

# HB0104S01 compared with HB0104

~~{deleted text}~~ shows text that was in HB0104 but was deleted in HB0104S01.

inserted text shows text that was not in HB0104 but was inserted into HB0104S01.

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Representative Matthew H. Gwynn proposes the following substitute bill:

## MODIFICATIONS TO PUBLIC SAFETY RETIREMENT

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Matthew H. Gwynn**

Senate Sponsor: ~~{~~ Curtis S. Bramble

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### LONG TITLE

#### General Description:

This bill modifies requirements related to retirement from a public safety or firefighter retirement system.

#### Highlighted Provisions:

This bill:

- ▶ reduces the length of the period of separation for postretirement reemployment of a retiree from a public safety system or a firefighter retirement system;
- ▶ provides the circumstances that constitute a separation from employment for purposes of being eligible for postretirement employment;

~~{~~ schedules the termination of the reduced period of separation but requires legislative review before termination;

~~}~~ ▶ modifies the years of service and ~~{increases}~~ the multiplier for purposes of

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calculating the retirement allowance provided to a member of the New Public Safety and Firefighter Tier II hybrid retirement system hired before July 1, 2029;

▶ schedules the termination of the reduced period of separation, reduced years of service, and increased multiplier but requires legislative review before termination;

and

▶ makes conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

**49-11-1204**, as last amended by Laws of Utah 2020, Chapter 24

**49-11-1205**, as last amended by Laws of Utah 2021, Chapter 193

**49-11-1302**, as enacted by Laws of Utah 2016, Chapter 280 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 310

**49-23-301**, as last amended by Laws of Utah 2020, Chapter 437

**49-23-303**, as last amended by Laws of Utah 2020, Chapter 449

**49-23-304**, as last amended by Laws of Utah 2019, Chapters 31, 484

**63I-1-249**, as last amended by Laws of Utah 2021, Chapter 195

ENACTS:

**49-23-303.1, Utah Code Annotated 1953**

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

Section 1. Section **49-11-1204** is amended to read:

**49-11-1204. General restrictions -- Election following one-year separation --**

**Amortization rate.**

(1) A retiree may not for the same period of reemployment:

(a) (i) earn additional service credit; or

(ii) receive any retirement related contribution from a participating employer; and

(b) receive a retirement allowance.

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(2) (a) Except as provided under Section 49-11-1205, the office shall cancel the retirement allowance of a retiree if the reemployment with a participating employer begins within [~~one year of the retiree's retirement date~~]:

(i) ~~90~~183 days of the retiree's retirement date, if the retiree is retiring from one of the following retirement systems:

(A) Chapter 14, Public Safety Contributory Retirement Act;

(B) Chapter 15, Public Safety Noncontributory Retirement Act;

(C) Chapter 16, Firefighters' Retirement Act; or

(D) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act; or

(ii) one year of the retiree's retirement date, if the retiree retires from a system other than a system described in Subsection (2)(a)(i).

(b) If the office cancels the retiree's retirement allowance under Subsection (2)(a), the retiree may be eligible to earn additional service credit in the reemployed position and receive an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title.

(c) For purposes of determining whether the separation period described in Subsection (2)(a) has been met, a retiree:

(i) shall have a bona fide termination from all participating employers; and

(ii) may not have, before the retiree retires, a prearrangement that anticipates postretirement reemployment with a participating employer.

(3) If a reemployed retiree, in accordance with Subsection (2)(a), is exempt from having the allowance cancelled, including for completing the [~~one-year~~] period of separation from employment with a participating employer, the retiree may elect to:

(a) cancel the retiree's retirement allowance and instead earn additional service credit in the reemployed position and receive an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title; or

(b) continue to receive the retiree's retirement allowance, forfeit earning additional service credit, and forfeit any retirement-related contribution from the participating employer that reemployed the retiree.

(4) (a) If a retiree's retirement allowance is cancelled and the retiree is eligible for retirement coverage in a reemployed position, the office shall reinstate the retiree to active

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member status on the first day of the month following the date of the employee's eligible reemployment.

