015, Chapters 315 and 463
- 61 [49-23-203](#), as last amended by Laws of Utah 2020, Chapter 24
- 62 [49-23-401](#), as last amended by Laws of Utah 2020, Chapter 437

63 REPEALS:

- 64 [49-11-904](#), as enacted by Laws of Utah 2020, Chapter 437



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 ~~[(e)]~~ (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 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[-];
- 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 ~~(e)~~ (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 ~~[(e)]~~ (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. [~~Am~~]

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 ~~[(e)]~~ (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. **Repealer.**

1537 This bill repeals:

1538 Section **49-11-904, New Public Safety and Firefighter Tier II Retirement Benefits**
1539 **Restricted Account -- Insurance premium tax revenues -- Distribution.**

1540 Section 20. **Effective date.**

1541 This bill takes effect on July 1, 2022.