

## SB0024S01 compared with SB0024

~~{deleted text}~~ shows text that was in SB0024 but was deleted in SB0024S01.

inserted text shows text that was not in SB0024 but was inserted into SB0024S01.

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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

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#### LONG TITLE

~~{Committee Note:~~

~~—————The Retirement and Independent Entities Interim Committee recommended this bill.~~

~~—————Legislative Vote: 11 voting for 0 voting against 4 absent~~

~~{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;

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

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a special effective date.

### **Utah Code Sections Affected:**

AMENDS:

**49-11-603**, as last amended by Laws of Utah 2017, Chapter 141

**49-11-1207**, as last amended by Laws of Utah 2017, Chapter 141

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49-12-102, as last amended by Laws of Utah 2018, Chapter 415  
49-13-102, as last amended by Laws of Utah 2018, Chapter 415  
49-14-102, as last amended by Laws of Utah 2016, Chapter 227  
49-14-201, as last amended by Laws of Utah 2021, Chapter 344  
49-15-102, as last amended by Laws of Utah 2016, Chapter 227  
49-15-201, as last amended by Laws of Utah 2021, Chapter 344  
49-16-102, as last amended by Laws of Utah 2019, Chapter 349  
49-22-102, as last amended by Laws of Utah 2018, Chapter 415  
49-22-201, as last amended by Laws of Utah 2020, Chapter 24  
49-22-204, as last amended by Laws of Utah 2020, Chapters 24 and 365  
49-22-205, as last amended by Laws of Utah 2021, Chapters 64 and 382  
49-22-401, as last amended by Laws of Utah 2016, Chapter 227  
49-23-102, as last amended by Laws of Utah 2020, Chapter 180  
49-23-201, as last amended by Laws of Utah 2015, Chapters 315 and 463  
49-23-203, as last amended by Laws of Utah 2020, Chapter 24  
49-23-401, as last amended by Laws of Utah 2020, Chapter 437

### REPEALS:

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

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

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

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

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

(a) the eligibility for service credit accrual of:

(i) each current employee;

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

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

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

(c) other factors relating to the proper administration of this title as required by the

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executive director.

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

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

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

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

(iii) a reemployed retiree; or

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

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

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

(b) a penalty equal to the greater of:

(i) \$250; or

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

(c) attorney fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **49-12-102. Definitions.**

As used in this chapter:

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

(i) a leave benefit of any kind;

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

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

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

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

- (i) a payment for social security;
- (ii) workers' compensation insurance;
- (iii) unemployment insurance;
- (iv) a payment for Medicare;

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

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

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

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

(i) bonuses;

(ii) cost-of-living adjustments;

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

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

(v) member contributions.

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

(c) "Compensation" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) a classified school employee:

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

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

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

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

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

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

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

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

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

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

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

and

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



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

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

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

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

(7) "Years of service credit" means:

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

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

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

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

### **49-13-102. Definitions.**

As used in this chapter:

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

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

(i) bonuses;

(ii) cost-of-living adjustments;

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

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

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

(c) "Compensation" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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the termination of employment to the effective date of retirement.

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

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

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

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

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

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

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

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

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

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

(ii) a classified school employee:

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

(7) "Years of service credit" means:

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

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

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

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

### **49-14-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable in gross income [~~which are~~] received by a public safety service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of member

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contributions or any amounts the public safety service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

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

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

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

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

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

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

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

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

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

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

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

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

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

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of service credit in accordance with Subsection (10).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the date the public safety service employee is employed by the participating employer and is eligible to perform public safety service, except that a public safety service employee initially entering employment with a participating employer on or after July 1, 2011,

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who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

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

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

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

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

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

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

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

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

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

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

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

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

(A) the participating employer covered other similarly situated positions under this



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system during the time period in question; and

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

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

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

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

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

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

(b) the employee:

(i) remains employed by the Department of Corrections;

(ii) meets the eligibility requirements of this system;

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

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

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

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

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

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

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

- (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
- (ii) perform duties that consist primarily of providing community protection; and
- (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

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

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

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

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

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

- (i) shall be made at the time the employer elects to move [its] the employer's public safety service employees to a public safety retirement system;
- (ii) documented by written notice to the participating employer; and
- (iii) is irrevocable.

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

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

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

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

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

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

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

### **49-15-102. Definitions.**

As used in this chapter:

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

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

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) the monetary value of remuneration paid in kind, as in a residence, use of

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equipment or uniform, travel, or similar payments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A public safety service employee employed by the state [~~prior to~~] before July 1, 1989, may either elect to receive service credit in this system or continue to receive service credit under the system established under Chapter 14, Public Safety Contributory Retirement Act, by following the procedures established by the board under this chapter.