(b) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible for retirement coverage in the reemployed position, the participating employer that reemploys the retiree shall contribute the amortization rate to the office on behalf of the retiree.

(c) A participating employer that reemploys a retiree in accordance with Subsection 49-11-1205(1) is not required to contribute the amortization rate to the office.

(5) (a) For a retiree reinstated to active member status under Subsection (4)(a) who retires within two years from the date of reemployment, the office:

(i) may not recalculate a retirement benefit for the retiree; and

(ii) shall resume the allowance that was being paid to the retiree at the time of the cancellation.

(b) Subject to Subsection (1), for a retiree who is reinstated to active membership under Subsection (4)(a) and retires two or more years after the date of reinstatement to active membership, the office shall:

(i) resume the allowance that was being paid at the time of cancellation; and

(ii) calculate an additional allowance for the retiree based on the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

Section 2. Section **49-11-1205** is amended to read:

### **49-11-1205. Postretirement reemployment restriction exceptions.**

(1) (a) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within [~~one year of the retiree's retirement date~~] the period of separation required under Section 49-11-1204 if:

(i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;

(ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree does not receive any employer paid benefits, including:

(A) retirement service credit or retirement-related contributions;

(B) medical benefits;

(C) dental benefits;

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(D) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease Act, and withholdings required by federal or state law for social security, Medicare, and unemployment insurance; or

(E) paid time off, including sick, annual, or other type of leave; and

(iii) (A) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the retiree's retirement allowance is based; or

(B) the retiree is reemployed as a judge as defined under Section 78A-11-102.

(b) The board shall adjust the amounts under Subsection (1)(a)(iii) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(2) A retiree shall be considered as having completed the [~~one-year~~] period of separation from employment with a participating employer required under Section 49-11-1204, if the retiree:

(a) before retiring:

(i) was employed with a participating employer as a public safety service employee as defined in Section 49-14-102, 49-15-102, or 49-23-102;

(ii) during the employment under Subsection (2)(a)(i), suffered a physical injury resulting from external force or violence while performing the duties of the employment, for which injury the retiree would have been approved for total disability in accordance with the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of service are not considered;

(iii) had less than 30 years of service credit but had sufficient service credit to retire, with an unreduced allowance making the public safety service employee ineligible for long-term disability payments under Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program;

(iv) does not receive any long-term disability benefits from any participating employer; and

(v) is at least 50 years old; and

(b) is reemployed by a different participating employer.

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(3) (a) The office may not cancel the retirement allowance of a retiree who is employed as an affiliated emergency services worker within [~~one year of the retiree's retirement date~~] the period of separation required under Section 49-11-1204 if the affiliated emergency services worker does not receive any compensation, except for:

(i) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money or cash equivalent payment not tied to productivity and paid periodically for services;

(ii) a length-of-service award;

(iii) insurance policy premiums paid by the participating employer in the event of death of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

(iv) reimbursement of expenses incurred in the performance of duties.

(b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax credits, vouchers, and payments to an affiliated emergency services worker may not exceed \$500 per month.

(c) The board shall adjust the amount under Subsection (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(d) A retiree is eligible for an exemption from the requirement to cease service without cancellation of a retirement allowance under this Subsection (3) only if the retiree, at the time of retirement, is at least:

(i) 50 years old, if the retiree is retiring from a public safety system or a firefighter system; or

(ii) 55 years old.

(4) (a) The office may not cancel the retirement allowance of a retiree employed as a part-time appointed or elected board member within [~~one year after the retiree's retirement date~~] the period of separation required under Section 49-11-1204 if the part-time appointed or elected board member does not receive any compensation exceeding the amount described in this Subsection (4).

(b) A retiree who is a part-time appointed or elected board member for one or more boards, commissions, councils, committees, panels, or other bodies of participating employers:

(i) may receive an aggregate amount of compensation, remuneration, a stipend, or other benefit for service on a single or multiple boards, commissions, councils, committees, panels,

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or other bodies of no more than \$5,000 per year; and

(ii) may not receive an employer paid retirement service credit or retirement-related contribution.

(c) For purposes of Subsection (4)(b)(i):

(i) a part-time appointed or elected board member's compensation includes:

(A) an amount paid for the part-time appointed or elected board member's coverage in a group insurance plan provided by the participating employer; and

(B) the part-time appointed or elected board member's receipt of any other benefit provided by the participating employer; and

(ii) the part-time appointed or elected board member's compensation does not include:

(A) an amount the participating employer pays for employer-matching employment taxes, if the participating employer treats the part-time appointed or elected board member as an employee for federal tax purposes; or

(B) an amount that the part-time appointed or elected board member receives for per diem and travel expenses for up to 12 approved meetings or activities of the government board per year, if the per diem and travel expenses do not exceed the amounts established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 or by rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(d) The board shall adjust the amount under Subsection (4)(b)(i) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average, as determined by the board.

(5) (a) If a retiree is reemployed under the provisions of Subsection (1) or (4), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Section 49-11-1204.

(b) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitation under Subsection (1)(a)(iii), (3)(b), or (4)(b).

Section 3. Section **49-11-1302** is amended to read:

**49-11-1302. Phased retirement -- Voluntary participation -- Employer duties.**

A participating employer may elect to participate in phased retirement for a retiree who

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has not completed the [~~one-year~~] employment separation requirement under Section 49-11-1204 under the conditions established under this part, if the participating employer:

(1) establishes written policies and procedures for phased retirement that shall include provisions for:

- (a) granting and denying a request for phased retirement;
- (b) needed approvals within the participating employer;
- (c) time limits or other restrictions;
- (d) identifying positions that may be included or excluded; and
- (e) the elements of a written agreement described under Section 49-11-1304;

(2) enters into an agreement described under Section 49-11-1304;

(3) submits an application to the office for phased retirement on behalf of the parties of the agreement described under Section 49-11-1304; and

(4) complies with this part.

Section 4. Section **49-23-301** is amended to read:

### **49-23-301. Contributions.**

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

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

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

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

(d) 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.



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(3) (a) A member contribution is credited by the office to the account of the individual member.

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

(c) A member contribution is vested and nonforfeitable.

(4) (a) Each member is considered to consent to payroll deductions of member contributions.

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

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

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

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

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

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

(A) the ~~{increase}~~ modifications to the multiplier effective July 1, 2020, ~~January 1, 2024, and July 1, 2029,~~ as provided in ~~{}~~Section 49-23-304~~{.}~~ Subsection 49-23-304(2)(a)(ii)~~{.}~~; and

(B) the decrease to the number of years of service effective January 1, 2024, as provided in Section 49-23-303~~{.}~~; and

~~—— (C) the increase to the multiplier effective January } 1 {, 2024, as provided in Subsection 49-23-304(2)(a)(iii)}.~~

(ii) The requirements of Section ~~[49-22-310] {49-22-309}~~ 49-23-309 do not apply to the benefit adjustment described in this Subsection (6)(b).

Section 5. Section **49-23-303** is amended to read:

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### 49-23-303. Defined benefit eligibility for an allowance -- Date of retirement --

#### Qualifications.

(1) ~~[A]~~ Subject to Section 49-23-303.1, a member is qualified to receive an allowance from this system when:

(a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

(i) the member has accrued at least four years of service credit and has attained an age of 65 years;

(ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;

(iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or

(iv) the member has accrued at least ~~25~~ 22 years of service credit.

(2) (a) The member's retirement date:

(i) shall be the 1st or the 16th day of the month, as selected by the member;

(ii) shall be on or after the date of termination; and

(iii) may not be more than 90 days before or after the date the application is received by the office.

(b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).

(3) (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.

(b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease

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service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).

(c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).

(d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).