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

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

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

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

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

(e) A person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system

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or plan administered by the board, may not participate in this system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the employee:

(i) remains employed by the Department of Corrections;

(ii) meets the eligibility requirements of this system;

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

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

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

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

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

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

(b) If a position satisfies the requirements of Subsection (11)(a), the office and Peace



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Officer Standards and Training Council shall consider whether the position requires the employee to:

- (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
- (ii) perform duties that consist primarily of providing community protection; and
- (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

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

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

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

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

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

- (i) shall be made at the time the employer elects to move ~~its~~ the employer's public safety service employees to a public safety retirement system;
- (ii) shall be documented by written notice to the participating employer; and
- (iii) is irrevocable.

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

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

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

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

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

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

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

### **49-16-102. Definitions.**

As used in this chapter:

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

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

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) continues to receive regular firefighter training; and

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

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

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

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

### **49-22-102. Definitions.**

As used in this chapter:

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

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

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(i) bonuses;  
(ii) cost-of-living adjustments;  
(iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;

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

(v) member contributions.

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

(c) "Compensation" does not include:

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

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

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

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

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

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

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

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

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

~~[(a)]~~ (b) Except as provided in Subsection [~~(4)(b)~~] (4)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's

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

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

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

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

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

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

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

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

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

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

(a) Sections 49-12-201 and 49-12-202;

(b) Sections 49-13-201 and 49-13-202;

(c) Section 49-19-201; or

(d) Section 49-22-201 or 49-22-202.

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

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

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

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

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

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

(ii) a classified school employee:

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

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

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

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

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

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

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

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

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

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

(iii) a classified school employee:

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

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

(iv) a classified school employee:

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

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

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



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and

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

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

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

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

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

(8) "Years of service credit" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**49-22-204. Higher education employees' eligibility requirements -- Election**

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### between different retirement plans -- Classification requirements -- Transfer between systems.

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

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

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

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

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

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

(i) this system; or

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

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

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

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

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employee:

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

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

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

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

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

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

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

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

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

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

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

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

(a) an executive department head of the state;

(b) a member of the State Tax Commission;

(c) a member of the Public Service Commission;

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

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

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

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

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

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- (i) an employee of the State Auditor's Office;
  - (j) an employee of the State Treasurer's Office;
  - (k) any other member who is permitted to make an election under Section 49-11-406;
  - (l) a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision;
  - (m) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members;
- and

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

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

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

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

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

(4) Each participating employer shall:

- (a) maintain a list of employee exemptions; and
- (b) update an employee exemption in the event of any change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) is sponsored by the board; and
  - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
- (b) The member may make voluntary deferrals to:

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

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

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

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

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

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

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

(d) (i) Years of employment under Subsection (3)(a) includes any fraction of a year to

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which the member may be entitled.

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

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

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

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

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

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

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

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

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

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

(c) The office shall establish a forfeiture account and shall specify the uses of the



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forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.

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

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

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

### **49-23-102. Definitions.**

As used in this chapter:

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

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

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a firefighter service employee trained in firefighter techniques and assigned to a

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position of hazardous duty with a regularly constituted fire department;

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

(iii) a firefighter service employee who is:

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

(B) trained in firefighter techniques;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Sections 49-14-201 and 49-14-202;

(b) Sections 49-15-201 and 49-15-202;

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(c) Sections 49-16-201 and 49-16-202; or

(d) Sections 49-23-201 and 49-23-202.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) continues to receive regular firefighter training; and

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

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

(14) "Years of service credit" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) An election made by a public safety service employee or firefighter service

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employee initially entering employment with a participating employer under this Subsection (2) is irrevocable beginning one year from the date of eligibility for accrual of benefits.

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

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

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

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

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

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

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

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

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

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

(a) an executive department head of the state;

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

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

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

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

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

(3) Each participating employer shall:

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

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

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

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

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

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

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

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

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

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

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

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

(6) (a) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election

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period under Subsection 49-23-201(2)(c) is expired if the employee:

- (i) elects to be exempt in accordance with Subsection (1); and
- (ii) continues employment with the participating employer through the one-year

election period under Subsection 49-23-201(2)(c).

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

- (i) elects to be exempt in accordance with Subsection (1); and
- (ii) terminates employment prior to the one-year election period under Subsection

49-23-201(2)(c).

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

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

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

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

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

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

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

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



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

(i) is sponsored by the board; and

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

(b) The member may make voluntary deferrals to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SB0024S01 compared with SB0024

plan under federal law.

Section 19. **Repealer.**

**This bill repeals:**

**Section 49-11-904, New Public Safety and Firefighter Tier II Retirement Benefits**

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

**Section 20. Effective date.**

**⌘ This bill takes effect on July 1, 2022.**