(4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:

(a) 50 years old, if the member is retiring from a public safety system or firefighter system; or

(b) 55 years old.

Section 6. Section ~~{49-23-304}~~49-23-303.1 is ~~{amended to read:~~  
enacted to read:

### 49-23-303.1. Special rules for defined benefit eligibility for members hired between January 1, 2011, and July 1, 2029.

A member who is hired on or after July 1, 2011, and before July 1, 2029, is qualified to receive an allowance from this system when:

(1) except as provided in Subsection 49-23-303(3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;

(2) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and

(3) one of the following conditions is met as of the member's retirement date:

(a) the member has accrued at least four years of service credit and has attained an age of 65 years;

(b) the member has accrued at least 10 years of service credit and has attained an age of

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62 years;

(c) the member has accrued at least 20 years of service credit and has attained an age of

60 years; or

(d) the member has accrued at least 22 years of service credit.

(4) On or before November 30, 2028, the Retirement and Independent Entities

Committee shall:

(a) request, from the participating employers in this system, data showing the impact of eligibility for retirement at any age with 22 years of service credit and the increased multiplier described in Subsection 49-23-304(2)(a)(i)(C), on recruitment and retention within the participating employers; and

(b) make recommendations regarding whether the eligibility for retirement at any age with 22 years of service credit and the increased multiplier should be extended to include members hired on or after July 1, 2029.

Section 7. Section 49-23-304 is amended to read:

**49-23-304. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social security limitations.**

(1) (a) Except as provided under Subsection (6), the retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years ~~[of age]~~ old or has accrued at least ~~[25]~~ the number of years of service credit described in Subsection 49-23-303(1)(c)(iv) or 49-23-303.1(3)(d), the allowance is an amount equal to:

(i) for a retiree hired on or after July 1, 2011, but before July 1, 2029:

~~(i)A)~~ (A) 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011, but before July 1, 2020; ~~[plus]~~

~~(ii)1(B)~~ (B) 2% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2020~~[-]~~, but before January 1, 2024; ~~[and]~~

~~(iii)C)~~ (C) subject to Subsection (2)(a)(i) ~~+~~ (D), 2.27% of the retiree's final average salary multiplied by the number of years of service credit accrued on or after January 1, 2024, up to a

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maximum of 22 years of service credit; and

(D) if the retiree has more than 22 years of service credit, regardless of the retiree's date of hire, 2% of the retiree's final average salary multiplied by the number of years of service credit in excess of 22 years; or

(ii) for a retiree hired on or after July 1, 2029, 2% of the retiree's final average salary multiplied by the number of years of service.

(b) If the retiree is less than 65 years ~~[of age]~~ old, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has ~~[25 or more years of]~~ more than the number of years of accrued credit described in Subsection 49-23-303(1)(c)(iv) or 49-23-303.1(3)(d), in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

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(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(5) (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

(b) A conversion to an Option One benefit under this Subsection (5) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.

(6) A retiree may not choose payment of an allowance under a retirement option described in this section that is not applicable to that retiree, including because the retiree did

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not make member contributions or does not have a lawful spouse at the time of retirement.

Section ~~{7}~~8. Section **63I-1-249** is amended to read:

### **63I-1-249. Repeal dates: Title 49.**

(1) Subsection 49-11-1204(2)(a)(i), relating to a ~~{90-day}~~183-day separation for public safety and firefighter retirees, is repealed July 1, ~~{2027}~~2029.

(2) The language in Subsection 49-11-1204(2)(a)(ii), "~~{,}~~ if the retiree retires from a system other than a system described in Subsection (2)(a)(i)," is repealed July 1, ~~{2027}~~2029.

~~{+}~~ (3) Title 49, Chapter 11, Part 13, Phased Retirement, is repealed January 1, 2025.

~~{2}~~ (4) Section 49-20-418 is repealed January 1, 2025.

Section ~~{8}~~9. **Effective date.**

This bill takes effect on January 1, 2024.